

Anti-Obeah Laws of the Anglophone Caribbean, 1760s to 2010

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Starting in Jamaica in 1760 and continuing to the present, scores of laws criminalizing obeah have been enacted in the 17 jurisdictions of the Anglophone Caribbean, the former British West Indies [countries such as Trinidad and Tobago, St. Kitts and Nevis, for example, are counted as one jurisdiction]. These laws include laws solely concerned with obeah -- so-called "Obeah Acts" or "Obeah Ordinances" -- as well as anti-obeah provisions in sections of Penal Codes, Criminal Codes, Police Acts, Vagrancy Acts, and Summary Jurisdiction Acts.

This paper gives a comparative summary of the main features of anti-obeah laws from the period of slavery to the present. It is the preliminary result of a study started several years ago. In a 2004 paper, Kenneth Bilby and I included a brief appendix which made a cursory attempt to discuss some of the anti-obeah legislation in the Anglophone Caribbean. A few years ago we decided to expand that appendix and compile a detailed inventory of anti-obeah laws, which would serve as an empirical baseline for comparative studies. In dividing the labor, I assumed the task of researching the laws and producing an initial draft. I must emphasize here that although the spirit of my collaborator Bilby hovers over this paper, he is in no way responsible for its present form and content-- its flaws and shortcomings are mine alone.

In our 2004 paper Bilby and I argued that the term obeah [largely restricted to the Anglophone Caribbean] is a catchall term referring to a diverse range of beliefs and practices related to the control or channeling of spiritual forces. These forces are neither bad nor good, and "could be used either way,"

as Philip Curtin observed years ago in his pioneering study of Jamaica. The beliefs and practices West Indians today include under the rubric obeah do not, nor have they ever, formed a unified system. However, what all obeah practitioners have in common is the recitation or casting of spells and the utilization of material objects, which have been endowed with spiritual qualities. These spells and objects, Bilby and I maintained (broadly following the views of Kamau Brathwaite) were/are primarily directed toward socially and personally beneficial ends on the behalf of clients. Evidence for these objectives is also found within the laws themselves, as I will discuss momentarily.

Moreover, the positive social value originally attached to obeah by enslaved West Indians (and many of their descendants) is reflected in its most likely original meaning. While all authorities agree that the term [**not the beliefs and practices associated with it**] ultimately derives from some African language or languages, its specific linguistic roots remain problematical. Bilby and I argued in another paper [**2001**], contrary to conventional assumptions tracing it to the Gold Coast with meanings such as evil magic or witchcraft, that a likely original source for the term is Igbo or a related language spoken in southeastern Nigeria, where the term could mean “practitioner, herbalist” or even doctor; in any case, a term regarded as more socially positive.

Yet, undeniably obeah was also believed to be sometimes used malevolently to harm enemies (including whites), a belief that was heavily emphasized in the slave laws which criminalized obeah. Resident whites in the West Indies condemned and feared obeah practitioners [**a fear or awe that was**

often shared by the enslaved themselves], views that profoundly informed attitudes towards obeah for many years including the present day.

Laws that specifically included the term “obeah” in their titles emerged during the period of slavery, first in Jamaica in 1760, then Barbados in 1806. By the end of the slave period in 1834-1838, virtually all territories of the British Caribbean had criminalized obeah. After emancipation, with the nullification of slave laws, anti-obeah legislation was gradually re-introduced and within the next forty or fifty years obeah had been criminalized in all of the British West Indies.

Early post-slavery prohibitions were often included in Vagrancy Acts. These were ultimately based on England’s 1824 Vagrancy Act, which addressed a variety of social issues, primarily if not entirely focused on the working class and the poor. One clause of the English act listed a number of offenses which defined a “rogue and vagabond.” Heading this list were persons “pretending or professing to tell fortunes, or using any subtle craft, means or device, by palmistry or otherwise, to deceive . . .” West Indian Vagrancy laws incorporated this phrase [sometimes with minor variations in wording], but the word “obeah” was inserted after “palmistry.” Unlike the slave laws that preceded them, West Indian Vagrancy laws were not phrased in racial terms, but they were clearly directed against the new class of emancipated slaves; the white elites and their colonial supporters were not willing to relinquish their control of the mass of the population.

Whether included in Vagrancy Acts or other types of legislation, by the 1880s or 1890s, anti-obeah provisions had appeared in the legal code of every

jurisdiction in the British West Indies. Although these provisions were modified or amended, with penalties for conviction becoming less severe over time they were to continue well into the modern era.

In today's Anglophone Caribbean, in the popular mind and in governmental and official circles, obeah is generally viewed negatively and as a harmful practice. These views persist to varying degrees in different territories and vary among and within socioeconomic classes. Although changes in the laws in recent times reflect changing societal attitudes and efforts to discard the negative cultural and social legacies of the colonial past, virtually all of the legal systems of the former British West Indies still criminalize obeah. As of early 2011, only four countries had removed obeah from their legal codes [Anguilla, 1980; Barbados, 1998; Trinidad and Tobago, 2000; St Lucia, 2004], although prosecutions against it have become increasingly rare.

In most cases anti-obeah laws follow a standard format: first, a brief preamble which usually attacks obeah as a fraudulent and evil practice; this is followed by an itemization of the types of activities that are condemned, a discussion of the judicial procedures for trying suspected cases, and finally a specification of the sanctions or penalties for those convicted.

The difficulty modern scholars experience in defining obeah is reflected in all of the laws. Although the term "obeah" is mentioned any number of times, only a few laws attempt to define it - - even then definitions are vague and imprecise. For example, Trinidad's 1901 Ordinance merely stated, "obeah signifies every pretended assumption of supernatural power or knowledge for

fraudulent or illicit purposes or for gain, or the injury of any person”; essentially the same definition, with only minor differences in wording, was found elsewhere. The 1904 Obeah Acts of the Leeward Islands and Dominica were particularly vague, merely stating tautologically that obeah “means obeah as ordinarily understood and practiced.”

In one form or another, every West Indian law emphasized obeah as a fraudulent activity, either explicitly or implicitly stressing that practitioners were aware that their claims to “supernatural power or knowledge” was false, and only served their own pecuniary interests.

Many laws also emphasized that obeah was used to control or frighten people, and the laws associate the word “intimidate” with obeah in most territories, starting in the nineteenth century and in many cases continuing to the present.

The highly negative view of obeah was expressed in several slave laws, which castigated the practitioner as “pretending to have communication with the devil and other evil spirits.” This phrase first appeared in Jamaica in 1761 and also occurred in the slave laws of a few other jurisdictions (it disappeared in post-slavery laws). In fact, slave laws often equated obeah with witchcraft (the most common term) or sorcery, although neither term was defined. Both terms were sometimes continued through the nineteenth century and remain in present-day laws. However, in post-emancipation times, as Paton (2009) has quite rightly observed, “the legal construction of obeah shifted from being primarily about witchcraft to being primarily about fraud.”

Thus, when post-slavery West Indian laws characterized the **obeah practitioner**, they emphasized fraud and deception, often repeating verbatim or closely paraphrasing, as I mentioned earlier, wording in England's 1824 Vagrancy Act. The laws merely inserted the word "obeah" into the list of offences, sometimes also adding to the English law's phrase "to deceive or impose," the phrase "superstitious means"; thus, the West Indian law now read, "to deceive or impose by superstitious means."

In general throughout the West Indies, the Vagrancy Acts and anti-obeah sections in other laws had very similar wording, a similarity which Paton has observed (2009) "resulted both from deliberate copying by one colony of the laws of others and from imperial pressure toward consistency across Britain's Caribbean colonies."

Some slave laws referred to "**instruments of obeah**," i.e., material goods allegedly used by practitioners. Sometimes these "instruments" were **not** specifically identified, and sometimes they were, e.g., broken bottles, egg shells, dog's teeth, pounded glass, cards, to give a few examples. Poison as one of the reputed "instruments of obeah" was first explicitly associated with obeah in a 1788 Dominica slave law; it was then included in the laws of a **few** other jurisdictions. As an aside, it can be noted, poison is not an intrinsic feature of obeah; some obeah practitioners employed poisons (**or were so accused**), others did not. People who did not consider themselves obeah practitioners also used poison. In any case, neither poison nor any of the "instruments" specified in the slave laws were repeated in post-slavery times and when "instruments" are

mentioned in post-slavery laws they are not specified and left vague [probably reflecting the wide array of objects that practitioners used]. For example, the major 1898 Jamaica Obeah Act defined an “instrument of obeah” simply as “anything used or intended to be used” in the practice of obeah. Identical or virtually identical wording occurred from time to time in other jurisdictions, and in some cases these vague definitions and phraseologies have persisted until the present.

In several jurisdictions the law presumed that a person found in possession of an “instrument of obeah” (which was never defined in the law itself) on his person or in his home was an obeah practitioner.

In general, given how vaguely “instruments of obeah” are defined in most laws, interpretation and prosecution are difficult. Keith Patchett, a former Dean of the Law School at Cave Hill (Barbados) wrote several decades ago, “Since in practice **almost any** instrument can be claimed by [prosecutors] . . . to possess occult or supernatural power, the task of determining which instruments found in the possession of someone who practices obeah are actually used in such practice is not always an easy one.”

If the wording in anti-obeah laws is similar throughout the West Indies, the **penalties for practicing obeah** were also broadly similar - - although they varied from territory to territory and changed over time.

The slave laws contained severe penalties, which usually involved, at the minimum, execution [probably hanging in most cases, although the type of execution is not specified]. Sometimes in lieu of execution, “transportation” or

“banishment” from the territory was possible. Within the Caribbean context, banishment meant, in effect, being sold into slavery elsewhere as well as the breaking of local family and other social ties, relationships of fundamental importance to many of the enslaved. In general, the penalties in the slave laws were far more uniform and stable than penalties enacted after the end of slavery.

After slavery ended, the death penalty and transportation or banishment was eliminated and penalties gradually became less harsh. The most common penalties became imprisonment with or without hard labor (the most frequent type) and whipping/flogging (much less common); these were sometimes combined with fines. The frequency of these penalties varied by time period and by jurisdiction and could be combined; for example jail with hard labor as well as a whipping.

Within recent years, the laws against obeah are infrequently enforced, and the penalties for conviction vary. In Jamaica, conviction can result in up to one year imprisonment, with or without hard labor; or whipping in addition to or in lieu of prison. Jamaica stands alone in continuing to have hard labor and whipping in its laws. The remaining territories impose, at the minimum, a jail sentence, sometimes in combination with a fine, at other times in lieu of a fine.

In addition, persons convicted of **consulting obeah practitioners** were also liable to penalties in most jurisdictions at one time or another, continuing in some cases, to the present. Penalties varied, but they usually involved a jail sentence or a fine, sometimes both and sometimes including hard labor. Jail

sentences also varied, and ranged from a minimum of three months to, more commonly, up to six months or a year.

A final component of many laws, which did not emerge until the late 19<sup>th</sup> century but which continues to the present, relates to the **writing, printing, and distribution of written** materials promoting obeah. Jamaica's 1898 Obeah Act, which has remained in force essentially unchanged until the present, **[movement to get rid of law in Jamaica]** was the earliest law to impose a fine for writing, publishing, selling, or distributing any printed matter that promoted "the superstition of obeah." Most other jurisdictions followed with similar restrictions, sometimes with identical wording. The penalty for conviction varied from jurisdiction to jurisdiction, but usually involved a fine or prison, sometimes both.

**In concluding**, let me consider what I as an historical/social anthropologist, find one of the most interesting dimension of laws in general and anti-obeah laws in particular, that is, in prohibiting an activity or activities the laws reveal the behavior, values, and ideas of the people against whom the laws are directed.

The slave laws enacted by colonial authorities and local white elites emphasized the perceived deleterious influences of obeah practitioners on the enslaved. It was asserted that practitioners could, among other things, incite rebellion and escape from masters, and also convince slaves that they could be protected from harm by a spell or some other spiritually based protective device.

Post-emancipation laws no longer mentioned revolts or escape, but in highly ethnocentric terms they continued to stress the negative and anti-social

influences of obeah and its practitioners. In so doing, the laws inadvertently indicate the most common social issues or personal concerns that prompted clients to seek help from obeah men and women. That is, in their very condemnation of certain activities or behaviors, the laws also suggest the problems that encouraged people to patronize obeah practitioners.

One of the most common practices condemned in the laws is “fortune telling,” in effect, divination -- the practice of foretelling future events or discovering hidden knowledge by supernatural means. While the word “divination” only appears in two slave laws, “fortune telling,” or some variation in wording, is quite common. From the perspective of enslaved Africans and their descendants whose cultures were heavily influenced by African practices and belief systems, divination played a fundamental role in their everyday lives. In Africa, then and now, divination allows people to control chance and minimize ambiguity in their lives so that important decisions can be made under favorable circumstances. It also permits finding lost or stolen objects (and identifying thieves), a practice West Indian laws commonly attribute to obeah practitioners, or discovering special knowledge, such as the cause of illness or other types of misfortune. The diagnosis of disease is crucial to divination in Africa, and the diviner's immediate objective is to ascertain the cause of the illness and then prescribe appropriate healing rituals and treatment.

Although West Indian laws widely viewed obeah practitioners as having the ability to “inflict any disease” or otherwise cause injury, at the same time they also indicated that practitioners were consulted to “restore any person to health”

or “to cure injuries or diseases”; that is, they could cause as well as cure “disease or sickness, pain or infirmity.” For this reason a few slave laws, reflecting usage in the enslaved communities themselves, referred to obeah practitioners as “doctors.” Although the term “doctor” does not appear in post-slavery laws, these laws continued to inadvertently emphasize that medical help was a major reason why obeah practitioners were consulted.

In sum, as reflected in the laws, the major reasons why early West Indians sought the help of obeah practitioners were essentially the same as today. Today, although obeah is widely invoked to explain evil happenings or bad luck (its frequency as an explanatory device varies from society to society) and despite the negative views of obeah held by many contemporary West Indians, practitioners are still sought, to varying degrees in different societies, for a wide diversity of life’s problems. These include, for example, medical issues, protection from harm and the bringing of good luck in every day affairs (school exams, keeping a job), discovering lost objects, ameliorating social relationships such as stopping an errant husband from cheating on his wife or holding onto a lover. In brief, as Kamau Brathwaite stressed in a 1974 essay, “The principle of obeah is . . . like medical principles everywhere, the process of healing/protection through seeking out the source or explanation of the cause . . . of the disease or fear. This was debased by slave master/missionary/prospero into an assumption, **inherited by most of us**, that obeah deals in evil. In this way, not only has African science been discredited, but Afro-Caribbean religion has been negatively fragmented and almost . . . publicly destroyed.” The history of anti-

obeah legislation in the West Indies and the texts of the laws themselves amply support Brathwaite's perspective on this widely misunderstood dimension of West Indian society and culture.