

Research Article

Impact of Common Law on the Gambian Legal System

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Abstract: The impact of common law system on The Gambia is manifest in the type of legal system the country embraces. Prior to colonialism, The Gambia embraced customary practices of the indigenous people of the country which is mainly influenced by their belief systems in cultural practices. So, customary practices were dominant in the country and they reflected the beliefs of different regions in the country. They also differed from one region to another and from one ethnicity to another. The present existence of the Law of England (Application) Act that allows all the laws operating in Britain as of 1888 to be used in The Gambia is an indication of how common law system gains traction in the country's legal framework. It is obvious that common law is still alien to the practices in certain regions in The Gambia – especially the provincial part of the country but it is also clear that it contributes to maintenance of peace and justice. On the other hand, it causes social disorder as some societies find it inimical to their traditional practices. For example, the criminalization of Female Genital Mutilation (FGM) in 2015 and the current attempt to abrogate this law questions the compatibility of this criminalization with the cultural values of certain indigenous people. Therefore, for the country to strengthen its legal framework, the common law needs to be strengthened by moral values of Gambian society to address its problem of governance.

Keywords: Colonial Legal Heritage, Common Law, Customary Law, Gambian Legal System, Legal Pluralism.



1. Introduction

The Gambia, the smallest sovereign state on the African mainland, is situated in West Africa and is entirely encircled by Senegal on its northern, eastern, and southern borders, while its western boundary meets the North Atlantic Ocean. Covering an approximate land area of 11,000 square kilometers, the nation's population was recorded at approximately 2.4 million in the 2024 census [1]. The country is geographically bisected by the Gambia River, one of West Africa's most navigable and prominent waterways, originating from the Fouta Djallon highlands in Guinea and flowing westward into the Atlantic Ocean. The river's strategic significance is believed to have enticed early European explorers, whose arrival heralded the transplantation of common law into The Gambia. Their initial engagement with the region was primarily motivated by mercantile interests, particularly the transatlantic slave trade, which dominated the socio-economic landscape from the fifteenth to the early nineteenth century until the eventual abolition of slavery [2].

The year 1816 marked a pivotal juncture in Gambian history when, in the aftermath of the British abolition of the slave trade, the United Kingdom established a settlement on the small island of Bathurst (now Banjul) at the river's mouth. This fortification was intended to deter rival European powers from exploiting the river for slave trading purposes [3]. This transition signaled not only the decline of the transatlantic slave economy but also the commencement of formal British colonial dominion. British and French merchants subsequently entrenched their presence on Bathurst Island, fostering its evolution into an urban center. By 1821, Bathurst was incorporated into the British West African Settlements under the jurisdiction of the Governor of Sierra Leone, notwithstanding early expectations that France might annex The Gambia. British resistance ensured the retention of the territory [4]. In 1888, The Gambia was administratively separated from Sierra Leone, emerging as a distinct British colony.

Following protracted colonial rule, The Gambia attained sovereignty on 18 February 1965, with Sir Dawda K. Jawara assuming office as Prime Minister, while the British monarch remained the ceremonial Head of State. Subsequently, after a successful referendum, The Gambia transitioned into a republic on 24 April 1970. The Gambian legal architecture, reflective of the broader legal traditions of Anglophone West Africa, embodies a tripartite framework comprising English common law, including principles of equity and statutory enactments customary law applied within traditional tribunals for specific ethnic communities, and Islamic Sharia law, regulating matters such as marriage, divorce, and inheritance among Muslims. The pervasive influence of English legal norms, particularly in areas outside the ambit of customary and Islamic law, aligns The Gambia with the postcolonial legal trajectories of other former British colonies.

Common law governs various legal domains, notably commercial law, criminal justice, and human rights law. A burgeoning field within contemporary international jurisprudence. The domestication of international human rights standards, often accompanied by penal sanctions, has catalyzed the criminalization of certain entrenched cultural and religious practices. A salient example is the prohibition of Female Genital Mutilation/Cutting (FGM/C) enacted in 2015, an initiative that has recently been subjected to contentious efforts aimed at its repeal. The polarized public discourse surrounding this issue underscores the profound impact of the common law tradition on Gambian society [5], illustrating both the transformative potential and the inherent tensions engendered by the transplantation of foreign legal paradigms.

2. Literature Review

Although The Gambia achieved political independence on 18 February 1965, it did not immediately attain complete sovereignty over its internal governance, as British influence remained embedded within its legal and administrative structures. The vestiges of colonial governance were particularly evident in the country's continued reliance on British-derived legal norms. However, a critical milestone was reached on 24 April 1970, when The Gambia formally transitioned into a republic, with Sir Dawda Kairaba Jawara assuming the dual role of Head of State and Head of Government. This constitutional transformation culminated in the promulgation of the 1970 Constitution of The Gambia, which institutionalized the incorporation of common law principles into the national governance framework. These inherited legal doctrines permeated various branches of government executive, legislative, and judicial manifesting in their respective regulatory and operational mechanisms.

Prior to the imposition of colonial rule, The Gambia's societal order was predominantly regulated by customary norms and traditional practices, deeply rooted in the indigenous belief systems prevalent across the Senegambian region. The term Senegambia denotes the historical and cultural

convergence of The Gambia and Senegal, a relationship later formalized through the establishment of the Senegambia Confederation. This confederation was the product of a bilateral agreement signed in February 1982 between Presidents Sir Dawda K. Jawara of The Gambia and Abdou Diouf of Senegal. Its formation followed Senegal's military intervention to restore Jawara's government after the attempted coup d'état of 1981. In the subsequent years, multiple protocols were enacted under the Confederation's framework, aiming to forge a closer political and economic union between the two states. Nonetheless, by 1989, with the Gambian government's political authority having stabilized and public confidence restored, the Confederation dissolved [6].

Historically, customary practices varied significantly across regions and ethnic groups within The Gambia, reflecting the country's rich tapestry of cultural diversity. These indigenous systems were characterized by a profound respect for, and tolerance of, the traditions of different communities an ethos that, while still present, has diminished in intensity since the colonial era. The imposition of the common law tradition into The Gambia's governance structures has contributed to the gradual erosion of indigenous legal practices, replacing them with Western models of governance that often conflict with traditional belief systems and ways of life. Consequently, the encroachment of the common law framework has introduced cultural dissonance, reshaping the country's normative and institutional landscape in ways that are, to some, alien to the indigenous ethos.

3. Methodology

This study employs a comparative historical analysis to critically evaluate the extent and nature of the influence exerted by the common law tradition in The Gambia, spanning from the colonial inception in 1821 to the contemporary era. By examining various state institutions, the research elucidates the intricate interplay between legal systems, indigenous cultural practices, and societal belief structures. It systematically traces the historical trajectory of the imposition and entrenchment of common law principles, analyzing their evolution and persistence within the country's twenty-first-century governance framework. A qualitative research methodology underpins this investigation, utilizing secondary data sources, including scholarly books, peer-reviewed journal articles, academic theses, and pertinent legal instruments of governance. Through rigorous analysis and comparative assessment, the study reveals that common law norms remain perceived as alien by segments of the population, with some communities regarding them as fundamentally incompatible with their traditional cultures and belief systems.

4. Finding and Discussion

4.1. How Common Law invades The Gambia Legal System

The initial European explorers to navigate the River Gambia were the Portuguese, led by Alvise Cadamosto in 1455; however, their presence was met with fierce resistance from the indigenous populations, ultimately resulting in their expulsion. Subsequent European expeditions, motivated by the commercial successes of the Portuguese, sought to establish a foothold along the river, leading to successive claims of dominion over the area first by the Portuguese, then the Dutch, and eventually the British. The first Europeans to establish a permanent settlement in The Gambia were the Baltic Germans in 1651, who were later displaced by the British amidst ongoing threats from piracy, African monarchs, and French colonial ambitions. Initially incorporated into the British Crown's holdings as part of the Colony of Senegambia, administered from Saint-Louis in Senegal, The Gambia was formally ceded to Britain under the Treaty of Versailles in 1783, while France retained the majority of Senegambia. By 1820, The Gambia had been declared a British protectorate, governed administratively from Sierra Leone, until it achieved the status of a crown colony in 1886. The subsequent year saw the demarcation of formal boundaries between Senegal and The Gambia, and in 1888, The Gambia was accorded the status of a distinct colony under its own governor [7].

The infusion of the common law tradition into The Gambia's legal and governance frameworks was principally effected through the enactment of the Law of England (Application) Act [8]. This statute stipulates that, subject to its own provisions and those of any other legislation, "the common law, the doctrines of equity, and statutes of general application in force in England as of 1 November 1888, shall have force in The Gambia" [9]. Furthermore, with respect to the applicability of Acts of Parliament from the United Kingdom, all such Acts that were extended to The Gambia prior to its independence on 18 February 1965 were to remain operational insofar as local conditions and jurisdiction permitted, and subject to modification by any subsequent local legislation. However, it is critical to note that the Law of England (Application) Act explicitly preserved the validity of

indigenous customary laws, provided they were not repugnant to principles of natural justice, equity, and good conscience, and did not conflict, either directly or implicitly, with any statutory provision in force [10].

Within this context, both the common law and the doctrines of equity originally developed in the English Court of Chancery to mitigate the rigidity of the common law were gradually incorporated into The Gambia's legal framework. Their recognition and continued relevance are enshrined in Section 7(d) of the Constitution of the Republic of The Gambia, 1997 [11].

4.2. Governance framework

Since the invasion of The Gambia by the British through colonialism, the latter's governance system has gained access to the governance system and structure of The Gambia. Effective colonisation in The Gambia demanded a legal system to maintain and control a country and resolve disputes within it, and this is a reflection of the work of the executive. Everywhere the colonial metropolises established their own systems of law and dispute resolution, disregarding pre-existing mechanisms of governance as primitive or appropriate for 'natives' only. Since the establishment of colonial legal institutions, anthropologists and historians have investigated the relationship between state and traditional law.

They have been concerned with the dissonance between the institutional structures and patterns of behaviour prior to colonisation and those that developed because of the presence of a dominating foreign power of Britain. Much of this research has related to individual choices, for example, the decision to have a complaint heard by a council of elders rather than a local small court, or the recourse to traditional laws and customs when confronted with modernising forces such as land reform or agricultural commercialisation. Beyond this act against state institutional issues lies another set of questions relating to common law system in The Gambia and also rooted in the varied colonial experiences of the continent. Of particular interest at the national level is the performance and effectiveness of the various legal systems inherited from the metropolises [12].

4.2.1. Legislature

Since the British colonisation of The Gambia, the colonial governance system penetrated and gradually reshaped the indigenous governance structures of the territory. Effective colonial administration necessitated the imposition of a legal framework capable of maintaining order, exercising control, and resolving disputes, thus reflecting the operational priorities of the colonial executive. In every colonial setting, the metropolitan powers introduced their own legal systems and mechanisms of dispute resolution, often dismissing pre-existing indigenous governance practices as primitive or suitable solely for the "natives."

Since the establishment of colonial legal institutions in The Gambia, anthropologists and historians have sought to examine the complex interactions between state-imposed legal frameworks and traditional forms of law. Their inquiries have focused particularly on the tensions between precolonial institutional structures and the new patterns of governance that emerged under British rule. Much of this scholarship has explored individual agency within this context. For example, the choice between seeking redress through a council of elders or through a colonial small court, or the strategic reliance on customary law in response to modernising interventions such as land reform and the commercialisation of agriculture.

Beyond these micro-level acts of resistance and adaptation lies a broader set of questions concerning the operation of the common law system in The Gambia, deeply rooted in the continent's varied colonial legacies. Of particular significance at the national level is the assessment of the performance and effectiveness of the legal systems inherited from the colonial metropolises [12].

4.2.2. Chieftaincy

District District chiefs represented a tangible expression of African governance and leadership during British colonial rule in The Gambia. Even as the educated elite primarily the Aku community; fell out of favour with colonial authorities from the 1920s onwards, chiefs continued to play a significant yet underexplored role in strengthening local governance systems and, eventually, in the dismantling of colonial rule. Through the indirect rule system, perfected by Lord Lugard in Northern Nigeria from 1914, the British strategically employed the authority of traditional chiefs to augment their limited administrative capacity in West African colonies such as The Gambia. The extremely low literacy rates, the near-total absence of communication infrastructure, and the peculiar territorial configuration

of The Gambia necessitated reliance on traditional leadership structures to sustain colonial control until independence in 1965 [16].

Chiefs served as principal contenders against deeper colonial intrusion and preserved aspects of indigenous authority. In precolonial Gambia, traditional institutions played a central role in governance, with chiefs at the forefront of communal leadership. The onset of colonial rule introduced Western forms of governance, which were progressively modified over time, incorporating modern political and administrative structures at the national and regional levels. Nonetheless, at the district and community levels, traditional authorities, particularly chiefs, continued to share governance responsibilities with central political institutions. In rural areas, however, inadequate infrastructure and persistent poverty limited access to modern state services such as security, justice, and healthcare. In such contexts, the institution of chieftaincy assumed a critical role, becoming a strategic partner in local development.

Despite their enduring importance, traditional institutions suffered significant erosion of political authority under both colonial and postcolonial regimes. Colonial penetration, propelled by European economic and political interests, systematically overhauled indigenous African traditions, diminishing the relevance of traditional governance. The kinship system, once the foundation of indigenous governance, gave way to a chieftaincy system an alien title endowed with diminished power and authority. In many African contexts, remnants of traditional governance structures survive today primarily within the realm of local government administration.

In traditional Gambian societies, the management of public affairs by state institutions historically involved the participation of key local stakeholders. Conceptually, "government" refers to the machinery and institutional arrangements for exercising sovereign powers to serve the internal and external interests of state communities. "Governance," on the other hand, is a broader notion, referring to the interaction between formal institutions and civil society actors. As the United Nations Development Program (UNDP) noted in its 1997 policy paper, governance encompasses the exercise of economic, political, and administrative authority in managing a country's affairs at all levels [17]. It includes all the activities and relationships that governing bodies must engage with to manage public and private matters effectively.

In post-independence Gambia, there appeared a relatively smooth working relationship between traditional and modern state institutions. Local government assumed greater responsibility for administering local affairs, with village-level governance entrusted to Alkalolu village heads elected by the people, endorsed by the Chief, and confirmed by the Regional Governor. Within the broader framework of representative democracy, village-level Village Development Committees (VDCs) operate under the supervision of Ward Development Committees and ward councillors, who, in turn, represent their constituencies at the Area Councils.

Today, local authorities oversee the collection of taxes, levies, and dues, a function previously performed by chiefs during the colonial era. Nevertheless, traditional authorities continue to serve as custodians of cultural heritage and traditional customs. The Gambian Constitution recognises the institution of chieftaincy as a symbol of traditional law and custom, assigning chiefs significant responsibility over matters involving land ownership and distribution, family disputes including marriage, divorce, and inheritance and communal conflicts, though excluding serious criminal matters such as murder.

The colonial administration retained the institutions of chieftaincy and village leadership, using them to ease colonial governance through indirect rule. Chiefs and village heads not only represented the colonial government but also collected revenue, enforced law and order, administered justice, and promoted the cultivation of export-oriented cash crops such as peanuts and cotton. The Local Government Act of 2002 codified the status of traditional governance institutions such as chieftaincies and Alkalolu. Early post-independence constitutions similarly utilised these structures, primarily for taxation and local justice administration.

In the absence of modern governance mechanisms at the village level, Alkalolu continued to collect rates and taxes, which were subsequently gathered by district-based revenue collectors. This arrangement allowed local government authorities to monitor compliance effectively. Furthermore, the 1997 Constitution provides for the involvement of Chiefs in the dispensation of justice, empowering them to adjudicate civil matters, particularly those pertaining to marriage, inheritance, and land disputes. Given that many such cases are deeply rooted in traditional norms, Chiefs are supported by Councils of Elders who advise and, in some instances, adjudicate in district tribunals higher courts of arbitration dealing primarily with local disputes.

In the sphere of development, the Gambian government recognises the value of community ownership of initiatives. To promote inclusive development, authorities routinely seek input from local communities through Village Development Committees, working in collaboration with chieftaincy structures at all levels. This model underscores the enduring significance of traditional institutions as vital partners in governance and local development in modern Gambia.

4.2.3. Court Systems

Pre-colonial African societies, although recognising the existence of executive, legislative, and judicial functions within their governance architecture, did not necessarily distinguish between the various institutions or offices that exercised these functions [19]. Consequently, these diverse offices and the powers they wielded were often centralised in a single person, usually a traditional paramount ruler who discharged them either directly or with the assistance of other traditional authorities and institutions. For all its flaws, the system of indirect rule, while fiscally convenient, acknowledged the multiplicity of normative and moral frameworks that existed within colonial states. It consequently provided multiple fora for dispute settlement. However, litigants were generally not able to engage in forum-shopping or choose the forum in which their cases would be heard and decided. Instead, the state determined the appropriate dispute resolution forum according to specific criteria, typically based on the identities of the litigants, the geographical context, and the type of case. Customary law was accorded a limited role, usually confined to specific regions and particular types of cases. Family matters and issues deemed of minor concern to colonial authorities were generally relegated to customary law jurisdictions, while westernised adjudication was predominant in urban areas; especially concerning economic and contractual matters and was mandatory for serious offenses such as homicide.

Adjudicatory systems were often aligned with the identities of litigants; British colonial regimes typically established 'Native Tribunals' for non-Muslim areas, whereas predominantly Muslim regions were served by Islamic Qadi courts [20]. Even after independence [21], the highest appellate court for The Gambia remained the West Africa Court of Appeal, which had jurisdiction to hear appeals from the High Court in The Gambia. Thus, the judiciary continued to be influenced by the British legal system until 1997, when the promulgation of the Constitution of The Gambia established the Supreme Court as the highest appellate court in the country.

5. Conclusion

In conclusion, the history of common law in The Gambia's governance system has been highly influential in shaping the current framework of the state's legal operations. The continued existence of the Law of England (Application) Act which permits the application of all British laws in force as of 1888 demonstrates the deep entrenchment of common law within The Gambia's governance structure. The court system remains dominated by English common law, resulting in the adoption of an adversarial system of criminal justice within the Gambian judiciary.

Although the legislature plays a central role in governance today, it does not reflect the customary systems that governed indigenous Gambian societies prior to colonisation. Customary law, once the primary and most relevant legal framework for indigenous communities, has been increasingly marginalised by the introduction of British common law and the doctrines of equity that accompany it. Significantly, for a customary law to be recognised as legally valid, it must not be repugnant to principles of equity an external standard imported through the common law tradition.

It is evident that common law remains somewhat foreign to practices in certain regions of The Gambia, particularly in rural areas. Nevertheless, it has contributed to the maintenance of peace and justice. At the same time, however, it has caused social tensions, as some communities view it as contrary to their traditional and cultural values.

Thus, I recommend that, in order to strengthen The Gambia's governance framework through legal reforms, the common law system should be complemented with the moral and cultural values of Gambian society. This would ensure a legal system that both maintains justice and remains authentic to the unique traditions and identity of the Gambian people.

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