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HISTORY, LAW AND SOCIETY IN NIGERIA

By

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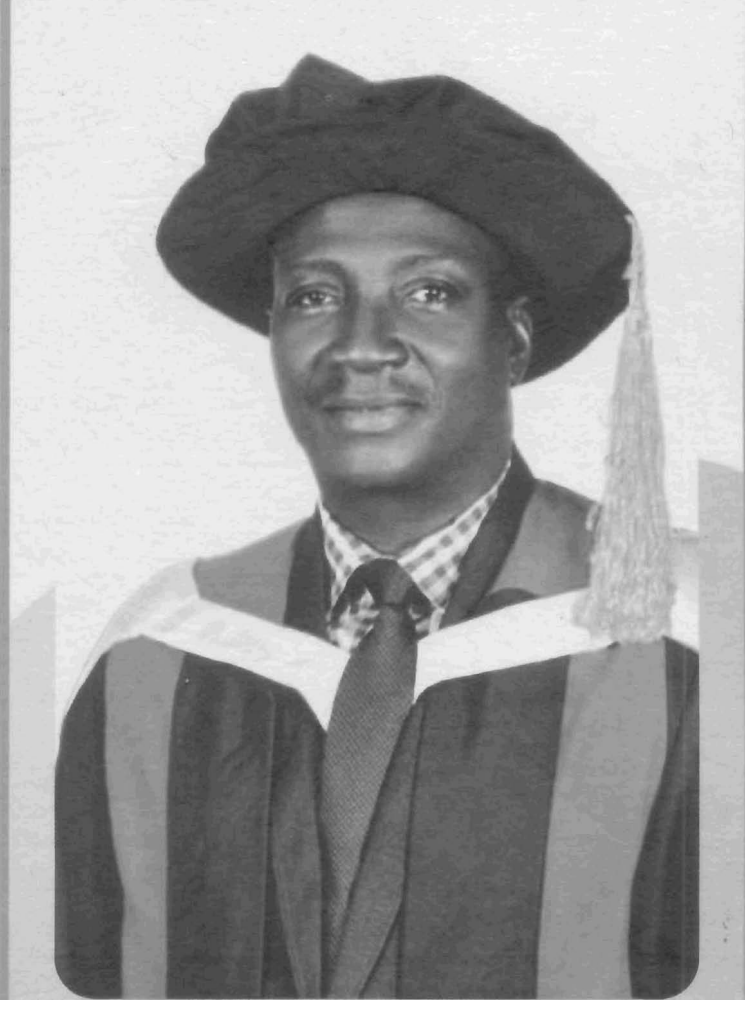

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Preamble and Introduction

Mr Vice Chancellor,
I stand here today to pay my dues to this academic community and to partake in an academic tradition or ritual, which over the ages, has been a plumb line in measuring academic excellence, career relevance and sustained commitment to scholarship. Though there are different interpretations and understanding of what an Inaugural Lecture is; it is however, for me, a one in a life time opportunity to publicly proclaim the success of my sojourn in the discipline of history, and having attained the peak of my career as a Full Professor, seize the auspicious occasion to call attention to the continuing relevance of history in an organic society such as our country, Nigeria.

My decision to share my thoughts on History, Law and Society in this lecture is both personal and institutional. I decided to speak on this topic because of my initial fascination with law and eventually, love for history and the study of history. I want to provide the connection between law and history based on my understanding of African indigenous knowledge, thoughts and ideas. A careful study of the intellectual foundation of the Yoruba society would reveal the general attitude of the Yoruba to law and history. The potentials of the Yoruba indigenous knowledge in juristic thought, public administration and history are enormous which over the years, served the best interest of the race in state and nation building. Indigenous knowledge possesses almost limitless possibility for the resolution of the problems of life and living that we face today. As rightly observed by Charles Darwin, 'the highest possible stage in moral culture is when we recognise that we ought to control our thoughts'. This, the Yoruba, from time immemorial, have done by developing a system of thought and knowing which provided sense and direction for all their engagements with socio-political and economic realities. It is therefore, a major research agenda for me, to explore, understand and account for the development of such a huge traditional intellectual capital and to underscore its relevance even in the global market of ideas and epistemologies.

As I present today, the 324th Inaugural Lecture of the University, it is the 10th from the Department of History and the only one in the last twelve

years. It is therefore, on the shoulders of my illustrious predecessors and former teachers that I lean, in trying to demonstrate once again, the timeless relevance of our discipline and calling. From History and Society through History and Nation Building, The Arab Factor in African History, Evolution of African Historiography: An Overview, Nigerian Diplomacy: The Burden of History, The Problem with the Past, Reconciliation: The Myth and the Fact, Foreign Policy Cooperation in Developing States, to The Problems of Historical Understanding[1], it is obvious that the menu is well served and that the subject matter of history has been properly articulated for this academic community. However, there is equally, and always, a need to add some flesh to, and update the framework already provided by earlier lecturers as indicated above. My concern is to inform this audience that the province of history is getting wider by the day and therefore, the need to re-appraise methodologies, re-define the purpose of history and demonstrate its relevance in a materialistic world, one in which, gratification could hardly be delayed. Evidently, it is practically impossible to see any branch of knowledge without its own history and every system of knowing is better understood through the exploration of the labyrinth of its history or annals.

Frontiers of Knowledge and the Functional Relevance of History in Society

It is equally evident that demonstrating and orchestrating the functional relevance of history as a field of study is a continuous exercise, and as the field gets wider, the challenge becomes bigger. As the human society becomes more complicated, complex and impatient, so also must history which, is a faithful recorder of events, must re-tool to explain the extent, directions, causal factors and implications of the flux and changing situations, circumstances and ideas. Peter Loewenberg probably had this in mind when he declared that 'each historian and each age re-defines categories of evidence in the light of its needs, sensibilities and perceptions'[2]. Put differently, it means each age writes its own history in a way. The hallmark of a good historical account is the logic of its thesis, lucidity of its language, credibility of its evidence, its factual accuracy, interpretive brilliance and narrative clarity. African history and cultural productions are examples per excellence in discursive engagements with social reality and traditions. The peculiarity of the nature and character of African history makes it amenable and answerable to narrative formats that would serve its purpose for scholarship and society. The second and

third waves of historical scholarship in Africa have demonstrated the need to re-conceptualise historical research methodology and recognise same as an integral part of global history. African history has moved into virgin lands and new areas or frontiers are being added to the enlarged coast of historical scholarship. As succinctly put by Hans Meyerhoff:

> The subject matter of history is human life in its totality and multiplicity. It is the historian's aim to portray the bewildering, unsystematic variety of historical forms-people, nations, cultures, customs, institutions-in their unique, living expressions and in the process of continuous growth and transformation.[3]

Professional historians are committed to and guided by the canons of historical scholarship and, in expanding the province of African history, contemporary academic productions have gone beyond the narrow confines of justifying the antiquity of African history to establishing the relevance of history within the context of the society and age. For instance, the initial goal of the new School of History at Ife was an understanding of society through research in its culture and traditions.[4] The first Inaugural Lecture titled History and Society[4] was delivered in 1976 by Professor B.O. Oloruntimehin, while History and Nation Building[5] was presented in 1977 by Professor I.A. Akinjogbin as the second. Accordingly, Oloruntimehin declared "... the task of the historian is to study and interpret the changes embodied in society and explain the reasons for them". For Akinjogbin, the main purpose of history in nation building is the conscious search for the soul of the nation through diligent production of enough collective experiences. In his words:

> The framework within which any African history should be written today should be helping the nation, whatever nation, to find its soul. It should be the yardstick against which scholarship is measured. It should be the knowledge to which we all seek to contribute.[6]

It is therefore within this reasoning that the twin concepts of 'Continuity and Change' and 'The Past in the Present' found their respective relevance in Nigerian historical scholarship. These two pioneering academic publications emphasised the utilitarian value of history, the need for a proper understanding of the role of history in organic human

societies just as they provided a philosophical foundation for the Ife School of History.

History and Law in Society

The disciplines of Law and History have come a long way to the extent that their provinces could be said to co-terminate within human society which is organic, dynamic and responsive to internal and external pressures. History as an academic discipline is set to study human activities within a particular time frame and in the context of society. As rightly defined by Oloruntimehin, 'History is the study of society in time perspective'[7] which, means the subject matter of history is the human community in its mutual interactions with the forces of social change in spatial and time dimensions. As noted elsewhere, the academic discipline of history, properly so understood, is not in any way close to the common definitions which explain history as mere fairy tales or tales by moonlight, accounts about the rise and fall of states, Empires and kingdoms, the biographies of individuals or the now common definition of history as the study of the 'past today for the good of tomorrow'. Historical scholarship has, indeed, demonstrated the inadequacies, errors and inappropriateness of these elementary and perhaps pedestrian positions. As noted by the eminent German jurist Friedrich von Savigny, law and history have many meeting points. A nation's history is partly reflected in its laws and in the activities of the officers of the law who administer and manage the legal process.[8] The proponents of historical jurisprudence opposed all attempts to codify the law or derive legal theories from general principles without due regard to customs and traditions of the particular people. They advocated a proper study of law through historical research and declared that 'law is to be understood always in its historical setting, the result of a process of historical development, not simply as the arbitrary command of a –perhaps transitory- sovereign power'.[9] The main idea of historical jurisprudence was that a nation's indigenous or customary law is its essentially living law which the judge must discover within its social context. In Germany, where it all started, jurists of Savigny's persuasion, identified law with the customs and traditions of a people and were sceptical of rationalism, natural law and the idea that law was a command of the State.

Law has been variously defined and its functions variously conceived or understood. Primarily, law is to secure justice, resolve social conflicts, order the society, lubricate the machinery of social interrelationship,

protect individual and corporate interests and manage social relations. The agencies of law are therefore designed to enhance the capacity of law to establish relevance in social relations, where it is necessary to preserve order, redress harm and protect basic freedoms. It is obvious that legal institutions open avenues to the deeper understanding of culture, history, political system and economy. The history of any society is best understood by a study of the laws guiding the nature and pattern of human social relations and behaviours. By the same token, the origin, sources, adequacy or relevance of law in any human society are better appreciated by an understanding of the history of those who made and for whom laws were made *ab-initio*. Arising from the above, the relevance or functionality of both disciplines derives from history being a product and recorder of change, and law, a causative agent and product of change. In all of this, social change and law share the proverbial relationship between an egg and a chick. Social change which, by its nature is either evolutionary or revolutionary is provoked by law and in turn modifies the law. History is the faithful witness of these mutually reinforcing interactions and is made by their consequences or implications. While sustaining his conviction of the inexplicable relationship between history and society, Oloruntimehin noted:

> The task of the historian is neither easy nor exclusive. Just as the society is multi-faceted, so also its history, as (sic) of the problem of studying it. This is part of the explanation of the many images of history and the historian. History shares the task of interpreting changes in the society with other disciplines in the humanities and social sciences...[10]

Buttressing this same point of the relationship between history and society, Oloruntimehin quoting Guy Rocher said:

> History is society. It is constantly engaged in an historical movement, in a transformation of itself, its members, of its environment as of other societies with which it maintains relations. It stirs up, undergoes or receives ceaselessly both internal and external forces which modify its nature, its orientation and its destiny. Whatever its manner-sudden, gradual or even imperceptible-every society experiences changes every day. These changes are more or less in harmony with the past of the society and follow a more or less explicit pattern or plan... It

(society) is also movement and change of a collectivity over time... [11]

Importantly, apart from organising and interpreting individual and collective lived experiences, history provides a channel for the transmission of tangible and intangible (visual and performing art) cultural heritage from one generation to the other.

Proponents of sociological jurisprudence have also located the role of law within the context of society. The leading advocate of this school of thought, Roscoe Pound argued that in order to improve the law and solve the problems associated with the administration of justice; jurists must go beyond legal studies to an understanding of the actual effects of legal institutions and doctrines. In an address delivered at the 29th Annual Meeting of the American Bar Association in 1906, Pound advocated a sociological legal history, which he described as a study not only of how doctrines evolved and were developed, but more importantly, of what social effects the doctrines of law have produced in the past and how they produced them. [12] What was fundamental to Pound was the functional attitude which is the study of not only what legal materials are and how they were made, but also of what they aim to effect and how they work. Sociological jurisprudence is therefore more about law in action and as a means of social control.[13]

Society, Law, and Justice in Africa

Pioneering works on African law, customs, and judicial administration have examined the nature, character, and functions of African law from divergent intellectual and disciplinary perspectives. The main thrust of judicial administration or customary law in pre-literate and agrarian societies, namely arbitration, reconciliation, and amelioration have been widely discussed to the extent that it would be trite bringing such discussions up again here. The inadequacies of earlier studies included, but not limited to the condemnation of African law and customs as barbaric, incomprehensible, fluid and diametrically opposed to Western or Christian civilization. Some even believed that African law was no more than detestable aspects of pagan traditions. Those who reluctantly conceded that Africans had a system of laws would not see anything, other than criminal law and a primitive system of law and order. More recent works have however demonstrated the obvious ignorance and misconceptions inherent in this denial of African legal heritage.

For convenience and ease of access to significant portions of its historical experiences, Nigerian history is conveniently divided into three major phases of pre-colonial, colonial and post-colonial. In all of these phases, law played and is still playing the important roles identified above. Law and its agencies have had cause to re-order the society and to re-define its values. The re-definition of values had enormous social consequences, huge enough to cause social change in all phases and many facets of Nigerian socio-political, cultural and economic life.

In securing justice and resolving social conflicts, societies, kingdoms and Empires in pre-colonial Nigeria designed and implemented laws to guide human conduct and ensure that justice was served across board. Each Nigerian society had a proper definition of justice and devised mechanisms and machineries for actualising it. For instance, the Hausa city states before the Jihad had each, a constituted authority system, which was managed by the Sarkin as head of an elaborate court system. The city state system was predicated on the ability and capability of the State and its agencies to maintain a system of laws derived from customs and traditions. It was not until the early 19th century that internal and external pressures forced a breakdown of existing mode of managing differences. The Jihad led by Usman dan Fodio queried the legitimacy of what was described as decadent political system that was allegedly unable to secure justice and resolve social conflicts. According to Arshad Munir, the contradictions connote clashes between the old and the new forces and ideas. The Sokoto Jihad could necessarily be described as an intensification of the inherent contradictions in Hausaland before and by 1804. The success of the revolution marked a transition from Habe traditional rulership to Fulani hegemony and the establishment of an Islamic Empire known as the Sokoto Caliphate. The crowning glory of the Jihad was the proclamation and acceptance of Islamic culture and system of law of which, the Maliki School of jurisprudence became dominant.[14] Judicial intervention in the Caliphate, in theory, was based on the foundational principles of the Maliki School which included, the Quran, the Sunna, the Consensus of the People of Medina, analogy, statement of the Companions together with consideration of public interest, customs, common usage, blocking the means, presumption of continuity and discretion.[15]

Among the Igbo, to secure justice and manage social conflicts, a stateless and acephalous system of administration based on a system of village

democracy of adult male suffrage was predominant. The twin institutions of Amaala, which was a council of Ofor title holders and the Village Assembly of all male members of the village, provided direction and were responsible for the making and execution of laws for the proper management of the affairs of the village. The Council of Elders maintained the traditions, customs and laws of the land while also making and implementing laws against any act that could adversely affect the moral health of the society. Each village also belonged to a network of villages which also secured justice and managed social conflicts. History has a catalogue of instances when values changed to accommodate new realities and developments.[16] One of such instances was the introduction of the Christian faith. Christianity among the Igbo has a chequered history as it eventually became, not just the dominant religion, but also gave birth to what could be described as a cultural revolution in South-eastern Nigeria.

The Yoruba of South-western Nigeria established efficient machinery of State administration, in which the judiciary at the State level, operated as a paramount agency of social control and justice. This public policy direction was confirmed by the system of judicial administration in the leading states of Oyo, Ife, Ibadan, and Abeokuta. It is conclusive that the level of legal and judicial administration in a state is indicative of the level of its political and administrative sophistication. Judicial tribunals in these states operated on the basis of highly developed and advanced body of legal principles and jurisprudential thoughts. They equally became involved in the resolution of matters with major consequences for State policy. The coordinated relationship of the executive and the judiciary among the Yoruba was amply demonstrated by the existence of well-defined and well-known machinery for the enforcement of judgments and other judicial decisions. The Yoruba legal tradition also made clear and necessary distinctions between civil and criminal law and also between law and custom.[17]

The Concept of Justice among the Yoruba

Mr. Vice Chancellor, I have demonstrated severally that Africans had a clear understanding of what justice was, what it was not, and why it was a necessity in nation building and healthy inter- personal relationships. The concept of justice among the Yoruba could be understood if it is located within the matrix of the underlying moral philosophy of an incurably religious people. A 'stream of tendency' is found in the

Yoruba worldview that, in turn, defines social reality for them. How they conceived of social reality is expressed in the body of thoughts that defined the nature and pattern of social relations. Yoruba worldview is shaped by powerful religious beliefs which throughout their history have influenced every aspect of Yoruba life. Yoruba legal and judicial systems recognized this and therefore found it appropriate in the determination of what was morally right and socially acceptable. In pre-colonial era, Yoruba jurisprudence was, in significant proportion, if not totally, a reflection or recognition of the sacredness of right moral conduct. The kernel of law was situated in a moral philosophy that directed how human beings must behave in society. While the esoteric knowledge of Ifa belonged to an elite class of initiates, proverbs as a body of thoughts probably developed to define and regulate the dynamics of social relation. As noted by Adewoye, Yoruba proverbs convey juristic thought[18] and if we may add, Odu Ifa provided the underlying principles or philosophy of law and of adjudication. This position is nonetheless strengthened by the observation that virtually all Yoruba judicial personnel belonged to the exclusive cult of Ogboni and other similar bodies. Knowledge of the secret things of the Yoruba world was only obtainable in the sacred groves, which provided opportunities for initiates to acquire wisdom from what Wenger called their 'metaphysical bloodstream'. According to Akinjogbin,

> All other knowledge derived from human actions or from actions which human eyes can observe, including all the applied sciences, are classified as history (Itan). Itan for the Yoruba included what we would now regard as Law, Political Science, Philosophy, Literature, etc. The Yoruba believed that a good understanding of the essences imparts imo, which can roughly be translated as knowledge, while a good acquaintance with history bestows ogbon-again roughly translated as wisdom.[19]

It might equally be that proverbs owed their origins to members of these sacred conclaves who having been reared in the best tradition of esoteric moral philosophy had cause to apply these principles and expressing them in ways that had meaning to the non-initiates. Proverbs are everyday sayings that provide easily digestible prescriptions for human conduct in society. According to Crowther:

> There is a degree of moral light observable in them (proverbs) which renders them peculiarly interesting and gives them, I may

> add, a real value in connection with the inquiry into the moral government of the universe...but there is something more striking: the high standard of morality observable in the sayings of the Yoruba displaying as it does, peculiar virtues, which are commonly regarded as being appreciated only in civilized societies. Were we to measure this people by the standard of their proverbial morality, we should come to the conclusion that they had attained no inconsiderable height in the development of social relations having passed out of the savage barbarism in which every individual lives for himself alone into a higher state of being in which the mutual dependence of one member on another is recognized, giving room for the exercise of such virtues as a sort of moral contract for the safeguard of society.[20]

Proverbs serve as the conveyor belt for juristic and other thoughts and yet in some instances, the reverse of the sense they convey could be applicable. They therefore lack the comprehensiveness of what Immanuel Kant in his moral philosophy called the categorical imperative; a body of knowledge that could guide the conduct of man in society. They are not principles of adjudication, but general directions to guide the conduct of man. As noted above, the conclaves of the oracles provided opportunities to search the deep things of life in order to understand the cosmos in our attempt to explain the purpose of man. The conclaves were indeed the precursors of the present efforts to acquire knowledge of the world in which we live. The main thrust of Yoruba jurisprudence was how to use the agency of law to maintain a morally acceptable pattern of conduct within the society. It reflected recognition of the immortal truth of sacred injunctions as the ultimate principles of justice. The end of justice was to enhance the achievement of what Akiwowo called the five categories of inalienable social values that constituted the purpose and goal of human society. He listed these categories as:

Ire aiku (the value of good health till old age)
Ire owo (financial security)
Ire oko aya (the value of intimate companionship and love
Ire omo (the value of parenthood); and
Ire abori ota (the value of assured self-actualization).[21]

The Yoruba believed that justice was all about using the agency of law at whatever level to ensure that human efforts to achieve these goals were not abridged. Law must then be administered to teach human beings the basic moral lessons in behaviour.

Mr. Vice Chancellor, my study of indigenous judicial systems in many Southern Nigerian communities and societies has given positive indications of the possibility of locating the roots of Alternative Dispute Resolution System in Africa. The pivotal principles and ideas undergirding Alternative Dispute Resolution reflect the philosophy of law and principles of jurisprudence that are typically indigenous to Africa. The judicial process equally bear evidence of essentially African understanding of and approach to conflict resolution at both personal and corporate levels. The end of justice among indigenous African societies was the preservation of the moral health of the society and the enhancement of individual wellbeing. A comparative examination of the African conception of justice and the principles of justice, as developed in a morally conscious society, underscore the relevance and functionality of non-adversary system of litigation and provide a nexus between law and society. The three domains of idea, process and effect in African law and justice system could as well be Africa's original contribution to legal and judicial traditions in a globalizing world. [22]

Colonialism, Law, Society and the Burden of History

In spite of the volume of literature on the colonial phase, it would seem that the bulk of existing works fit into what Ranajit Guha categorised as elitist historiography, which demonstrates the prejudice that the making of the colonial state and the development of nationalistic awareness were jointly 'exclusively or predominantly an elitist achievement'. [23]This trend is noticeable in the academic productions on the colonial phase in Nigerian history, which relied heavily on colonial archival records and documentations. Colonial administrators were painstaking and meticulous in compiling and preserving every imaginable detail of their activities from the perspective of administration with a view to justifying what was done or could not be done. Elitist historiography, more or less, made a fetish of colonial records and paid scant regard to the oral documentation of the people at the receiving end of colonial administration. Evidently, the imposition of colonial rule marked a turning point in Nigerian history as it occasioned the distortion of an existing social, political, economic and cultural order. In the words of

Nicholas Dirks, colonialism was itself a cultural project of control created by Western civilisation and sustained by colonial technologies of conquest and rule.[24]

At the conquest of Nigeria which was concluded during the first decade of the 20th century, a new legal order was introduced, which made all previously existing systems inferior. The imposition, by force, of British legal and judicial traditions was part of a grand design to completely change the course of development through value re-orientation and cultural subjugation. Pax Britannica was a ruse and a smokescreen to subvert existing systems of legal values and ensure the cultural subversion of Nigerians. Indigenous laws and traditions were only allowed in instances where they did not conflict with or repugnant to equity and good conscience. Such issues or matters repugnant to equity and good conscience were determined by the new law giver. The hegemonic British culture sought to annihilate Nigerian values, and in so doing, provoked enormous changes. Accordingly, the goal of British imperialism was the colonisation of Nigeria to ensure massive exploitation of her human and material resources through a programmed imposition of a regime of legal justice. Colonial law and all its apparatuses were designed and implemented to discourage or frustrate all opposition to the new order, change the nature, direction and character of the economy, re-design social relations and determine what values were appropriate. For instance, resistance, uprisings and any form of oppositions were brutally contained through the deployment of excessive force. Economic activities were determined solely by the colonial authority and were only supported if they enhanced British mercantile and financial interests. Laws were introduced which affected family life, patterns and ramifications of social relations, values of social welfare and support systems. The results became apparent in the valorisation of individualism at the expense of kindred spirit, increased rate of family breakdown and divorce, enormous gap between the elite on the one hand and the mass on the other.[25] There were other developments, which had major consequences for the Nigerian State in subsequent years. For instance, the 1921 Clifford's Constitution introduced the elective principle which allowed certain individuals who met certain specific requirements to vote and be voted for. Again in 1946, the Richard Constitution divided Nigeria into three regions and constituted each of the dominant ethnic group into a region. It could be safely said that this

constitution, politicised the ethnic divides of Nigeria and created the nagging agitations by minority groups for self-actualisation.

In the immediate post colonial era, the new status of Nigeria as an independent and sovereign state affected the direction and purpose of its laws. The events leading up to independence in 1960, had created awareness of the advantages of being independent and indeed, created understandable euphoria of unimaginable proportion. The independence constitution and the Nigerianisation policy created new sets of elite with implications for the emergence of new social values, lifestyles and attitudes. The foster elite supplanted earlier authorities of traditional rulers and they constructed a new relation of power. Of considerable concern was the inglorious role of the foster elite which soon became embroiled in intra-class conflicts for which, ethnicity became the cheapest weapon. As succinctly captured by Ayandele:

> ...the British rulers knew that they had all the time had the worst opinion of the educated elite; that the educated elite were evincing more qualities of politicians than of statesmen; that their semi-Nigerian collaborators were anything but paragons of the virtues of disinterested patriotism and pan-Nigerianism; that none of these agitators for transfer of power to them attained a stature that could be described as national; that the interests of these hybridized Nigerians were dangerously sectional, inherently in conflict with the interests of other classes in Nigeria.[26]

Sub-Nationalism and the Political Process in Nigeria

Mr. Vice chancellor, one of the main burdens of historical reconstruction is the need to explain the notion of cause in historical occurrences and provide interpretive analysis for why events happened, how and when they happened as well as establishing relationships among clusters of historical facts. History is about locating a trend within the complexity of individually unique events in order to provide a narrative that is not only credible and factual, but equally objective and amenable to scientific scrutiny. It is for this reason that I intend to provide this explanation for what eventually turned out to be the national question for Nigeria and which has not been successfully addressed by successive legal regimes. The seeds of ethnic and religious conflicts which were sown by separatist ideologies of British colonial administration in the Lugardian tradition

were nurtured by the foster elite through divisive partisan politics before and after independence in 1960.

The Nigerian Youth Movement succeeded Eyo Ita's Nigeria Youth League of 1934 which preached the value of unity and stressed the need for a political awakening of the Nigerian society. The 1931 Charter of the N.Y.M. had the following objectives; (1) to obtain complete autonomy for Nigeria within the British Commonwealth and Empire; (2) to make Nigeria a united nation, thus foster understanding and a sense of common purpose and common nationality among the people; and (3) to demand for Nigerians, economic opportunities equal to those enjoyed by the foreigners. Thus, in 1937, as a result of the membership of Azikiwe, many Igbo and other Nigerian youths inspired by the political philosophy of Zik, swelled the membership of the N.Y.M. Branches were established in several important towns all over the country to the extent that, by 1938 the N.Y.M. had a membership of about 10,000 and twenty branches in the provinces.[27] The N.Y.M. became so popular with the people that in 1938, it won all the seats to the Lagos Town Council and all the three seats in the Legislative Council, thus putting an end to the electoral dominance of the Nigerian National Democratic Party of Herbert Macaulay.

In spite of the popularity of the NYM among educated Nigerians in urban centres of trade and commerce, the success story of the NY.M was very brief. The resignation of Azikiwe in 1941 dealt a fatal blow to the movement. The circumstances that led to Zik's resignation were not unconnected to the disagreement over the selection of a candidate to fill the seat of the Legislative Council that was vacated by Dr. Kofo Abayomi, the outgoing President of the N.Y.M. Two of the four founding members of the N.Y.M. wanted the seat; Ernest Ikoli, and Samuel Akisanya. Ikoli was an Ijaw man who had just been elected the President and was also the Editor of the movement's official organ, The Lagos Daily Service. Samuel Akisanya, on the other hand, was a Yoruba from Ijebu-Remo and the Vice-President of the Movement. Both had factions to support their candidature. The Executive of the Movement endorsed the candidature of Ikoli and he subsequently won the seat. A section of the party alleged anti-Ijebu bias among the Lagos members of the party and Zik, seizing this occasion, resigned his membership of the party. The split became irreparable; after the Ikoli-Akisanya affair and the resignation of Zik and his supporters from the N.Y.M. All efforts to

reorganise the movement especially by Obafemi Awolowo in Ibadan proved abortive.

With the collapse of the N.Y.M., the Nigerian nationalists had no common front against British colonialism. It would seem that the British policy of divide and rule had started to bear fruits of discord among Nigerian nationalist leaders and frontliners. At a time when there should be a concerted effort at dismantling the fortress of colonialism in Nigeria, ethnicity and ethnic rivalry thwarted all cooperative attempts. The newly formed political parties, especially as from 1951, pronounced the division of the country along ethnic lines.[28] Between 1944 when the National Council of Nigeria and Cameroon was formed and 1951, the party provided an active front for some Nigerian nationalists and it was the leading all-Nigeria nationalist movement. Its membership was restricted to organisations, clan unions and lineage associations. However by 1951, the NCNC had lost its national outlook and had come to be recognised and identified with the interest of the Eastern region and the Igbo people.

In order to contest the 1951 elections under the newly introduced Macpherson Constitution, the Action Group was formed as a political party in the Western Region. Though the party was formed by some leading members of the Egbe Omo Oduduwa (A Yoruba Cultural Organization established to promote the interest of the Yoruba race) who wanted to exploit the popularity of the Egbe in promoting their own political interests, the A.G. was not, as some writers will want us to believe, the political wing of the Egbe.[29] The party was inaugurated publicly on March 21, 1951 at a meeting of handful political associates selected from the Western Region. The party received instantaneous support from many quarters, notably, the old Yoruba families and professional class in Lagos, the emergent Yoruba middle class of businessmen and lawyers, Yoruba Oba and traditional chiefs who were patrons and members of the Egbe Omo Oduduwa, Yoruba intellectuals opposed to the N .C.N.C. and finally selected leaders of minority groups. It was obvious that the formation of the Action Group as a political party was aimed at achieving one crucial objective, which was the capture of power in the Western Region under the electoral system of the newly adopted Macpherson's Constitution.[30] As we shall see later, the pursuit of this objective led to, first, a collision between the A.G and the N.C.N.C. and thereafter, the development of inter-ethnic political

hostility during the era of the First Republic. The aims of the Action Group, included:

1. to encourage and strengthen most assiduously, all the ethnical organizations (sic) in the Western Region and
2. to explore all possibilities for and to cooperate wholeheartedly with other nationalists in the formation of a Nigeria-wide organization which shall work as a united team towards the realization of immediate self government for Nigeria[31].

The main theory of the A.G. leaders was that, in order to win power in the Western Region under the prevailing situation in Nigeria, perhaps, the best strategy was the concentration of the party's activities at the region. Accordingly, the A.G. launched a campaign to obliterate the influence of Dr. Nnamdi Azikiwe and his party the N.C.N.C. in the Western Region.[32] This sparked off a counter offensive campaign from Zik and his party. The N.C.N.C. fanned the embers of ethnicity among the non-Yoruba and quasi-Yoruba groups of the Western Region to undermine the Yoruba led and dominated A.G. Thus, it so happened that from 1951, regional nationalism became not only the most legitimate, but also the most effective means for the political leaders to secure power.[33] In the words of J.S. Coleman, "the Victory of the Action Group over the N.C.N.C. by a sizeable margin in the 1951 elections in the Western Region marked the triumph of regional nationalism."[34]

With the prevailing circumstances in the country, the Northern politicians also realized that the most secured base of support in the struggle for political offices was the people of their region. This awareness led to the formation of Northern political parties that were intended to serve the interest of the Northern political leaders best, the most important of which was the Northern People's Congress. Historically, at least since the imposition of British rule on Northern Nigeria, the Islamic North had been treated as a special area. The British, with the introduction of Indirect Rule by Captain (later Lord) Lugard into Northern Nigeria conceived of traditional political institutions as local institutions that required a British administrative structure for their effective operation in a modern setting. Thus, on the occupation of Northern Nigeria by the British in 1903, they took over political power from the Fulani Emirs and modified the Fulani political and administrative system to suit the British purpose. On this Lugard said:

"The Fulani rule has been maintained as an experiment, for I am anxious to prove to these people that we have no hostility to them, and only insist on good government and justice, and I am anxious to utilize if possible their wonderful intelligence for they are born warriors". [35]

This assertion formed the basis of the principles and application of Indirect Rule in Northern Nigeria. The policy sought to screen the North from southern influences. Indeed, the first phase of Indirect Rule in Northern Nigeria (1900-1925), witnessed the development of how Indirect Rule should be operated which, was inimical to the emergence of a united Nigerian nation. For instance, Charles Temple, one of the well known Residents of the first decade of Indirect Rule, believed that the duty of the British Administrative Officer was to preserve the social structure and cultures of indigenous societies from the 'disrupting effects' of contact with alien culture and civilization.[36] Charles Temple once said: "Every school, every book, newspaper, bicycle, motor car, railway, every article of commerce exposed for sale, every sight of a steamer, every exercise in the use of English Language is a sapping of the foundations"[37]. This conception must have been influenced by the views of E.D. Morel, who maintained "that the high human attainments were not necessarily reached on parallel lines; and that humanity should not be legislated for as though sections of it were modelled on the same time".[38] Under the governorship of Sir Graeme Thomson (1912-1931), there was a deliberate attempt to develop the North independently, apparently in accordance with the views of E.D. Morel. Colonial administration therefore, did not rely on southern labour to work in the North, but trained local clerks and craftsmen. The people of Northern Nigeria were encouraged in their natural desire to resist external influences on their religion, culture and tradition.[39]

It was perhaps the educational policy of the British, apart from the colonial constitutions that helped to create sharp intellectual and psychological distinctions between Northern and Southern Nigeria. Lugard and his successors promised to "studiously refrain from any action which would interfere with the exercise of the Mohammedan religion by its adherents, or which would demand of them action that was opposed to its precepts." They, therefore, placed education in the north in the hands of government, except in the non-Muslim areas. Emphasis was then placed on moral precepts at the expense of intellectual development. This belief was interpreted to mean total prohibition of Christian

missionary activities in the emirates. The colonial office justified this in 1919 by arguing that; if British Missionaries were granted permission to propagate the Christian religion in the North, especially in the emirates, the Emirs would regard such activities as a breach of Lugard's pledge to refrain from any act that could weaken the authority of the Islamic religion and consequently, the authority and prestige of the Emirs who were the major instruments in the operation of Indirect Rule. British administrators in the emirates also feared that the propagation of Christianity in Northern Nigeria might generate Muslim fanatism which could lead to religious disturbances. Thus, after 1926, the Christian Missions were denied official permission to build schools and hospitals within an emirate.[40]

The various colonial constitutions up to 1946 also treated the North in exclusive terms. The Lagos Constitution (1862-1922)[41] was the first of the colonial constitutions which was meant for the governance of the Lagos colony. When the Northern and Southern Protectorates were amalgamated in, the basic legal framework for the governance of unified Nigeria was the Lugard Constitution of 1914-1922. This Constitution was introduced to secure an expression of public opinion from every part of the new country. The Nigerian Council that it created consisted of 36 members comprising the Governor; members of his executive council, first class Residents and political secretaries from both provinces as officials. The unofficial members were seven Europeans representing the Chambers of Commerce, Shipping, Banking and Mining and six Nigerians nominated to represent both the coastal districts and the interior of the country. The Nigerian members were two Emirs from the North, the Alafin of Oyo, one member each from Lagos, Calabar and the Benin-Warri area.[42] This constitution was purely an instrument of colonial administration as the central institution it created was merely an advisory body.[43] It also created Native Authorities which were local institutions that affirmed existing cultural and ethnic diversities and not their reconciliation. The obvious lacunae of the Lugard Constitution were in part, responsible for not only the noticeable uneven development of political consciousness in the ethnic groups but also the isolation of Northern elements from the mainstream nationalist movement[44]

The next constitution promulgated during the Governorship of Sir Hugh Clifford in 1922 further widened the gap between the north and the south. This was because its jurisdiction was confined to the South while

the North was ruled by Proclamations issued by the Governor-in-Council. Although there were informal links between the Northern and Southern provinces, in actual practice, the two areas were governed separately without a common legal basis[45]. In reality, national integration or unity was not envisaged while designing the Clifford constitution. The Arthur Richards Constitution of 1946 was designed to introduce "responsible government along practical lines, to promote unity in the country and at the same time provide adequately within that unity, desire for the diverse elements which make up the country.[46] With the benefit of hindsight, the division of the country into three regions was a fatal blow to Pan-Nigerian nationalist consciousness, because it provoked rivalries based on a three-nation-state structure. The Richards Constitution was interpreted to mean a subtle framework for diverting nationalist energies away from anti-colonial agitation to sectional squabbles and ethnic rivalries.

The new constitution known as the Macpherson Constitution of 1951 attempted to forge unity by establishing a too closely-knit system of government[47]. In the context of unity, and national integration, the constitution was grossly inadequate as it failed to reflect the expressed wish of the people with regards to the type of federal system they desired. The arrangement in which the representation of each unit at the centre was based on population strength gave permanent advantage to the less developed North at the expense of the other two regions. Consequently, elections conducted under the Macpherson Constitution heightened inter-ethnic hostility, suspicion and rivalry.

The British colonial overlord, therefore, by acts of omission or commission through her activities in Nigeria produced serious inter-ethnic hostility by treating the North as a special area. All said, the Northern Protectorate was screened from the influence of liberal ideas inherent in Western civilisation or social values.[48] The British emphasized religious, cultural and temperamental differences between the North and South and encouraged disparities in the level of material development. Thus, by exaggerating the isolationism of the Northern people, British colonial administration in Nigeria did a great disservice to the promotion of national integration and unity. The introduction of the 1951 Constitution laid the essential foundation for regionalism and thereby gave a new impetus to the development of ethnic exclusiveness and competition. This was largely as a result of the recognition accorded

the division of the country into three major regions-the North, the East and the West, coupled with the grant of legislative powers to the former purely advisory and deliberative regional councils[49].

The Constitution also established a too closely-knit system of government while attempting to unify the country. At the same time, it allowed each of the ruling parties in the three regions to draw its political power and support from the majority ethnic group in the region. Each party therefore, consolidated its hold on the region, by appealing to the emotional sensitivities of the dominant group. Each party regarded itself as the agent of its ethnic group and region which made nation-wide concerted efforts against colonial exploitation almost practically impossible to organize. The need to secure the support and loyalty of other ethnic groups outside its jurisdiction in order to control the centre especially by the two southern parties led to competition between the three dominant political parties. This competition was clearly reflected by the attitude and electoral strategies adopted by the three major political parties with regard to minority agitation for self determination. Problems of the minority groups were precipitated by perhaps three important factors; the growth of sub nationalism among the principal ethnic groups as represented by the Jami'iyyar Mutanen Arewa, the Egbe Omo Oduduwa and the Ibo State Union; the constitutional preparation towards self-government and independence and the effect of inter party rivalries.

The so called minority groups within each region resented perpetual domination by the major ethnic groups that controlled the machinery of government in each region. Thus, while each of the major political parties recognised and supported the agitation of minority groups for independent political and administrative status in areas outside its own regional base, the NPC and the NCNC especially, evinced common antipathy towards the creation of state movements within the areas of their respective jurisdiction. The A.G. which was the dominant party in the Western Region on its part gave a conditional and qualified consent to the creation of new states from the existing ones.[50] For instance, between 1951 and 1962, the A.G not only encouraged the separation of Southern Cameroons, the Calabar-Ogoja and River Provinces from the Eastern Region, but also persistently supported the agitations for a merger of Ilorin and Kabba Provinces with the West and for the creation of a Middle Belt Region. In order to break the monolithic North, the A.G

supported the Ilorin Talaka Parapo of Josiah Olawoyin, which led agitations for the separation of Ilorin and Kabba Provinces from the North. In fact in 1956, the Action Group through its leader recommended:

> That in order to promote the success of a federal constitution for Nigeria, it is desirable to have more states, provided that no region is split into states unless there is a majority of the people wanting the separate state in the area concerned, that there are sufficient resources in the area to support such a state and that there shall be no fragmentation of existing ethnic units.[51]

The N.C.N.C. which had Eastern Nigeria as its power base, in 1953 encouraged the Middle-Belt Peoples Party to demand the autonomy of the Middle-Belt from the Northern Region. It also actively and persistently encouraged and supported the creation of the Mid- West from the Western Region. Though Azikiwe could declare passionate plea and support for the right of minority groups to self determination, he was able to state with equal vehemence, his opposition to the creation of Calabar-Ogoja and Rivers from the Eastern Region. He contended that the "East can no longer stand dismemberment as a sacrifice either for administrative convenience or for national unity."[52] The N.P.C. was equally opposed to the creation of the Middle-Belt Region or the merger of Ilorin and Kabba with the West, though the party gladly supported similar movements in other regions.[53] To the extent that each of the political parties was socially and politically based among the major ethnic group in each region, the political elite in each party saw their political future and interests as co-terminus with those of their ethnic groups and with the regions they controlled. These leaders therefore employed every political strategy and power to insulate their regions and power base from what the dubbed internal fragmentation.

Sub nationalist groups were encouraged to question, resist and oppose their domination by and subservience to the major ethnic groups. This attitude of rebellion and hostility became so widespread and it greatly undermined the stability and unity of the nation, to the extent that a Special Commission was set up. The Sir Henry Willink's Commission was set up in 1958 by the colonial government to investigate the fears of minorities in the country. An analysis of the report revealed that the fear of minority groups related to the following:

(a) regional governmental control by an ethnic majority.
(b) discrimination in the distribution of economic resources and welfare amenities.
(c) discrimination in recruitment into public and bureaucratic offices.
(d) maintenance of law and order and
(e) social and religious intolerance.

These grievances did not encourage the minority groups to participate in the promotion of a Nigerian State as they indicated that none of the three components of citizenship, civil, political and social rights, were realisable as long as the government in power was identified with a particular ethnic group or interest.

The Lyttleton Constitution of 1954 did not redress the existing imperfection but retained the defective federal structure of the 1951 Macpherson Constitution. It also gave fuller recognition to the development of the regional governments and further entrenched the ethnicisation of politics. Political leaders in each region behaved as if government of each region must be controlled by the dominant ethnic group in the region. Political relations among the regions became sharply competitive, and appeals to ethnicity were common place. [54] The competition was further aggravated by the endemic and acute imbalance in the levels of economic and educational development among regions.[55] This situation was carried into the First Republic during which ethnic competition and hostility assumed a new dimension. Each action or inaction of government was considered an attempt of one ethnic group to dominate the others. Each political party sought the annihilation of its opposition and this became a major conundrum in the affairs of State and the search for unity.

When elections were conducted in 1959, the N.P.C. returned to power as the senior partner of the coalition government. It was apparent that the two parties in power (the NPC and the NCNC) sought to obliterate the existence of the A.G as a political party. The intra-party crisis of the Action Group which became public knowledge in 1962 snowballed into an intense intra-class conflict between two major factions of the party personified by Chief Obafemi Awolowo, the leader of the party and Chief S.L. Akintola, the deputy leader. At a joint meeting of the Western and the Mid-Western executives of the A.G. on 19th May 1962, Premier

of the West Chief S.L. Akintola was accused by Chief Obafemi Awolowo of mal-administration, anti-party activities and gross indiscipline.[56] On 20th May 1962, the Federal Executive Committee and the Parliamentary Committee of the A.G. supported the motion to remove Chief Akintola as the party's Deputy Leader and his resignation as Premier of the Western Region.

Expectedly, Akintola refused to resign his Premiership of the West and an attempt to remove him, led to disturbances in the Western House of Assembly on 25th May, 1962. This deadlocked situation played into the hands of the N.P.C. controlled Federal Government which exploited the situation to clamp down on the Western Region by declaring a state of emergency in the West; the power base of the A.G. A confidant, personal physician of the Prime Minister and the Federal Minister of Health, Senator Adekoyejo Majekodunmi,[57] was appointed the Administrator of the Western Region for six months. While the emergency was on, and in a grand design to put the A.G. in utter disarray, a three man Commission of Inquiry was set up by the Prime Minister under the chairmanship of Justice G.B.A. Coker. The Commission was to inquire into the working and financial administration of six statutory corporations in Western Nigeria, especially the National Bank and the National Investment and Property Corporation (N.I.P.C.).[58] The main objective was perhaps to discredit the A.G. and its leadership.[59] After sitting for three months, the Commission found that Chief Awolowo's conduct while in office as Minister of the Crown in Western Nigeria "fell short of expected standards". [60] Chief Akintola who was a prominent member of Awolowo's Government and party before the crisis was absolved totally from blame. A court order also froze the bank accounts of the A.G. After this came the treasonable felony trial of Awolowo and twenty seven other senior members of the A.G after which Chief Awolowo was found guilty and sentenced to ten years imprisonment.[61] This scheme to phase out the A.G. from the Nigerian political scene was successful largely as a result of the cooperation received by the N.P.C. from its coalition partner, the N.C.N.C that sought to improve her own political fortune by putting paid to A.G.'s political relevance in Southern Nigeria.

These actions of the Federal Coalition Government assumed ethnic and sectional coloration as the people of the West had every cause to sympathise with the A.G. and its leadership. The actions of the federal government were interpreted to mean a grand design to eliminate the

authentic mouth piece of the west from the mainstream of Nigerian politics. The net effect was that majority of the people of the Western Region felt cheated and maintained an uneasy calm; a situation which was not conducive to the realization of national unity. Federal government handing of the Western Nigerian crisis deepened rather than closed Nigeria's ethnic fault lines.[62]

Another manifestation of the attempt of the N.P.C. to dominate perpetually Nigerian politics and government was the 1963 census. In earlier head count conducted by the British government in Nigeria in 1952-53, the population of Nigeria was put at 31,750,000 with the North having 17,573,000, the East 7,497,700, the West at 6,408,000 and Lagos, the Federal Territory had 272,000. These figures assured the North of its domination of the political scene in Nigeria because seats in the Federal House of Parliament were allocated on the basis of population statistics. Thus, after the election, out of the 312 seats in the Federal House of Representatives, the N.P.C. won 174 seats thus having an absolute majority and the right to form a government at the federal level. When a new census was to be conducted in 1962, other regions saw the occasion as an opportunity to redress the political imbalance of the federation.[63] The figures of the 1962 count were unacceptable and the result of a recount was also not realistic. Another census was then scheduled for 5-9 November, 1963. In the words of the Prime-Minister, the 1963 census was organized to last only four days in order to ensure an accurate count of people at places where they lived. At the end of the 1963 head count exercise, a delay of about two months followed during which, the figures were said to be undergoing "exhaustive test". The results were finally released by the Census Board on 24th February, 1964. The North had 29,777,986, the Eastern Region, 12, 388,646, the Western Region, 10,278,500, the Mid-Western Region, 2,533,337 and Lagos Federal Territory, 675,352, making a total of 55,653,821.[64]

The figures showed an overall increase of the total Nigerian population in one decade to be about 74 percent. The United Nations demographers regarded a 2 percent increase per annum as normal for African countries. Going by this projection, in ten years, there would be an increase of 20 percent.[65] There were spontaneous reactions to these abnormal figures largely because of their political significance. The census was politically crucial because the allocation of parliamentary seats for the next election would be based on its figures. The figures would also determine the

amount of revenue each state would be allocated from the Central Distributable Account. The Premier of the East, Dr. Michael Okpara backed by Dennis Osadebey his Mid-West counterpart, rejected the preliminary census figures. Dr. Okpara accused the Prime-Minister of not consulting the Premiers before releasing the figures, and declared that the figures were worse than useless.[66] There were reactions from the South, especially university students, political parties, Labour Unions, the Lagos City Council and others. They all unequivocally condemned and rejected the figures which they described as a farce and a slap on the face of reasonable men of integrity and conscience. The hope of the South breaking the dominance of the North at the federal level through the census became unrealizable thereby diminishing the prospects of national understanding and nation building.[67] Some leaders of the N.P.C. however, saw the figures as an everlasting insurance for perpetual Northern domination of the Nigerian federation.

The election of 1964 and the attendant electoral malpractices devised to ensure the domination of Nigerian politics by the N.P.C. alarmed the other regions and ethnic groups. To contest the elections of 1964, two major alliances, The Nigerian National Alliance (NNA) and the United Peoples Grand Alliance were formed.[68] The electioneering campaign was characterized by unnecessary arrest, intimidation and persecution. In the North and the West, where the NNA was based, oppressive instruments and mechanisms were employed by those in power to repress and stifle opposition. UPGA candidates and known supporters were falsely accused of heinous crimes and those charged to court for specious reasons were denied due process of the law and even bail. In the North the Alkali Courts and the Native Authority police men were let loose on the opponents of the NNA. A team of lawyers sent by the UPGA to defend the legal interests of its supporters were arrested and charged.[69]

On 10th December 1964 the Head of State Dr. Nnamdi Azikiwe, noted that the way and manner the electioneering campaign was being conducted left much to be desired. He said it would appear that certain political parties were preventing their opponents from having the opportunity to explain their party policies and programmes. Dr. Azikiwe then cautioned that politicians in power had no right to make use of the instruments of power in order to perpetuate their stay in office. On 30th December, 1964, the elections were held in Northern Nigeria, in many parts of the West and in some parts of the Mid-West. They were

completely boycotted in the East. When the results were released, the NNA won 190 seats and the UPGA 40 seats.[70] The circumstances surrounding the conduct of the elections made a farce of the whole exercise. On 1st January, 1965 the President informed the Prime Minister that he would rather resign than appoint him to form a government.[71] The impasse lasted three days and on the 4th of January, 1965 a compromise was agreed upon. The President, arguing for the unity of the country subsequently, invited the NPC to form a government that would be representative of the country. Sir Tafawa Balewa therefore formed a coalition government of only the NPC and NCNC. Thus, the elections of 1964 further deepened the division between the peoples of Nigeria. The last 'sign post' to the fall of the First Republic was perhaps the 1965 Western regional elections. Chief S.L. Akintola was determined to stay in office at all costs. The leaders of Northern Nigeria recognised the huge ambition of Chief Akintola and it was used as a powerful weapon to win political control of the Western Region.

As planned, on 11th October, 1965 the people of Western Nigeria went to the polls during which, the electoral fraud of 1964 was repeated on a larger scale.[72] Soon after the election, the NNDP, the party of Chief Akintola announced on the network of the Nigeria Broadcasting Corporation which was a federal radio station that it had won 82 seats to UPGA's 11 seats.[73] The results of the elections were transmitted to the Governor of Western Nigeria by the Secretary to the Western Nigeria Electoral Commission. By these results, the Governor, Sir Odeleye Fadahunsi, appointed Chief Akintola as Premier of the Western Region and formally asked him to form a Government. The interim government formed by UPGA was quickly liquidated as Alhaji Dauda Adegbenro and his team of nine ministers were promptly arrested and charged with illegal assumption of office. It therefore seemed that Chief Akintola had succeeded in getting away with his rape of the people's will expressed through the polls. In such a situation, there was little or nothing left to the people than a mass uprising escalating to arson, looting and murder in what became known as "Operation Wetie" in the Wild Wild West.[74]

Despite appeals from well meaning individuals and groups to the Prime Minister to declare a state of emergency in the Western Region, the government of Tafawa Balewa remained unconcerned and unmoved by events in the West.[75] In the words of a contemporary writer on the military episode in Nigeria, "the only available force capable of putting

situation in the West under control, if not stopping it completely was the army..." Thus on the 15th January 1966, the army struck to arrest the drift to anarchy and national disaster.

By the beginning of the First Republic, it was obvious that the false sense of national unity created by the political class would not be sustained for any length of time. Political opportunism of a criminally decadent and corrupt power elite distorted the political structure and perverted its political culture; leading to the destruction of progressive political values. The valorisation of the concept of winner- takes- all magnified the divisive impact of ethnic competition, unhealthy rivalry and mutual suspicion. The gross inability and utter helplessness of the State to address the problem of inequity in providing access to national resources accentuated its inability to resolve and arbitrate the differences among its many sub nationalities. Falola has equally lent a voice that the cross intersection of religion and ethnicity as weapons for the mobilisation of support by the emerging power and political elite to negotiate and re-negotiate power and relations of power within the power sharing formula of the state system complicated the Nigerian national question. Indeed, religious and ethnic sentiments were deep sited in Nigeria's First Republic.

Military Rule, Law and Social Change

Military intervention in the politics of the Nigerian federation has been examined from different disciplinary perspective, including history and law. In spite of its nature and character, military rule was essentially a change of the domicile of power or the grand law in the country. During the First Republic the Independence Constitution and later, the Republican Constitution of 1963 was the basic norm or what Hans Kelsen called the *grundnorm*. It would be re-called that in 1963, a new Republican Constitution was enacted with implications for relationship with Britain, the former colonial master. Two major consequences of this new Constitutional Order, was the emergence of the President of Nigeria as the ceremonial head of the country, replacing the Queen of England and the cessation of appeals from the Supreme Court of Nigeria to the Privy Council in London. They both emphasised and established the fact of Nigeria's sovereignty and freedom of its citizens from external control.[76]

However, in order to establish the authority or powers of the new military leaders, certain unconstitutional actions became inevitable. I have had cause to examine military rule and nation building in Nigeria and it could be seen that the excessive use of Decrees as legal instruments in State administration retarded the growth of constitutionalism in Nigeria. Decree No. 1 of 1966 (Constitution Suspension and Modification Decree) abolished the federal parliament and all regional houses of assembly.[77] Furthermore, it established the Supreme Military Council, and an Executive Council or Cabinet. Section 3 equally empowered the Federal Military Government to make laws for the peace, order and government of Nigeria, while it also empowered the Military Governors to legislate only on matters on the concurrent legislative list. This must however be exercised after prior consent had been obtained from the Federal Military Government. In cases of conflict, federal laws prevailed to the extent of the inconsistency. It is important to state that Decree No.1 established the absolute powers of the Military Government vide Section 6 which ousted the jurisdiction of the courts from any matter in respect of the Decree. Curiously, this same Decree that saved certain major provisions of the 1963 constitution, ended the intervention of the Supreme Court in disputes between a state and the Federal Government and disputes among states.

On May 24, 1966, two Decrees were promulgated. Under Decree No. 33, otherwise known us Public Order Decree, eighty-one political associations and twenty six 'tribal' and cultural associations were outlawed. The display of signs (flags, insignia and emblems) of any proscribed associations was prohibited as was the shouting of any political slogan, political name or nickname and any procession of a political nature involving three or more persons. Formation of new associations of political nature was also banned until January 1969.[78]

Under the other May Decree known as the Unification Decree No. 34, Nigeria ceased to be a Federation and was renamed the "Republic of Nigeria". The Federal Military Government became the "National Military Government" and the Federal Executive Council became the Executive Council. The regions were abolished formally and were replaced by Groups of Provinces but their boundaries co-terminated with the boundaries of the regions. The federal and regional public services were unified into a single National Public Service with a central control mechanism over the senior cadres of the service. The power to appoint

and dismiss persons and to hold or act in the office of Permanent Secretary to any department of the republic was vested in the Supreme Military Council.[79] Ostensibly and in theory, the provisions of Decree No. 34 were intended to remove the last vestiges of the intense nationalism of the First Republic and to promote an amount of cohesion in the structure of government with a view to achieving and maintaining national unity.[80]

These two Decrees, especially Decree No. 34, generated strong and spontaneous reactions all over the North. The unification of the public service was interpreted by the Northern civil servants as a ploy to dominate Northerners perpetually. The decree was seen as a direct result of Alex Nwokedi's report of 20th April 1966, which apparently ignored the views of those directly concerned. The Decree, it was feared would put the Northern civil servants, who were on lower pay than the Eastern counterparts before the unification, on a lower status.[81] The Northern fear of Igbo domination became very strong when certain policies and programmes of the Ironsi regime were carefully and dispassionately analysed. In the first instance, the plotters of the coup d'état of 15th January, 1966 were not court marshalled as required by military regulations. Also the pattern of killing during the coup left many Igbo officers alive and therefore could possibly replace the dead Northern and Western officers.[82] To have made any new promotions in the army would have created the impression of the coup as an attempt by the Igbo to gain top command of the Army. It was on this belief that the Supreme Military Council agreed to put a moratorium on all promotions in the Armed Forces. The Supreme Commander ignored this decision of the Supreme Military Council to suspend promotion within the Forces and in April, he approved the promotion of twenty-one officers of whom eighteen were of Igbo origin.[83] Not only this, General Ironsi also went further to announce that the Military Governors who were indigenes of their various regions would be rotated and Military Prefects would be appointed. By his actions and methods of effecting national integration, Ironsi alarmed other groups apart from his own. His actions were interpreted to mean an attempt to install Igbo hegemony over the Federation.[84] General Ironsi also confirmed these fears by surrounding himself with Igbo advisers to the total exclusion of other ethnic groups. At an early stage of his administration, General Ironsi appointed a three-man all Igbo advisory team of Chief Francis Nwokedi, a Permanent Secretary in the Ministry of External Affairs, Dr. Pius Nwabafor Okigbo

(Federal Adviser on Economic Development) and Colonel Patrick Anwunah who subsequently became Chairman and Head of the Orientation Committee. Some other close advisers were Lt. Col. Odumegwu Ojukwu, Professor Onwuka Dike (the Vice Chancellor University of Ibadan), Chief Gabriel Chike Michael Onyuike who was appointed to replace Dr. Teslim Elias as the Attorney General and Minister of Justice and Chief Eneli, the Permanent Secretary Federal Ministry of Trade. In all, the conduct and body language of General Ironsi appeared to lend credence to the impression that the 15th January coup was designed and executed to install Igbo in power.[85]

This catalogue of blunders by General Ironsi and his administration led to the overthrow of his regime. The incapacity of General Ironsi to rule could perhaps be blamed not on the lack of legitimacy (because he was initially well accepted) but on the fact that, along the line, the General got caught in the cross currents of personal, clan and most importantly ethnic loyalties.[86] He was unable to disregard these forces and they subsequently drowned him. Whatever the intentions of his advisers, Ironsi's policies had aggravated Nigeria's political crises and instability. In the words of Lt. Colonel Hassan Usman Katsina, Ironsi's Decrees introduced certain controversial and passionate issues without due consultations with all sections of the country. The confidence of the majority of people in the regime was therefore shaken by these measures and by the way and manner the interests of certain sections of the country were undermined or totally ignored.

The Ironsi regime was toppled on 29th July, 1966 by a coup d'état led by a section of the Army mainly from the Northern part of the country. Arguably, the successful execution of the coup d'état represented the North's successful attempt to assert or re-assert its control over the army and consequently over the nation. Lt. Col. Yakubu Gowon was sponsored [87]by the Northern interest group within and outside the Army to succeed General Ironsi as Supreme Commander. [88] Mr. Vice Chancellor, I have had the opportunity of a perceptive study of the national question in Nigeria before, during and after military rule. Unfortunately, the attainment of national unity or nation building is still problematic despite the deployment of enormous resources, initiatives and funds. Attempts were made to build a nation out of the polyglot of sub nationalities through creation of States and post war reconciliation, reconstruction and rehabilitation. Other measures and policies introduced

by successive administrations included the National Youth Service Corps Scheme, Nationalisation and Centralization of Educational Administration through the creation of boards, parastatals and agencies, Establishment of Unity Schools and tertiary institutions by the Federal Government, Introduction of the Quota System and adoption of National Character in resource allocation and access to power.[89]

However, in spite of these efforts, the prevalence and pervasiveness of endemic ills within the Nigerian society and the damaging implications of international capitalism have conjointly prevented the country from benefitting from its defining moments. My colleagues and I have had reason to address some of these issues in our study of the Nigerian State.[90] While it is true that the Nigerian political system is a bundle of contradictions as identified by Richard Sklar, these contradictions were indeed products of the failure on the part of the power elite, both foreign and Nigerian to address the foundational question of structure, agency and nation building in a post colonial and divided country. They failed to formulate and entrench an equitable system of resource allocation among the various sub nationalities and classes. The strident call for restructuring, resource control, true federalism and even re-negotiation of the Nigerian project, all testify to the lack of confidence in the ability of the present system of political representation to fully address the Nigerian national question in its broad magnitude and extensive ramifications.

Always as Sentinels: The Judiciary in the Consolidation of Constitutionalism in Nigeria

Courts and judicial institutions in Nigeria have contributed significantly to the evolution of a typically Nigerian constitutionalism. The overall performance of the Bench in leading constitutional cases provided a platform on which constitutional democracy has been constructed; making the courts the final arbiter in all constitutional matters. The landmark decisions of forthright jurists and judges, especially at the appellate level, have continued to consolidate constitutionalism by providing direction for succeeding generations of officers of the law at the temple of justice. It would appear that constitutionalism has been adopted as a weapon in the struggle for the protection and enhancement of basic human rights of citizens, in spite of the tendency of the state to abridge such rights and basic freedoms. I have argued that the judiciary in Nigeria, under different dispensations, has enlarged the province of

constitutional adjudication and deepened constitutional democracy by providing access to justice through an expansive definition of rights and why it is the duty of the state to protect, promote and enhance such basic freedoms. The First Republic, 1960-1966 was particularly remarkable for the testy constitutional cases which the judiciary entertained and made pronouncements upon. The Supreme Court of Nigeria, as the last judicial institution, brilliantly promoted constitutionalism during this era of intense party politics and left no one in doubt of the desideratum for caution on the part of the State and its agents in the protection of national or state interests.[91] Constitutionalism during this period formed the basis on which the principle of separation of powers among the three arms of government rested and the judiciary did not fail to use this in the preservation of its corporate independence. The period of military rule was characterised by arbitrary use of Decrees as legal instruments of control to abridge the rights of citizens and muffle oppositional voices. Indeed, the most celebrated case on the inter-relationship of the military rulership and the judiciary was the Lakanmi Case.[92] Obviously, the political situation of the country, the attitude of the court to individual freedom and the ownership of property, the puritanical and anti corruption pretences of the military regime, collectively played their respective roles in this case. The most eloquent testimony of the popularity of this case is the recurring debate on the legal platform upon which the Supreme Court rested its decision. It is obvious that the last line has not been written as there are revisionist and anti-revisionist perspectives on judicial activism displayed by the Supreme Court. A careful review of the performance of the judiciary in this case would confirm the political role of the Appellate Court. In our own consideration, the Lakanmi Case marked a departure in the judicial attitude of the leadership of the Supreme Court of Nigeria in its relationship with the military executive. Despite the fact that the Chief Justice, Sir Adetokunbo Ademola, realised the intention of the military government to sanitise the society and deal harshly with those it described as 'vampires', he did not consider it necessary to use the law, in this particular case, as an agency of social control.[93] It was generally known that the era of the First Republic was characterised by gross abuse of office by the political class and their collaborators in the public service. The climate of opinion generated by this judgment was captured by the New Nigeria Newspaper that:

> In declaring null and void the Federal Decrees No. 45 of 1968 and the Western State Edict No. 5, 1967, the Supreme Court took its stand on a banana skin.... By nullifying the forfeiture of stolen public money, the court did give the impression that fraud is being encouraged by legal technicalities... The Supreme Court chose a singularly inappropriate and unpopular measure on which to challenge the authority of government. It cannot expect sympathy from any quarter on this particular case. The decision of the Supreme Court in declaring the decrees and edict null and void was one that threatened to undermine the stability of the country.[94]

However, and beyond this public angst against the judgment of the Supreme Court here, the only aspect of the decision that remains convincing was the protection of the salience and relevance of the court as the final arbiter. The court declared its distaste and disapproval of ad-hominem laws which were specifically promulgated to deal with specific individuals. The Supreme Court, believed that sections 1(1-3) and 2(1-2) of Decree No.45 of 1968, technically shut out the Western State Court of Appeal. According to the Chief Justice:

> Not only are the provisions of the Decree No. 45 of 1968 designed to oust the jurisdiction of the courts generally, but there was a schedule tied to sub-sections 1(1) and 1(2) of the Decree. Part A of the Schedule sets out *inter-alia,* the names of particular officers whose forfeiture orders however made are validated. The name of the 1st Appellant is shown as item No. 4(a). Part B of the Schedule contains the names of the officers and other persons affected byb the Decree and names of the Appellants appear as item No.5. It is therefore clear what Decree (No. 45 of 1968) set out to do and that the object of the legislature was directed to the Appellants and their pending appeal.[95]

The reaction of the Federal Military Government to the decision of the Supreme Court was the promulgation of the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970. The obvious implication of the Decree was that it almost abrogated judicial review of executive and legislative actions of the military government. It stated that the coups of January and July 1966 were indeed revolutions and that both revolutions abrogated the entirety of the

existing legal order in Nigeria except what Decree No.1 of 1966 saved of the 1963 Constitution.

The essence of the performance of the Supreme Court in the Lakanmi Case was captured by Kayode Esho when he said: 'The judgment in Lakanmi's Case must have been the grandest day for the judiciary to whom by that judgement, even the guns were sublimated to the interpretive jurisdiction of the courts...'[96] He however, quickly assessed the implications of the promulgation of Decree No.28 of 1970 and commented:

> The position had been reversed; and the reverse was made absolute. The Grundnorm, if any, would not be shared by the Executive with or abdicated to the judiciary. The Military Government would have none of this... It was a Military devastated blow to the judiciary from jurisprudential point of view. The courts reverted to their literal and sometimes dull interpretative role.[97]

While we may not be able to make categorical statements on the legal foundation of the judgment of the Supreme Court in the Lakanmi Case, it would seem that the performance of the justices reflected a concern to emphasise and uphold the principle of separation of powers. Executive usurpation of judicial function was considered anathema and an aberration which must never be condoned in any form. The over-reaction of the Federal Military Government amounted to a disregard of judicial independence and intolerance of opposition.

It is equally important to address a constitutional issue which was and still at the heart of the national question in Nigeria and has attracted considerable academic attention. Though the courts in Nigeria have not had opportunities to decide cases on religion and or the secularity of the Nigerian state, there have been instances of reference to constitutional provisions on the subject matter. An examination of constitutional provisions for the secularity of the Nigerian State reveals the gross inability of the various instruments of government to grapple with and accommodate two differing views on the essence, nature, and character of political authority in Nigeria. As rightly observed by Peter Clarke, Christianity and Islam are religions that seek to make politics serve a higher truth, reality or divine kingdom, but in very different ways. In

Christianity, the 'Kingdom of God' is in but not of this world and political authority is something secular and transient.[98] Among the Pentecostal faithful, Christianity does not even allow for full time participation in elective and partisan politics because of its tendency to distract believers' attention from the kingdom of God. However, the Christian position accommodates the separation of Church and State, a secular state and pluralistic forms of constitutional government.[99] According to Bishop John Onaiyekan, Nigerian Christians have

> taken for granted that the State was ruled according to God's will, and that religious authorities were the authentic interpreters of this will, which the temporal ruler had to obey. When the idea of a secular state emerged, it referred to State in which the temporal, secular ruler enjoyed full autonomy as a ruler with no control from religious or spiritual authorities.[100]

However, as a result of the changing character, nature and dynamics of the Nigerian State, secularism has come to mean, at least to the Christian, making your religious faith a strictly personal affair.[101] Religion, obviously has, what Emile Durkheim calls, a dynamogenic quality, in that; it has the capacity not only to dominate individuals, but also to elevate them above their ordinary abilities and capacities.[102] There is sense in the belief that most, if not all, of the various collective representations of modern society have their origins in religion.

Leading Islamic scholars and clerics believed that a secular state is a negation of the Sharia and therefore harmful to the development and expansionist aspiration of Islam. As submitted by Ibrahim Suleman, secularism is hostile to Islam and seeks to undermine Islamic values, supplant the Islamic laws with those of its own and deface the sanctity of the Muslim Society. According to Jamaat Nasr Islam, 'secularism is a system of social teachings which, allows no part for religion". In contradistinction, to the position of Christianity, Islam regards the Caliphate or the Islamic Empire, as the direct determinant of political authority that must be employed to serve the greater interest of religion.[103] The belief or position of Islam would best explain the establishment and role of the Sokoto Caliphate in Northern Nigeria between 1804 and 1900. Guided by the dictionary definition of secularism as the doctrine, which holds that morality should be based squarely on the well being of mankind in life, to the exclusion of all considerations drawn from a belief in God or any future state, Muslims,

opposed the use of the term secular in the constitution which, would have meant for them, giving constitutional weight to the belief that Nigeria is a godless State. According to the Christian members of the 1979 Constitution Drafting Committee, the term "secular" meant that no one religion should be favoured by the constitution at the expense of another, and that the government must be clearly neutral in matters of religion.

Obviously, the gross inability of constitutional provisions to guarantee the secularity of the State should therefore be seen as a major contradiction of the State and its obvious helplessness to remain neutral. This is however being exploited by opportunistic members of the political class in both religions to promote personal political interests, thinly disguised as religious interests. The partisan debate on the exact meaning of the term secular brought to the fore, the limited possibility of the constitutional provisions to guarantee the secularity of the Nigerian State.

In spite of the belief and optimism of successive generations of Nigerian leaders, it is unfortunately unhistorical for religion to promote national unity and integration in a post colonial, multi-ethnic and multi-confessional society. Maintaining the secular status in the Constitution would not preclude the citizens from practising a religion of their choice, but just that the justice system would be in place to deal with any religious or constitutional issues or crisis as they might come up for determination.

Mr. Vice Chancellor, in examining the key concepts of history, law and society in Nigeria, the role and relevance of the judiciary and its personnel loom large. In all of this, those who interpret the law combine in themselves, a multiplicity of roles, and by virtue of the finality of their intervention, determine the course of social change and history. The extent to which successive administrations allowed the judiciary to perform its statutory role has been examined as a major aspect of my contributions to scholarship on the Nigerian State and legal historical scholarship. Under colonial rule, we cannot agree less with Omoniyi Adewoye who concluded that while it was true that there were cases decided purely on merit and in accordance with the law, majority, if not all of such cases, were suits in which the fundamental issues of power, authority, prestige and major economic interests of the colonial regime were not questioned.[104] He went further to state that in order to ensure the

survival of Britain's hegemonic control and domination of colonial Nigeria, the methods of recruiting judicial officers emphasised the need to appoint magistrates and judges who by training and socialisation had imbibed the English value system and who could be predicted, trusted and controlled.[105] The judicial reforms of 1933 inaugurated a system of Native Courts of Appeal, abolished the Provincial Courts, admitted legal practitioners into practise at both the High Courts and Magistrates Courts, subordinated all other courts to the Supreme Court and established a system of appeal from the Supreme Court and the High Courts of Nigeria to the West African Court of Appeal.[106] However, in spite of the ramifications of these reforms, the Nigerian society was still very much under a regime of executive justice because judicial officers were beholden to Executive Officers for a number of reasons. In post independence Nigeria, the Judiciary did not fare any better in its relationship with the executive or in the pursuit of social justice. In concurrence with the executive, the leadership of the judiciary preferred a system of power relations that emphasised the strength of the Federal Government over the constituent regions. The Federal Supreme Court and its successor, the Supreme Court of Nigeria between 1954 and 1966, became involved in matters of grave constitutional and political importance; matters that threatened the survival of the State system and the relationship of the State with individual citizens. This could be seen in matters relating to protecting the fundamental rights of the individual against breach by the state and in conflicts between the federal government and the regional or state governments.

In brazen attempt to re-define federalism in Nigeria, the Federal Government enacted the Emergency Powers Act, 1961, which at section 65 stated:

> The Federal Supreme Court, to the exclusion of any other court in Nigeria, shall during any period of emergency within the meaning of section sixty five of the constitution of the Federation have original jurisdiction with respect to any question as to the validity of the Emergency Powers Act, 1961, of any regulation, order or other instrument having effect or purporting to have effect by virtue of that Act, and of anything done or omitted, or purporting or proposed to be done, or omitted, in pursuance of that Act, or any such instrument.[107]

Jurists from critical jurisprudential traditions have criticised this piece of legislation and concluded that it was potent enough to re-structure and re-characterise federalism in Nigeria. According to Nwabueze, the power vested in the Federal Government by the Emergency Powers Act of 1961 was wider than its power to preserve the federal character of the constitution [108] The appointment of Dr. M.A. Majekodunmi as Administrator of the Western Region, the subsequent enforcement of restriction orders, including one on Chief Alade Rotimi Williams and the performance of the judiciary in the case that ensued, confirmed that the courts were supportive of a strong central government. This was equally confirmed in *Akintola v.Governor of the Western Region and Adegbenro*, [109] where the court demonstrated its willingness to over protect the interest of the Federal Government. I have had cause to examine the judicial career of the Sir Adetokunbo Ademola, the first indigenous Chief Justice of Nigeria who led the judiciary under three major dispensations between 1958 and 1972. My conclusions point to the role of judicial officers in our understanding of history, law and society in Nigeria. An examination of the socio-economic and intellectual background and philosophical persuasion of judicial officers, the changing political character of the Nigerian State and the institutional limitations imposed by the society would confirm the often quoted observation that 'no legal system, no matter how logical its design or how elegant its procedure can rise higher than the personnel who administer it'. Since the era of Adetokunbo Ademola, many other Justices of the Supreme Court have had opportunities to make impression on law and society and how important judicial decisions effect human conduct in society.

Mr. Vice Chancellor, during the politically unstable era of the First Republic, the judiciary was called upon to determine constitutional matters which had great implications for the relationship between history and law within the context of changing human society. Historical developments in sub-Saharan Africa have adequately confirmed that internally generated socio-political and economic instabilities pose the greatest threat to state and national security. It is trite that the judiciary, as an institution of State and a paramount agency of social control, plays a pivotal role in conflict resolution and management in order to ensure the survival of the State system, protect basic human rights and preserve order. The judiciary grapples with the paradoxical problem of reconciling contradictions within the State system and mediating in disputes between

the State and individual members of the society. The courts, especially at the appellate level, participate in the multifaceted role of determining the goals and ideals of the society, mobilising its resources and providing the enabling environment for the State to serve the interest of individual members in accordance with the constitution. Apparently, the attitude of the judiciary to State or national security is a function of the specific provisions of the constitution and of the judicial orientation, traditions, values, outlook as well as the ideological persuasion of judges. It also depends with, equal force, on the definition of State security as conceived by the learned gentlemen of the Bench.[110]

In conceptualizing national/ state security in the third world including Nigeria, it would be more appropriate to talk of State security since the concept of nation may be a misnomer. The nations have yet to emerge in many third world countries which explains the dilemma of the courts in constructing what constituted national interest. In many instances, judges protect State and not national interests. State security puts more emphasis on the State as a centralized governing organization and less on the individuals and social groups within the state. The experience of Nigeria as post-colonial and plural State exhibits the precariousness of the State when its survival was threatened by centripetal and centrifugal tendencies. The judiciary in its conservatism and self-restraint conceptualised security as the maintenance of peace, law and order. This seemingly narrow definition was obviously responsible for the restrictive and sometimes-illiberal interpretation of the constitution during the First Republic. Constitutional adjudication reflected preparedness on the part of the judiciary to protect perceived government interests, even when such interests detracted from the guaranteed or fundamental rights of citizens. This attitude found expression in the performance of the courts in a number of cases bordering on the violation of personal freedom of individuals by the State.[111]

Sedition is probably one of the major offences which, most seriously impinges on the right of free expression. For the judiciary, the law of sedition raised the problem of how to strike a balance between individual freedom of expression and the security of the State. Section 51 of the Criminal Code in Nigeria created the offence of sedition as stated below.

(1) Any person who

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any seditious words;
(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
(d) imports any seditious publication, unless he has no reason to believe that it is seditious;

Shall be guilty of an offence and liable on conviction, for a first offence, to imprisonment for two years or to a fine of ₦200 or both such imprisonment and fine and for a subsequent offence to imprisonment for three years; any seditious publication shall be forfeited.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable on conviction, for a first offence to imprisonment for one year or to a subsequent offence to imprisonment for two years and such publication shall be forfeited.[112]

It should be remarked that seditious publication and seditious words mean respectively publication or words having a seditious intention and to publish means to make known to another. Every other time this is done, a distinct offence is committed. Equally important is the fact that there must be a seditious intention as defined by section 50 (2) of the criminal code.

A seditious intention means any intention to:
(a) to bring into hatred or contempt or to excite disaffection against the person of the President, or the government of a State, or of the Government of the Federation, or of any State thereof, as by law established or against the administration of justice in Nigeria; or
(b) to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or
(c) to raise discontent or disaffection amongst the citizens or inhabitants of Nigeria; or
(d) to promote the feelings of ill-will and hostility between different classes of the population.[113]

It has however been established through a succession of judicial determinations that there are notable exceptions to the charge of sedition. An act, speech or publication is not seditious if the intention is any of the under listed.

(i) to show that the President or the Governor of a State has been misled or mistaken in any measure in the Federation or State , as the case may be; or

(ii) to point out errors or defects in the government or constitution of Nigeria, or of any State thereof, as by law established or in legislation or in administration of justice with a view to the remedying of such errors or defects; or

(iii) to persuade the citizens or other inhabitants of Nigeria to attempt to procure by lawful means the alteration of any matter in Nigeria as by law established; or

(iv) to point out, with a view to their removal, any matters which are producing or have the tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria.[114]

As rightly observed by Okonkwo and Naish, the last provision is essential for the safeguard of the rights of the citizen to fairly and without ill motive criticize government in the discharge of its constitutional responsibilities if the citizen feels that there could be a better course of action at minimal cost of time and resources.[115] In the words of Adetokunbo Ademola, the exercise of free speech must not extend beyond a reasonable limit.

> A person has a right to discuss any grievance or criticize, canvass and censure the acts of Government and their public policy. He may even do this with a view to effecting a change in the party in power or to call attention to the weakness of a Government, so long as he keeps within the limits of fair criticism. It is clearly legitimate and constitutional to criticize the Government of the day. What is not permitted is to criticize the Government in a malignant manner for such attacks by their nature tend to affect the public peace.[116]

Without prejudice to other cases heard by the Supreme Court of Nigeria, it would seem that the case *DPP v. Chike Obi* was the most important test for the ability of the judiciary to strike a neat balance between individual freedom and state security. In the instant case, the Supreme Court was called upon to consider whether the provisions of sections 1 and 24 of the Independence Constitution of 1960, regarding the

supremacy of the constitution and freedom of expression respectively had invalidated section 50 and 51 of the Criminal Code with regard to seditious publications. Chike Obi, a Professor of Mathematics and leader of a political party who, under normal circumstances, had good information about government activities was prosecuted on the charge that in August 1960, he distributed a pamphlet called 'The People: Facts that you must know'. It was alleged that the publication was seditious because it contained the following:

> Down with the enemies of the people, the exploiters of the weak and oppressors of the poor. The day of those who have enriched themselves at the expense of the poor are numbered. The common man in Nigeria can today no longer be fooled by sweet talk at election time only to be exploited and treated like dirt after the booty of office has been shared among the politicians.[117]

The prosecution submitted that the words used violated sections 50 and 51 of the Criminal Code which provided punishment for any person who published any material which could subject or which attempted to subject the government to hatred, contempt or disaffection or which could excite the subjects to effect changes otherwise than by lawful means. Defense counsel led by F.R.A. Williams submitted that the law of sedition could not be said to be reasonably justifiable in a democratic society because it contravened section 24 of the 1960 constitution, which guaranteed freedom of speech. It was further argued that the two sections could seriously restrict and detract from the freedom of political expression, which was considered vital in any democratic set up.[118] Adetokunbo Ademola found it hard to agree with the defense and went great length to establish a link between the publication and the probable threat to public peace. He left the determination of fair criticism in the hands of his court without making the features of fair criticism explicit. This obvious loophole was exploited when he said;

It is clearly legitimate and constitutional by means of fair argument to criticize the government of the day. What is not permitted is to criticize the Government in a malignant manner as described above, for such attacks; by their nature, tend to affect the public peace[119]

Adetokunbo Ademola held that where the seditious intention was clear and patent, truth could not be a defence. He believed that sedition was

clear and patent in the pamphlet and to that extent, its truth could not be considered as defence. Accordingly, it was held that the provision of the constitution relating to fundamental human rights was not invalidated by sections 50 and 51 of the Criminal Code in the Chike Obi case because it was the duty of the 'court to decide the real intention of persons charged on the facts of each particular case'.

The performance of the Federal Supreme Court in this case was a demonstration of its undisguised preparedness to safeguard the interest of the federal government against acidic criticisms by the critical public, the press and articulate opposition. The determination of the *mens rea* left ample room for expedientiary considerations without uniformity and generality. This attitude and judicial orientation could be seen in the determination of other constitutional cases since the decision of the Supreme Court was meant to achieve the objective of enhancing the position of the central government and protecting its total control of power within the Nigerian federation. Constitutional decisions were reduced to preferred moral choices, unrelated to and irreconcilable with one another, and lacking any philosophical guide or principle. Perhaps this was why Ezejiofor said that the ultimate collapse of the First Republic could be blamed on the 'failure of the court to interpret the constitution fearlessly. The Supreme Court believed that provisions of the constitution on human rights 'guaranteed nothing but ordered freedom.[120]

In true realist tradition, Nigerian judges have both professional and political constituencies but contemporary theories of jurisprudence recognize the judge's role as mediatory, that is, to balance conflicting interests in the society in order to achieve maximum satisfaction at the least cost. This position is an acceptance of the creative role of the judge especially with regard to how judgments are influenced by public opinion or other extra legal considerations. Realism believes that judges cannot be uprooted and isolated from contemporary realities and accordingly, a Judge's perception and understanding of social reality cannot remain uninfluenced by current and prevailing values in the society. On the other hand, judges by virtue of their professional orientation, ethics, and integrity, are barred from making volatile judicial pronouncements that could be considered as either too passionate or brazenly partisan. Though judges choose between alternatives and options, the difference between one judge's choice and another, does not

always derive from any significant difference in their technical knowledge of the law but, often, in their differing reactions attributable to differences in values. Accordingly, to the extent that judges must invariably, choose between competing values, they are bound to have a fair knowledge of the social consequences of their choice. According to Cardozo, judges cannot help but be influenced by the traditions and values of the society or a section of it in which they live. ''The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by''[121]. In deciding cases therefore, judges especially at the appellate level make a choice between different public policies that might result from court decisions and thus, often between specific values. Judges, by the circumstances of their training, orientation, and predisposition, are bound to have specific convictions of which set of values are necessary to the good of the society and what policies could accelerate the process of development. It is assumed that the provisions of the constitution, the laws and executive orders that judges interpret and apply are ordinarily ambiguous to the extent of being capable of multiple reasonable interpretations. As elegantly stated by Oliver Wendell Holmes in 1881,

> The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy avowed or unconscious, even the prejudices which judges share with their fellow-men have had a good deal more to do than the syllogism in determining the rules by which men should be governed.[122]

However, strict constructionists are well known for their ability and tendency to stick to the letters of the law even when they could be creative in the pursuit of substantive justice. As observed by Fatai Williams, a judge must learn to suppress his private feelings on every aspect of a case. "On the whole, judges must and do lay aside our private views in discharging our judicial function." [123]

The discourse above, has shown that judges appear to make laws but with some limitations on their law making powers. Some of these limitations are intellectual. For instance a judge has an obligation to give adequate reasons for his position on points of law raised in the course of the trial. There is also always an institutional limitation of the need to avoid involvement in hotly partisan issues. An examination and careful perusal of court decisions in Nigeria would suggest that no particular theory of jurisprudence could be said to have had a pervading and overwhelming influence on the character of judicial performance. Recent

events and developments in the courts and in the political process have shown that judges in Nigeria are willing to understand, borrow and adapt certain beneficial features of other judicial traditions. Through the court system and especially by the quality of its judgments, the judiciary could enhance the capability of government to achieve the goals of public policy. On the other side of the divide, the court is also an active participant in the process of distributing rights, duties, costs, benefits, rewards and punishments amongst members of the society through the resolution of conflicting claims. It is worthy to note that the courts perform their functions within a framework of rule, procedure, and traditions, which in some cases, might impinge on the province of either the executive or the legislature. The judiciary and its personnel provide a viable area for study in government and administration in view of the crucial role the courts have played in the evolution of the Nigerian State. The courts in both original and appellate jurisdictions and under different political dispensations have been relied upon to decide major issues of state policy and public interest.

Mr. Vice Chancellor, my scholarship in legal history has demonstrated the meeting point of history, law and society and I wish to conclude that by its nature and character, historical scholarship provides a one stop shop for our understanding of the implications of human activities for society and development. History is more than an assemblage of facts or annals of important happenings in the affairs of men and women. The 19th century positivists attempted to reduce history to mere compilation of facts, devoid of imaginative interpretation, incisive analysis and robust engagement of the historian with his facts. Rankean positivism was a denial of the capacity of history to produce scientific knowledge and re-construct social reality. As amply demonstrated by E.H. Carr, history is better considered or conceived as a perfect blend of objective historical facts and imaginative interpretation of the historical researcher.[124] In the nature of the discipline, facts of history exist independently of the historian and to that extent; he has no control over them other than to determine when to call them up for engagement and what importance to ascribe to them in the course of developing his interpretation. Facts are, indeed, the building blocks of historical reconstruction as every effort at writing is a re-construction of social reality. However, in spite of the pivotal role of facts in history, they do not, in themselves, constitute the totality of what history is or is not. The other and equally essential flip side is the interpretation imposed on these facts by the historical researcher which is the subjective part of what is known as history and

which, gives flavour and propriety to the piece of writing. Indeed, the quality of a piece of history is determined by how successful it is a blend of objective historical facts and the fecund creative imagination of the writer. This makes history a descriptive science, perfectly accommodating and reflective of the humanity of man within the context of his society and age. The Province of history is the past and its nature is an attempt to understand the past on the basis of present state of knowledge; what Carr refers to as 'seeing the past with the eyes of the present'

Legal historical scholarship provides opportunity for a more detailed study of the relationship that law and legal institutions have with the society. Its subject matter is how law and legal institutions operate and how they change over time in reaction to changing economic, social and political conditions. It also studies the activities of people who are governed by law as well as how they tried to influence law and legal actors. In essence, legal history deals with the central questions of how society is organised and the management of inevitable change occasioned by changing definitions of public morality and individual duty. Obviously, legal history provides understanding about the contingency of law and how other historical forces shape the law. It provides evidence that law is not a set of abstract ahistorical and universal principles, and that it does not exist in a vacuum. Rather, law is developed by, and exists within, human societies, and its forms and principles as well as changes to them, are rationally connected to society. As stated in the opening section of this presentation, the uniqueness of historical scholarship at Ife is the emphasis on the utilitarian value of history. The sub field of legal history provides yet another opportunity to demonstrate the functional relevance of history through a systematic study of the forces of change in society.

Conclusion:

Mr. Vice Chancellor, the task before the contemporary Nigerian historian has gone beyond what Atanda identified in 1982,[125] to what Falola called pluriversalism which for him is 'African academic orientation as well as practices that create their own distinctive methodologies and epistemologies'. There is a need to develop our scholarship to benefit from the indigenous milieu and knowledge production system. In the words of Falola,

> ...the final intellectual products of African scholars, even when they combine localism with globalism, will be a distinguishable autonomous hybrid that is African in its imprimatur. Thus we become the centre of knowledge, not its periphery, we originate as well as adopt and adapt, and, in the end, we invent as well renew. We create an African universalism in the context of multiple universalisms.[126]

With regard to the thorny issue of the Nigerian national question which, as we have demonstrated above, is, in part, a product of fundamental conflicts and crises created by the inability of legal instruments of the State to ameliorate differences; African knowledge production must reflect a large dose of sociological imagination which, is described as the ability to think yourself away from the familiar routines of everyday life and look at them from an entirely new and critical perspective. It is also the ability to locate historical developments within a maze, how they interact, the consequence of one for and influence on the other. The book Sociological Imagination written in 1959 by C. Wright Mills was an attempt to reconcile the individual and society as two different and abstract concepts in social reality. While Mills repudiated the prevailing academic support of elitist ideas and attitudes, he stressed the importance of recognising how individual experiences and worldviews are products of both the historical context and the immediate environment in which an individual exists. Jurists and judges in Nigeria should also consider the highpoints of sociological jurisprudence as propounded by Roscoe Pound in their commitment to substantive justice, social harmony, progress and development.

Our re-construction of the past must therefore be interpretive and analytical, capable of producing understanding of not just unique or isolated events but of trends and streams of historical developments. Historians must be aware of life impacting laws and write in their awareness. My contributions to historical knowledge in the area of career biographies are indicative of the need to emphasise the functionality of history in lives that have had significant implications for society. In all of this, the historian must be professional by remaining faithful to the fundamentals of historical scholarship in truthful objectivity, factual presentation, provision of evidence and rigorous analysis as he demonstrates the functionality of history in the search for justice and order in society.

Mr. Vice Chancellor, in my future years as I consolidate my Professorship, I intend to move the Obafemi Awolowo University towards a pluriversalist approach in which we develop our indigenous ideas to the point of global acceptance as an appropriate methodology in the furtherance of humanistic studies in Africa. My goal has always been and will remain, making Obafemi Awolowo University the last clearing house on any study about the Yoruba in particular and Africa in general. Going further and to achieve the above, I am committing my career to the production of more M.As and PhDs in field of Legal History. These will be men and women who will not only take to academic research but who will also use their skills in governance and politics. Some will work for the National Assembly and other State institutions, advice policy makers at international and national levels and help in all ways to discover the soul of the Nigerian nation.

I thank you for your attention.

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[1] All previous Inaugural Lectures Delivered from the Department of History of this University.

[2] Peter Loewenberg, *Decoding the Past: The Psychohistorical Approach* (New Brunswick, N.J.: Transaction Publishers, Paperback with New Introduction, 1996), p.15. Please note that Peter Loewenberg believes that psychoanalysis allows the historian to more effectively move back and forth across the internal boundaries between conscious, pre-conscious and unconscious processes.

[3]. H. Meyerhoff, *The Philosophy of History in Our Time: An Anthology Selected and with an Introduction and Commentary.* (Garden City, New York: Doubleday & Co. Inc. 1959), p.10

[4] B.O. Oloruntimehin, History and Society, An Inaugural Lecture ,Delivered at the University of Ife on 24th February, 1976, Inaugural Lecture Series 18

[5] I.A. Akinjogbin, History and Nation Building, An Inaugural Lecture, Delivered at the University of Ife on 28th November, 1977. Inaugural Lecture Series 26

[6] I.A. Akinjogbin, History and Nation Building, p.20

[7] B.O. Oloruntimehin, History and Society, p. 4

[8] Karl von Savigny, (MacCormick, Neil. Savigny Friedrich Karl von (1779-1861), 1998 doi.10.4324/9780415249126-T051-1, Routledge Encyclopedia of Philosophy, Taylor and Francis

https://www.rep.routledge.com/articles/biografical/savigny-friedrich-von-1779-1861/v-1) Accessed 25th July, 2017

[9] Ibid.

[10] B.O. Oloruntimehin, History and Society, p. 5

[11] I rely on and quoted from B.O. Oloruntimehin's translation of Guy Rocher's, Introduction a la Sociologie Generale: vol.3, le changement social (2 eme edition, Montreal MMH Ltee, 1969), p.313

[12] Roscoe Pound, The Scope and Purpose of Sociological Jurisprudence (part3), 25, *Harvard Law Review*, 489 (1912).

[13] For an elaborate discussion of the legal philosophy of Roscoe Pound in its formative years, see, Linus J. McManaman, 'Social Engineering: The Legal Philosophy of Roscoe Pound', *St. John's Law Review*, vol. xxxiii, No.1, December, 1958.

[14] For details see, Muhammad Abu Zahrah, 'The Fundamental Principles of Maliki Fiqh'

[15] Ibid., p. 97

[16] Emmanuel Onyeozili and Obi Ebbe, Social Control in Pre-Colonial Igbolandof Nigeria, *African Journal of Criminology and Justice Studies*, Vol.6, Nos. 1&2, pp. 29-34

[17] For an elaboration of this, see Akin Alao, 'Jurisprudence of the Oracle: Indigenous Judicial Systems in Africa." For 2003 - 2004 Sam Shannon Distinguished Lecture Series, Tennessee State University, Nashville, Tennessee

[18] Omoniyi Adewoye, 'Proverbs as Vehicle of Juristic Thought among the Yoruba' *Obafemi Awolowo University Law Report*. (1987) 3&4, pp. 1-17

[19] I.A. Akinjogbin, History and Nation Building..., p.10

[20] Samuel Crowther, A Vocabulary of the Yoruba Language together with Introductory Remarks by the Rev. O.E. Vidal, (London, 1852), p.30 (University of California Digitized by Microsoft)

[21] Akinsola Akiwowo, Ajobi and Ajogbe: Variations on the Theme of Sociation: Issue 46 of University of Ife, Inaugural Lecture Series, 1983

[22] Akin Alao, Always as Friends: African Roots of Alternative Dispute Resolution System being a paper presented at TOFAC 2014, Durban South Africa, July 3-5 2014

[23] Ranajit Guha is a very influential historian who is leading research on subaltern studies and history from the perspective of the common man and woman.

[24] Dirks penetrating insights on colonialism are well expressed in Nicholas Dirks, Introduction in B.S. Cohn (ed.), *Colonialism and its Form of Knowledge*. (Princeton, NJ: Princeton University Press, 1996)

[25] Elite-mass gap was instigated and encouraged through the implementation of discriminatory policies like the creation of Government Reserved Areas, discriminatory policies in schools and medical facilities and huge differentials in wages and salaries.

[26] E. A. Ayandele, *The Educated Elite in the Nigerian Society* (Ibadan: Ibadan University Press, 1974)

[27] For details see R.L. Sklar *Nigerian Political Parties* (New Jersey: Princeton University Press, 1963), pp.55-64.

[28] Coleman, J.S., *Nigeria: Background to Nationalism*, p. 20 See also Awa E.O., *Federal Government in Nigeria* (Berkeley: University of California Press, 196 pp. 96-97.

[29] For detailed information on the Egbe Omo Oduduwa, its formation and relationship with the A.G. see S.0. Arifalo The Egbe Omo Oduduwa: A Study in Ethnic and Cultural Nationalism (Ph.D. Thesis University of Ife, January, 1983).

[30] Ibid.

[31] Constitution of the Action Group Ibadan 1951, p. 1.

[32] Awolowo, *Awo* ... p. 217.

[33] R.L. Skiar, "The Contribution of Tribalism to Nationalism' *Journal of Human Relations*, Vol. 8, (1960), pp. 407-418.

[34] J.S. Coleman; Nigeria: *Background to Nationalism...*, p. 351.

[35] Michael Crowder, *A Short history of Nigeria* (London: Frederick A. Praeger Publisher 1962), p. 196.

[36] Byan C. Smith, "The Evolution of Local Government in Nigeria". *Journal of Administration Overseas* Vol.VI No.1 (January 1967), pp. 32-33.

[37] Quoted in A,H.M. Kirk Greene (ed.) *The Principles of Native Administration in Nigeria: Selected Documents.* (London, OUP 1965), p. 61.

[38] E.D. Morel, Nigeria: Is People and Its Problems (London: John Murray, 1912), pp.153-154.

[39] R.L. Buell, *The Nature Problem in Africa* (New York: Macmillan 1928) Vol. 1, p. 733.

[40] Ibid.

[41] B.O. Nwabueze, *A Constitutional History of Nigeria* (U.S.A. Longman Group, 1982), p. 35

[42] Nigeria's Constitutional Story, (Lagos: Federal Information Service, 1955), p. 5.
[43] Ibid.
[44] Abiola Ojo, "Law and Government in Nigeria" in David R. Smock and K. Benti-Enchill (eds.) *The Search for National Integration in Africa.* (London: The Free Press, 1975), p. 49
[45] T.O. Elias, Nigeria: *The Development of its Laws and Constitution*, (London: Stevens & Sons, 1967), p.27
[46] Kalu Ezera, *Constitutional Developments in Nigeria* (Cambridge: Cambridge University Press, 1960, p.67.
[47] O.I. Odumosu, *Nigerian Constitution* (London: Sweet and Maxwell, 1963), p.7.
[48] Bernard Bourdillon, "Nigeria's New Constitution" *United Empire.* Vol. 37 March-April 1946), p. 77.
[49] Nigeria (constitution,) Order-in-Council, 1951 section 91 Schedule 3 cited in A.Y. Aliyu, "Dilemma in Nation-Building: Problems of Integration arid Citizenship and their Implications for Policy Making and Administrative Efficiency." *Journal of Public Affairs* Vol.VI No.1 (Zaria: ABU May 1976), pp. 49-76
[50] The A.G. for instance supported the creation of the Mid-West Region in 1955 when a motion for its creation was moved and passed by the Western House of Assembly.
[51] Daily Times June 28,. 1956
[52] Coleman; *Nigeria: Background to Nationalism...*, p.335.
[53] The N.P.C. threatened secession should the Northern boundary be adjusted but readily cooperated in the creation of the Mid-West from the West in 1964.
[54] David R. Smock and K., Bentsi-Enchill, *The Search for National Integration in Africa* ... pp. 47-67.
[55] It was perhaps the common desire for political Independence that saved the country from falling apart.
[56] *West Africa* May 26, 1962 p. 579.
[57] Senator Adekoyejo Majekodunmi's antipathy towards the Action Group and its leadership in the Western Region was well known.
[58] The London Times wrote towards the end of June that, events in the Western Region of Nigeria appeared to be an assault on the A.G. and the region by the coalition government.
[59] The Economist contended that admittedly the whole inquiry was partly intended by the Federal Government to damage the A.G. which provided the Federal Opposition

[60] For details, see the Report of the Coker Commission

[61] For details of the travails of Chief Obafemi Awolowo, see Obafemi Awolowo, *Adventures in Power: My March Through Prison* (Lagos: Macmillan Nigeria Publishers Ltd., 1985)

[62] A.G. Nwankwo and .U. Ifejika. *The Making of a Nation. Biafra* (London: C. Hurst & Company, 1969), pp. 71-72.

[63] Oyeleye Oyediran, *Nigerian Government and Politics under Military Rule 1066-1979* (London: Macmillan Publishers 1979), pp. 1-24.

[64] National Census Board Press Release 24th February, 1964.

[65] A.G. Nwankwo and 5.U. Ifejika, *The Making of a Nation: Biafra* ... p. 90.

[66] Ibid., pp. 72-95.

[67] Oyeleye Oyediran (ed) Nigerian Government and Political Under Military Rule ..., p. 17.

[68] NNA was the combination of the NPC, the NNDP as principal partners and such other minor partners as the Mid-West Democratic front and the Dynamic Party of Dr. Chike Obi. The other alliance known as the United Peoples Grand Alliance (UPGA) was made up of the NCNC, the AG, NEPU and the United Middle Belt Congress. For details, see John 0. Mackintosh, Nigerian Government and Politics Evanston: North Western University Press, 1966), pp. 420-450 also Douglas D.G Anglin, "Brinkmanship in Nigeria: The Federal Election of 1964-1965" *International Journal* (Spring 1965), p. 175.

[69] The intimidation and molestation of opponents got to such a point that on October 10, 1964 the Nigerian Bar Association appealed to all the .Attorneys-General in the federation to ensure that its members were not in any way molested, or assaulted in the discharge of their professional and lawful duties especially in the Northern region.

[70] Oyeleye Oyedele (ed.) *Nigerian Government and Politics...,* p. 18.

[71] AVG. Nwanko and S.U. Ifejika. *The Making of a Nation: Biafra* ..., pp. 78-80.

[72] Even, the Chairman of the Commission, after listing the electoral shortcomings publicly confessed his doubts about the future of "free and fair elections in the whole of Nigeria". Quoted in "January 15 Before and After" *Nigerian Crisis 1966* Vol.7 (1966). In the same manner, a correspondent of the Africa World commenting on the Western Regional election said "The Ruling Party in the Western region, by an alliance with its opposite number in the North, has practically ended all hopes of effecting constitutional changes in the country by democratic means". Quoted in *The Economist* 8th January 1986, p. 126.

[73] J.P. Mackintosh, *et al Nigerian Development and Politics* (London Evanston, 1966), p. 550.

[74] What happened in the West was a complete breakdown of law and order; a situation of outright insecurity of life and property.

[75] On Thursday 13th January 1966 The Prime Minister, Alhaji Tafawa Balewa announced that the Federal Government was not going to intervene in the West despite increasing chaos and civil disturbances, and the fact that he had set a precedence for federal intervention in troubled regions four years earlier. See Adewale Adegboyega, *Why we Struck* (Nigeria: Evans Brothers (Nigerian Publishers) Limited, 1981), p.67.

[76] Alao, A.A. (2002) "The Republican Constitution of 1963: The Supreme Court and Federalism in Nigeria". *University of Miami International and Comparative Law Review .Vol. `10 Special Issue: 91 - 107*

[77] Akin Alao, Military Rule and National Integration in Nigeria in Toyin Falola Modern Nigeria

[78] Decree No. 34 of 1965. Laws of the Federal Republic of Nigeria. (Lagos: Government Printer, 1966), p. A153.

[79] Ibid.

[80] A.H.M. Kirk-Greene, *Crisis and Conflict in Nigeria: A DocumentarySsourceBbook 1966-1969* (London: Oxford University Press, 1971), p. 174.

[81] Raph Uwechue, *Reflections on the Nigerian Civil War.* (Paris: Jeune Afrique, 1971), p. 55.

[82] Four of the most senior Northern Officers, Brigadier Z. Maimalari, Colonel Kur Mohammed, Lt. Cols. Abogo Largema and Wash Pam and three Yoruba top officers, Brigadier Ademulegun, Colonel Shodeinde and Major Adegoke were slain.

[83] This action could however be justified, if it is considered that the quota system of promotion which favoured officers of northern origin could have been responsible for the non-promotion of these newly promoted officers of Igbo origin. For details see J. Bayo Adekanye, military Organization in Multi- ethnically segmented society: A Theoretical Study with reference to Three Sub-Saharan African case (Doctoral Dissertation, Brandeis University, Waltham, Mass., June 1976).

[84] According to Keneth Post and N. Vickers, Ironsi pursued policies hitherto advocated by the NCNC for a more centralized administration for the country. See Kenneth Post and Michael Vickers, *Structure and Conflicts in Nigeria 1960-65* (London: Heinemann, 1973), p. 40.

[85] West Africa July 20, 1968.

[86] B.J. Dudley "The Military and Politics in Nigeria some Reflections." in Jacques Van Doom (ed.) *Military Profession and Military Regimes: Commitments and Conflict* (The Hague, 1969) p. 208.

[87] Col. Ojukwu once told General Gowon at Aburi that "How can you ride above people's heads and sit in Lagos purely because you are the head of a group who has their fingers poised on the trigger.' See Federal Republic of Nigeria Meeting of the Military Leaders held at Peduase Lodge Aburi Ghana 4 and 5 January 1967" (Lagos: Federal Ministry of Information) p. 10.

[88] He was however opposed by the spokesman of Eastern interest and the Military Governor of the Eastern group of Provinces, Lt. Col. Odumegwu Ojukwu. For details about the different views of the coup see Robin Luckham, *The Nigerian Military* (Cambridge: At the University Press 1971) pp. 61-67.

[89] Akin Alao, Kayode Alao & Odusola Dibu-Ojerinde, An Assessment of Educational Policy and national Integration in Nigeria since 1960, *European Journal of Scientific Research*. Vol. 8, No.2, 2005, pp. 47-52

[90] Akin Alao, (ed.) *The Nigerian State: Language of its Politics: Essays in Honour of S.O. Arifalo* (Ibadan: Rex Charles and Collins Publishers, 2006), pp. 1-19

[91] Obviously, Ademola Popoola's doctoral thesis critically examined the performance of the judiciary in constitutional adjudication. For details, see Ademola Popoola, Some Aspects of Constitutional Adjudication in Nigeria' Ph.D. (Law) Obafemi Awolowo University, Ile-Ife, 1994.

[92] For details of the interplay of law and politics in the Lakanmi Case, see Akin Alao. Law, Justice and Politics: The Lakanmi Case in Historical Perspective. *Ife Journal of History*. Vol.3, No.1, June 1999. pp. 42-54

[93] Akin Alao, *Statesmanship on the Bench: The Judicial Career of Sir Adetokunbo Ademola, 1934-1972* (Trenton, NJ: Africa World Press, Inc. 2007)

[94] New Nigeria Newspaper, 12 may 1970

[95] (1971) *UILR*. p. 201

[96] Kayode Eso, 'Is there a Nigerian Grundnorm?' University of Benin Convocation Lecture, 1985, pp. 12-13

[97] Ibid.

[98] Peter B. Clarke, 'Religion and Political Attitude since I*ndependence 'in J.K. Olupona & Toyin Falola (eds.), Religion and Society in Nigeria: Historical and Sociological Perspectives, (Ibadan: Spectrum Books, 1991), p. 217*

[99] Ibid.p.218

[100] Matthew Hassan Kukah, *Religion, Politics and Power in Northern Nigeria* (Ibadan: Spectrum Books, 1993), p.228.

[101] The Catholic Archbishop of Lagos Anthony Cardinal Olubunmi Okogie believes that secularism means, 'when you are in a position of trust, forget about your religion because it's a private affair between you and your God if you want to bring religion in, after office hours. See also, Elisabrth Zullet, "Laicite in the United States or the Separation of Church and State in a Pluralist Society" *Indiana journal of Global Legal Studies*. Vol. 1, Issue 2 Summer, 2006, pp561-594

[102] Georg Ritzer, *Sociological Theory* (New York: Mac-Graw Hill Corporation, 1996), pp. 93-95

[103] Toyin Falola, *Violence in Nigeria: The Crisis of Religious Politics and Secular Ideologies* (Rochester: University of Rochester Press, 1998), pp.117-129

[104] For details, see Omoniyi Adewoye. *The Judicial System in Southern Nigeria, 1854-1954: Law and Justice in a Dependency* (London: Longman Group Limited, 1977)

[105] *Ibid.*

[106] Akin Alao, "Colonial rule and Judicial Reforms, 1900-1960" in Bayo Oyebade (ed.) *The Foundations of Nigeria: Essays in Honour of Toyin Falola* (Trenton, NJ: Africa World Press, 2003), pp.201-215

[107] Emergency Powers (Jurisdiction) Act, 1962. No.14 Supplement to the Official Gazette Extraordinary. Part A p.47

[108] B.O. Nwabueze, *A Constitutional History of Nigeria*...p. 144

[109] Akintola *v.* Aderemi and Adegbenro (1962) 1 *All NLR,* 442-452

[110] Akin Alao, "Judicial Attitude to State Security in Nigeria: A Retrospective Analysis in Remi Anifowose & Tunde Babawale (eds.) *An Agenda for a New Nigeria: The Imperative of Transformation* (Lagos: Concept Publications Limited, 2006), 242.

[111] Ibid., p. 242

[112] Section 50 (2)

[113] Ibid.

[114] C.O. Okonkwo, Criminal Law in Nigeria...p.341

[115] Ibid.

[116] DPP v. Chike Obi (1961)1 All NLR, 233 at 49

[117] Ibid.

[118] For details and commentaries, see D.L. Groves, "The Sentinels of Justice?: The Nigerian Judiciary and Fundamental Human Rights" *Journal of African Law*, 1963, p.152

[119] (1961)1 *All NLR*, 188.

[120] G. Ejiofor, "A Judicial Interpretation of Constitution: The Nigerian Experience during the First Republic"..., p.80

[121] B.N. Cardozo, *The Nature of the Judicial Process* (New haven: Yale University Press, 1960), p.168

[122] Oliver Wendell Holmes, *The Common Law* (Cambridge Massachusetts: Harvard University Press, 1963), p. 5

[123] Fatayi Williams, *Faces, Cases and Places*..., p.95

[124] E.H. Car, *What is History*...

[125] J.A. Atanda, The Task Before the Nigerian Historian, *Journal of Historical Society of Nigeria*, 1982

[126] Toyin Falola, *The Toyin Falola Reader on African Culture, Nationalism, Development and Epistemologies* (Austin: Pan African University Press), p.889