

CRIMINAL JUSTICE IN
THE PRE-COLONIAL,
COLONIAL, AND POST-
COLONIAL ERAS

*An Application of the Colonial Model to Changes in the
Severity of Punishment in Nigerian Law*

PETER O.
NWANKWO

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in the Nigerian Law**

Peter O. Nwankwo

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This textbook is dedicated with everlasting love and respect to the memories of my mother, Madam Jennet Obaji Nwonu, and my father, Chief John Nkwo Nwaokoro. May their souls rest in perfect peace.

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Preface

This research advances Frantz Fanon's Colonial Model of Social Change and his two-revolution theory of decolonization as a basis for predicting the evolution of specific changes in Nigerian Legal Code during the pre-colonial, colonial, and postcolonial eras. This study argues that Fanon's model of colonial oppression and its category of maintenance needs is highly predictive of the evolution from pre-colonial to postcolonial society in Africa. This claim is demonstrated through an analysis of changes in the legal code of a particular colonized nation during these eras. Changes in the rank order of severity of punishment and the correlative changes in the identification of seriousness of crime comprise the subject matter that this research investigates.

Dr. Frantz Fanon was born in Port-de France, the capital of the French Colony of Martinique on July 20, 1925. Fanon was educated in the University of Lyons in France where he studied medicine, and later became a practicing Psychiatrist. The advent of the Second World War in 1941 had its repercussions on the remote Island of Martinique his home country. Under the pressure of an American blockade, the French government established a military dictatorship. In that situation, Fanon decided for personal and family reasons to leave his hometown in a bid to join the Allied Forces as military doctor. At that period, Fanon's political motives and orientation were not very evident, for the war was not a conflict between whites and blacks in his own home town of Martinique. His practical benefit for going back home became hopelessly unlikely. He found himself trapped by the colonial oppression and racism that dragged third world countries into a war for equality, but built on the subservience of the blacks to the whites. His experiences in Algeria gave rise to his colonial theory and his two revolutionary theory of decolonization, which all became realities based on his practical experiences as

a psychiatrist military doctor in a colonized areas affected by the Second World War, including Algeria his adopted Country. As a result he decamped to aid the opposing forces.

The purpose of this text, in the first instance, is to describe and illustrate the component of oppression and racism in Fanon's model of social change. Fanon argues that colonialism is a subset of oppression of a people, and that it is geared to the maintenance needs of the oppressor vis-à-vis the colonialist. Fanon continuous to maintain that the Colonial System includes, but is not limited to, inequality of power, hypocrisy, changes in the law and severe punishment which are all proprietary to the survival of the colonialist. According to Fanon, maintenance needs of oppression relates to the specific set of beliefs and values and to the institutional configuration that oppression and colonialism require or put in place to guarantee continuous existence. Fanon's theory was developed in a particular historical context and geographical location—Martinique his original country and Algeria, his adopted country, but could be applicable to other colonized nations such as Nigeria. The components of oppression in Fanon's colonial model are basically derived from his works and experiences as a psychiatrist doctor in a colonized nation. His first book, "*Black skin, White Masks*," published in 1952, was actually a diary of black intellectuals recovering from the trauma of a delayed introduction to the white Western world. His second book, "*A Dying Colonialism*," an extended commentary on a society undergoing a thorough restructuring, is an original description of a colonial people winning self-determination. His third book, "*The Wretched of the Earth*," (1961), construes and predicts that the third world's agricultural masses had replaced the urban proletariat as the dynamic force for change in modern history, a theory clearly elaborated in "*Toward the African Revolution*," published in 1964. His article, entitled "*Racism and Culture*," was a lecture he delivered in 1956 before the first Congress of Negro Writers. Most of his professional publications were derived from his clinical notes, such as, his article on the phenomenon of colonialist alienation seen through mental diseases.

Fanon reformed the Jungian theories of the collective unconscious. Jung locates the unconscious in the inherited cerebral matter; Fanon called it the "sum of prejudices, myths, and collective attitudes of a given group." From this, Fanon argued that attitudes and fears make up the unconscious, and that attitudes could change with a reformed society. Given a certain amount of time, he argued, the scars in personality could heal and the health of the unconscious improves. For Fanon, the collective unconscious was a social and cultural phenomenon, not inherited but acquired (Fanon, 1964). The Martiniquan people, both black and white, according to Fanon, had what he termed, an "European collective unconscious," one that attributes darkness as evil and

associates blackness with sin, an unconsciousness that transforms the black man into a sexual animal, rather than a rational human being, (Fanon, 1961). Fanon's colonial theory is based on his concept of "maintenance needs." (See Chapter 5 for more detail).

EXPLOITATION

Fanon (1961: 80) argued that Europe was literally the creation of the third world. The wealth that smothered Europe was that which was stolen from the underdeveloped people. However, in order to exploit certain components of oppression must apply. (See Chapter 6 below)

INSTITUTIONAL STRUCTURES OF OPPRESSION

Fanon argued that oppression can be reduced to institutional structures and that this institutional structure is its objective dimension. In *Toward the African Revolution*, Fanon argued that the oppression system of reference has to be broken in order to be protected. The social structure of the oppressed is destructured; values are flaunted, crushed, emptied in the colonial action (Also see Chapter 8).

BELIEF AND VALUE SYSTEM

In order to exploit, Fanon noted that there must exist in the colonies a belief and value system, which constitute the subjective component of oppression (Fanon, 1961). The colonialists believe that the colony is a world without spaciousness (See details in Chapter 4).

HIERARCHICAL ARRANGEMENT INTO ALLEGEDLY SUPERIOR AND INFERIOR CLASSES

The inner logic of oppression affirms a two-category system. It divides the human family into at least two distinct groups, hierarchically arranged into allegedly superior and inferior classes. These dichotomies exist in almost every façade of life: male and female; rich and poor; master and slave; etc. In the case of the colonial system, the oppression strategy breaks the human family into two distinct groups also hierarchically arranged into allegedly superior

and inferior classes, which translate into human beings and natives (see details in Chapters 5, 6, and 7 below). Fanon was not and is still not alone in his theory of social change. Other advocates of the colonial model are William R. Jones who instituted the phenomenology of the maintenance needs of oppression, and other advocates are Jean-Paul Sartre (1968), Albert Camus (1951), Memmi (1965), Altbach and Kelly (1978), Carmichael and Hamilton (1922), Crowder (1978), Staples (1975), Osterhammel (1995), Patricia Kameri-Mbote (2001), Teffin and Lawson (1994). These advocates of the Colonial Theory are supportive of Frantz Fanon's theory on which this text is framed. The theoretical work derived from Osterhammel's book represents a new approach to "colonialism." Osterhammel discussed the process of colonization and decolonization from the early modern period to the twentieth century. At this point, his theory did not depart from Fanon's theory of decolonization through violence. Osterhammel shows how the colonial situation developed in angles that duplicated neither the metropolis nor the pre-colonial societies; instead, the colonial over-Lords blended their ways thereby instigating a new direction, which characteristically points only to colonial stratification of the foreign over the indigenous cultures. At this point Osterhammel and Fanon are retrospective and in compliance with each other.

According to some theorists, decolonization was based on revolution. Others go on to depict National Movement as the only means of decolonization. Osterhammel contends that the colonizer and the colonized each shape each other compliantly, but this position was at variance with that of other theorists, notably Frantz Fanon, Albert Camus, Altbach and Kelly. Fanon, Albert Camus (1951), and Altbach and Kelly (1978), dully discussed the deprivation of the colonized of the original dominant cultures in place which is replaced by the imported cultures of the colonizers, supported by the arrival of the Christian mission. In the Third World, the reaction was swift and immediate. For instance, Achebe's *Things Fall Apart* and *No Longer At Ease* (Achebe 1959), are fictional novels in resistance to colonization and Christian mission in the colonized world, and the revolution that followed through violence. Achebe's Okonkwo towers above all characters as the prime force of resistance to colonization. Wole Soyinka's "moi moi" and the replacement of the morning breakfast with McDonald fast food restaurant, Disco Sound, and others, created a mixed and distorted picture memories and the distaste for foreign culture.

A reading of the theories of social change from scholars mentioned above, including that of Durkheim, Weber and Marx reveals that Fanon's model theory of social change is superior when explaining a particular feature of the criminal justice system. From the point of view of changes in criminal punishment in the criminal code, Fanon's theory is assigned a higher interpretive

value. Fanon's theory is constructed and designed to explain generic societal structures, not just the legal or criminal justice system itself. In Fanon's model the legal or the criminal justice system is analyzed as subsets or larger societal units that affects or are variables of societal factors that transcend the legal system. The superiority of Fanon's model could also be established by affirming its transcultural validity and explanatory preeminence. Most theories of social change mentioned above could be ignored when they are assigned cross-cultural validity at the outset and utilized transculturally to explain general and specific societal matters in "Foreign" territories other than where each was spawned. Fanon's model is also prominent when researchers look at matters in the so-called underdeveloped countries that are nations in the colonial and post colonial world. Fanon's model of Social Change was designed to explain and predict geopolitical realities. His model of Social Change is applied in a few chapters specifically in chapter four to explain and predict the geopolitical realities of colonialism as a theory of social change in the Nigerian code/Criminal Justice System, during Colonial and Post-Colonial eras. Situations developed in angles that duplicated neither the metropolis nor the pre-colonial societies; instead, the colonial over-lords did blend their ways thereby instigating a new direction which characteristically point only to colonial stratification of the foreign over the indigenous culture. At this point Osterhammel and Fanon agree. Decolonization could be based on early retirement of those leaders who lived and had education from the colonizer. This is not the only lay way of getting rid of neocolonialism that had endangered our sovereignty and development. Osterhammel contends that the colonizer and the colonized each shape the other compliantly and at times could not be reconciled with the Fanon's colonial model. In an Ibo society changes in the traditional way of life because of the arrival of the Christian mission was a big blow to the traditional Ibo man. Things the Ibo people regarded as very sacred were made to fall apart, and nobody was happy to see the colonialist (a foreigner) taking over-things which were regarded as sacred and destroying them in the name of Christianity, an imported religion. Moreover, the titled men that were respected could no more hold together, thus "Things [Fell] Apart and the citizens were "No Longer at Ease." Chinua Achebe's second novel is indeed an extension of the first (*Things Fall Apart*) that indicates the uneasiness of "The Pacification of the Primitive Tribes of the Lower Niger" (Achebe, 1959:209). Wole Soyinka's "moi-moi" was a retrospective feeling of the traditional way of how McDonald, Kentucky Fried Chicken and other fast food restaurants in America replaced that of the traditional Yoruba socio-cultural means of enjoying early breakfast. Young girls do always carry "moi-moi" (ground beans rapped with leaves) from on the city streets. Soyinka did not appreciate the automatic change that had

damaged Nigerian social and cultural enjoyment. He was not happy that these ways were being replaced by an imported American breakfast. This view must have depicted the social changes in the post-colonial era of Nigeria in the 1990s. Wole's feelings were virtually periphery, compared to Fanon's deep rooted feelings of colonial change that could be reflected cross-culturally in all colonized society.

Chapter 1 of this text (an introductory chapter) introduces the reader to the validity and the interpretative merit of the colonial theory, particularly Frantz Fanon's Colonial Model as a theory of social change, especially for the study of colonial, post-colonial and neo-colonial societies in Africa and Nigeria in particular. The purpose is to analyze and illustrate the potential of Frantz Fanon's paradigm to explain and predict the particulars of the specific genre of change in the legal system of Nigeria's passage from pre-colonial to post-colonial status. This chapter also construes Criminal Justice in general, as a model for the entire textbook.

The second chapter discusses the historical origin of Nigeria, and King Jaja of Opobo's furious encounters with the European traders, that led to the colonization of Nigeria and the arrival of the Christian missions in Nigeria. This chapter also discusses the customary law in Nigeria, and the involvement of the Local Chiefs and the Council of Elders in settling disputes.

Chapter 3 contains the literature review and methodology. The chapter describes literature relevant to the research purposes. The review of the literature was an important Chapter because it would not have acquired an understanding of the methods of analysis. The literature review helped the author to know, and understand the main theories in the subject area and how they have been applied and developed as well as the main criticisms that have been discussed on the topic. Literature review gave the author the ideas needed to justify particular the approach to the topic, such as the selection of methods, and the demonstration that the research contributes to something new. The collection of data involved in-depth interviews of Judges, Counselors, Chiefs, Emirs, Onyibe's, Ogbu-inyas, and Obongs in order to ascertain what was going on in the pre-colonial Nigeria due to its unwritten status. A case study is an empirical research inquiry that helps to investigate contemporary issues within their real life context. In this type of research, multiple methods and sources of evidence were employed in the collection of data and analysis. The research uses Fanon's Colonial Model to describe severity of punishment changes in Nigerian Law, changes in the economic and social as well as changes in degree of criminal sanctions.

Chapter 4 explains the inseparability of Colonial and the Post-Colonial Eras and an imagery of Wole Soyinka's Ake town in Western Nigeria. Wole Soyinka's *Ake* is an autobiographical novel based on his childhood in Nige-

ria. However, for one jarring moment, he shifts his reader's attention to a store-lined street in Ake during the 1980s. In the novel, Soyinka contrasts Western images of "McDonald's," Coca-cola," and "disco sounds," with the memories of his idyllic (and distinctly Nigerian) childhood market place, wherein Soyinka expresses disgust in the westernization of his home (Paul, 1991).

Chapter 5 describes and illustrates the components of oppression in Frantz Fanon's Colonial model, which maintains that colonialism is a subset of oppression geared to the maintenance needs of oppression. Fanon notes that the maintenance needs found in the Colonial System include inequality of power, hypocrisy, changes in the law, severe punishment and so on. Fanon's theory was formulated and advanced to explain the realities of all colonized nations and therefore its effects on the Nigerian Legal System.

Chapter 6 describes and analyzes the changes that actually took place in the Criminal Legal Code as Nigeria progressed from the pre-colonial and colonial to the post-colonial eras. This chapter maintains that Fanon's theory argues that colonies were established for exploitation and trade rather than for settlement. In most instances, noted Fanon, the colonizer merely ruled and exploited (Fanon, 1961). Chapter 7 gives the Global History of Police, Law Enforcement, and the Police Systems in Nigeria. Kin policing with its liking for blood feuding and traditions of tribal justice/ intra tribal injustices are analyzed and explained.

Chapter 8 describes and explains the Nigerian Pre-Colonial Hierarchy of Courts (see figure 8.1); the colonial hierarchy of courts (see figure 8.2) and the Post-colonial Nigerian Hierarchy of courts of all the various states of Nigeria and the Federal courts hierarchy, and also the customary courts hierarchy in the states that they exist (see figures 8.3 to 8.9). The differences in these court systems are evident from one another, and also that of Britain.

Chapter 9 discusses punishment procedures and sentencing patterns in Nigeria, narrating the various barbaric types of punishments applied during the colonial rule. Most trials evidence was obtained by torture which method was unacceptable during the post-colonial era.

Chapter 10 entitled Law: Theory and Application, defines law as a system of rules usually enforced through a set of institutions. Different types of Laws are defined and explained in this chapter to include, but not limited to International law, Constitutional and administrative law, Criminal law, Contract law, Property, Trust and Equity law, Civil Law and Equity, Public law and Natural law. The chapter also discusses law in Nigeria and its application of theories, and the Nigeria legal sources (see appendix).

Chapter 11 describes and analyzes changes in the rank order of severity of punishment, using the death penalty as one measure of severe punishment

(See tables 10:1 and 10:2). Chapter 12 describes, analyzes, and explains the changes in the rank order of crimes in both the pre-colonial, colonial and the post-colonial eras. In the pre-colonial era, witchcraft assumed the first order of seriousness punishable with death. In the colonial era, treason and treachery displaced witchcraft and assumed first rank as the most serious crimes punishable with death. In the post-colonial era, pre-mediated murder and armed robbery are considered to be the most serious crimes. It is noted that a change in the rank order of seriousness of crimes during the colonial era expressed a particular tilt toward what was regarded as most threatening to the survival and well-being of the colonial government and the maintenance needs argument. It reflects the preservation of colonial power. Chapter 13 discusses the origin of punishment, and the Post-colonial Nigeria Prison System. It discusses the Colonial and American Revolution to back up the argument of the maintenance needs phenomenon.

Chapter 14 discusses the legislature and the making of laws. In fact, it discusses the processes that bills eventually become law, and other protocols involved in the making of laws. Chapter 15 discusses Criminal Justice, its process and practice. This chapter goes on to discuss the classical school of criminology, the positive school relevance of criminology and the sentencing strategies used.

Chapter 16 discusses and analyzes the “conceptual framework; and the location of crimes and punishments in the human enterprise.” It also discusses the phenomenology of oppression theorized by Frantz Fanon. Finally, summary and conclusions are presented in four parts, by describing and analyzing the findings. It summarizes and offers the authors conclusions regarding the maintenance needs argument. The first part describes and analyzes the findings. The second part presents the importance of the methodologies for further research. The third part discusses the results in response to the research questions, i.e. colonial oppression and its maintenance needs. The fourth part presents the importance of Fanon’s Model or Theory, significance of the study and overall conclusions.

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Chapter One

Introduction

KEY TERMS

- | | |
|-----------------|-------------------|
| 1. Validity | 11. Indigenous |
| 2. Hierarchical | 12. Incarceration |
| 3. Branding | 13. Justice |
| 4. Literature | 14. Equity |
| 5. Forfeiture | 15. Commission |
| 6. Indigenous | 16. Restorative |
| 7. Postcolonial | 17. Advocate |
| 8. Pre-colonial | 18. Culture |
| 9. Feasible | 19. Oji |
| 10. Ultimate | 20. Sacred |

The purpose of this study is to demonstrate the validity and interpretive merit of Frantz Fanon's colonial model as a theory of social change, especially for the study of colonial, postcolonial, and neocolonial societies. The hierarchical rank order of theories of social change in criminological research makes this specific study of Fanon both necessary and significant. Various theories have been advanced to account for changes in legal systems in general and criminal codes in particular. Currently, a clear hierarchy of explanatory theories obtains. Some theories are treated as master theories and afforded superior interpretative authority, while others are assigned second-class status. The allegedly superior models are selected as indispensable for research analysis and advanced as required interpretative models, not paying much attention to the universe of research. In fact,

the conceptual models of Durkheim, Weber, and Marx illustrate this type (Nwankwo, 1995:1).

To explain particular features of the criminal justice system, e. g. changes in criminal punishment in the criminal code, a certain type of theory is assigned higher interpretive value. The preferred models are constructed and designed to explain generic societal structures, not just the legal or criminal justice system itself. In these models, the legal or criminal justice systems are analyzed as subsets of larger societal units—that is, as effects or variables of societal factors that transcend the legal system. The superiority of these models lies in their affirmation of transcultural validity and explanatory preeminence (Nwankwo, 1995:2).

Nwankwo contends that every theoretical model develops in a particular historical context and geographical location, and this particularity is usually acknowledged. The theoretical models of Durkheim, Weber, and Marx, for instance, all developed in Western Europe during a very specific era. The monocultural and parochial character of these models, however, is ignored when they are assigned cross-cultural validity at the outset and utilized transculturally to explain general and specific societal matters in “foreign” territories other than where each was spawned. This pattern is especially prominent when researchers look at matters in so-called underdeveloped and third world countries, i. e., nations in the colonial and post-colonial world.

Nwankwo (1995) makes it clear that when one examines these models, one interpretive type is conspicuously absent from the indispensable list of theories of social change: cross-cultural models that originated in the so-called third world. Frantz Fanon’s colonial model is a case in point. Though formulated and advanced as a generic model to explain and predict geopolitical realities, this model is usually ignored—even when the object of investigation is a nation in the colonial or postcolonial orbit. For instance, a review of the literature reveals a striking paucity of studies that apply Fanon’s colonial model to Nigeria, the largest country, both in area and population, in colonial and postcolonial Africa. To remedy this, a specific case study will be employed to review changes in the severity of punishment under Nigerian law during the precolonial, colonial, postcolonial periods.

For the purposes of this research, fundamental maintenance-need is to preserve two categories of legal power: institutional configuration/belief and value system. Maintenance- needs of oppression include anti-powerism, inequality of power, violence, and infliction of ethnic suffering, and hypocrisy, which manifested themselves specifically in the changes of the severity of punishment in the Nigerian law during the colonial era.

PURPOSE OF THE STUDY

The purpose of this study is to analyze and illustrate the potential of Fanon's paradigm to explain and predict the particulars of the specific genre of change in the legal system of a Nigeria's passage from precolonial to postcolonial status. Given this point of departure, the purpose of this study can also be described as an exercise in causal analysis. In other words, we will attempt to explain "the why" and "the how" of changes in the severity of punishment and the correlative shifts in the definition and rank ordering of criminal actions in Nigeria's legal code that are reflected in the evolution of the Nigerian system of legal punishment.

In precolonial Nigeria, witchcraft was the crime for which the most severe punishment, the death penalty, was inflicted on offenders. In the colonial period, treason and treachery assumed first rank as the criminal *summon malum*. In the present postcolonial context, premeditated murder and armed robbery are punished by death. These changes express a particular tilt, a specific labeling of human actions, which reflects the tendency to safeguard the survival and well-being of whoever has controlling power in the society to define and label what is not criminal. Treason and treachery are political crimes against the government's survival and well-being, whereas murder and armed robbery are crimes against persons and property. Over against each of these, witchcraft directs our attention to the religio-social dimension of the society and what is regarded as the ultimate threat to the cohesiveness of the community. Accounting for the particular character of these shifts in the definition and rank ordering of crime and severity of punishment will be the special focus of this study.

Another objective of this study is to establish the interpretive value of explanatory paradigms that are indigenous to the actual context that spawns whatever phenomenon is the object under investigation. This study uses the internal data of the colonial system to explain internal changes in the code of criminal punishment as Nigeria moved through the various phases of colonial rule. In this sense, this study seeks to establish an alternative to explanatory paradigms like Durkheim's that were assembled on data external to the actual universe of the research of colonialism. Thus, the desired product of this investigation is a more accurate description of the colonial model and the results of its application to a concrete case study.

The foregoing description can lead to an erroneous interpretation of the actual purpose, scope, and desired outcome of this study. The purpose is not to establish the superior research validity of Frantz Fanon's colonial model. Rather, the objective is to document that it is a viable and feasible hypothesis that, if ignored, raises questions about a researcher's methodology.

Accordingly, it must be added to the list of explanatory paradigms that are integral for future research initiatives on colonial and postcolonial criminological issues. The interpretive apparatus to be used here is oppression and neo-racism. This study argues that Fanon's colonial model is most accurately interpreted as a phenomenology of oppression. However, because of Fanon's early and untimely death, it is necessary to enlarge and expand his original phenomenology of oppression to provide a state-of-the-art critical apparatus for this study. The William Jones' model complements Fanon's model by incorporating materials from other advocates of the colonial model of oppression associated with liberation and ethnic theologies, e.g., Carmichael and Hamilton (1992), Memmi (1965), and Sartre (1968). In fact, Jones' model of colonial repression talks about the anatomy of oppression. He analyzes the origins of repression in the blood of the colonialists whose objectives are inculcated into the philosophy of anti-powerism and hypocrisy. Fanon's colonial model is derived from his works: *Black Skin, White Masks* (1952); *The Wretched of the Earth* (1961); and *Towards African Revolution* (1964). Basically, the colonial model locates the controlling causality of colonialism in its maintenance-needs. Thus, elements of the indigenous culture are changed, abandoned, or left intact depending upon their structural relation to the colonial system and its effective operation. A case study from an American slave code illustrates the inner logic of the "maintenance needs" of the colonial system, a system that discriminates in terms of the significance it places on certain cognitive values. For instance, the slave code "That any free person, who shall hereafter teach, or attempt to teach, any slave within the state to read or write, the use of figures excepted, shall be liable to indictment" (North Carolina, 1831:11) made it illegal to teach Negroes to read or write, but excluded arithmetic from this ban. The rationale behind all this was that reading and writing would enable the slave to write her or his own pass and thus enhance the possibility of running away. Arithmetic had little potential as an instrument of freedom; however, it would enhance one's value as a "good slave."

SIGNIFICANCE OF THE STUDY

A number of theoretical and practical consequences flow from this study. Looking at its theoretical significance, one can identify several points. This research will help to clarify the explanatory scope and potential of the colonial model as a generic research tool. Moreover, it will provide the possibility for comparative studies with other generic models as well as cross-cultural studies of this dimension of human culture.

With regard to the field of Fanon's studies, this research helps to address the validity of Fanon's "two-revolution theory" of successful decolonization, and to answer such questions as: Does colonialism represent a unique and discrete subset of oppression that is different from racism, sexism, etc.? The research will help to fill a glaring gap in the literature on changes in the severity of legal punishments, especially as these changes apply to the precolonial Nigerian culture. The importance of this for comprehensive studies of the Nigerian legal system is obvious. A number of practical implications, especially for Nigerian policy makers and other postcolonial African nations also flow from this study. Understanding which parts of the colonial system undergird the maintenance needs of oppression provides tentative guidelines for policy makers who must decide which features of the legal system inherited from the colonial master should be dismantled, revised, or remain intact. For instance, statutes and the customary law are gradually replacing the common law doctrine of *stare decisis*, or binding precedent. Likewise, this study may help in making decisions about which parts of the precolonial indigenous system might be resurrected or refurbished for contemporary use. Furthermore, the study will inevitably lead to implications for reforming criminological curricula, in particular core areas and figures. The colonial system maintains two categories of legal power: institutional configuration/belief and value system. In order for the colonial system to continue in power, anti-powerism, inequality of power, hypocrisy, violence, changes in the law and severe punishments must be maintained by the colonialists.

CRIMINAL JUSTICE

Jeffery (1990) refers to criminal justice as a system used by government to maintain social control, prevent crime, enforce laws, and administer justice. The Law Enforcement Agencies such as the police, courts, and correction or prisons, are primarily charged with these responsibilities. It is noted that when processing the accused, through the criminal justice system, governments must operate within the framework of laws that protect individual rights. The pursuit of criminal justice is, like all forms of "justice," predicated on "fairness" or due "process" which is essentially the pursuit of an ideal.

HISTORY OF CRIMINAL JUSTICE

Modern criminal justice system has evolved since ancient times, with new forms of punishment, added rights for offenders and victims and police

reforms. These developments are reflected in changing customs, political ideals and economic conditions (Jeffery, 1990). From Ancient times through the Middle Ages, exile was a common form of punishment. Another alternative for punishment was the payment to the victim of crime (or their family), known as *wergild*, of violent crimes such as robbery, murder, or manslaughter. Those who could not afford to buy their way out of punishment were subjected to various forms of harsh corporal punishments, such as mutilation, branding, burying a live, burning alive etc.

Even though prison existed as early as the 14th Century in Florence, Italy, incarceration was not widely used until the 19th Century. William Penn toward the end of the 17th Century first initiated correctional reform in the United States. In fact, Pennsylvania in the U.S.A. revised its criminal code to forbid torture and other forms of cruel punishment, with jails and prisons replacing corporal punishment. Under pressure from a group of Quakers, these forms of punishment were revived in Pennsylvania toward the end of the 18th Century, and this revival led to a marked drop in Pennsylvania's crime rate.

Modern Police Force

According to Jeffery (1990), Sir Robert Pell established the first modern police force in London in 1829. Later, police departments were established in Boston Massachusetts in 1838 and in New York in 1844. Unfortunately, the Community did not respect earlier police officers, as bribery and corruption were rampant (Villa and Morris, 1999).

However, the evolution of the criminal justice system tended to be tailored towards specific local specificities. In the United States, the 1967 President's Commission has guided the criminal justice policy on Law Enforcement and Administration of Justice, which issued a groundbreaking report "The Challenge of Crime in a Free Society." This report suggested over 200 recommendations as part of a comprehensive approach toward the prevention and fighting of crime. Some of those recommendations found their way into the Omnibus Crime Control and Safe Streets Act of 1968. The Commission advocated a "systems" approach to criminal justice, with improved coordination among law enforcement, courts, and correctional agencies. The President's Commission defined the criminal justice system as the means for society to "enforce the standards of conduct necessary to protect individuals and the community." In the United Kingdom, the criminal justice system's main objective was to "reduce crime by bringing more offences to justice, and to raise public confidence that the system is fair and will deliver for the law-abiding citizen." In Canada, the criminal justice system was created to balance the goals of crime con-

trol and prevention, and justice (equity, fairness, protection of individual rights). In Sweden, the overarching goal for the criminal justice system is to reduce crime and increase the security of the people.

One question, which was presented by the idea of creating the justice system, involves balancing the rights of victims and the rights of accused criminals and how these individual rights are related to one another and to social control. It is generally argued that victims' and defendants' rights are inversely related, and individual rights, as a whole, are likewise viewed as inversely related to social control. Rights, of course, imply responsibilities or duties, and this in turn requires a great deal of consensus in the community regarding the appropriate definitions for many of these legal terms. Crime control involves going after criminal offenders, through arrest, prosecution, criminal conviction, and punishment.

These are several other basic theories regarding criminal justice and its relation to individual rights and social control:

- Restorative justice assumes that the victims or their heirs or neighbors can be in some way restored to a condition "just as good as" before the criminal incident. Substantially, it builds on traditions in common law and tort law that requires all who commit crimes to be penalized. In recent time these penalties that restorative justice advocates have included community service, restitution, and alternatives to imprisonment that keep the offender active in the community through re-socialization. Some suggest that it is a weak way to punish criminals who must be deterred. These critics are often proponents of retributive justice.
- Retributive justice or the "eye for an eye" approach assumes that the victim or their heirs or neighbors have the right to do to the offender what was done to the victim. These ideas fuel support for capital punishment for murder, amputation for theft (as in some versions of the sharia).
- Psychiatric imprisonment treats crime nominally as illness, and assumes that it can be treated by psychotherapy, drugs, and other techniques associated with psychiatry and medicine, in forcible confinement. It is more commonly associated with crime that does not appear to have animal emotion or human economic motives, nor any clear benefit to the offender, but has idiosyncratic characteristics that make it hard for society to comprehend, thus hard to trust the individual if released into society.
- Transformative justice does not assume that there is any reasonable comparison between the lives of victims nor offenders before and after the incident. It discourages such comparisons and measurements, and emphasizes the trust of the society in each member, including trust in the offender not to re-offend, and of the victim (or heirs) not to avenge.

Criminal Justice System

The criminal justice system consists of law enforcement (police), courts, and corrections, which all operate within rule of law. While the police work towards crime prevention, they are also involved with crime control, and handling cases initially when crime occurs. The police will conduct a crime investigation, gather evidence, and identify suspect(s). The first contact the offender has with the criminal justice system is with the police who make the arrest. Probable cause is necessary for the police to make an arrest, and take the suspect into custody. The suspect undergoes booking, a process which may involve fingerprinting, taking mugshots, and interrogation. In addition to preventing and dealing with crimes that occur, police also provide public safety services, such as directing traffic, providing emergency medical services, and helping people in other ways. Based on investigative evidence, the case could be handed over to the prosecutor who may then file a complaint. The case will then go before a grand jury in a preliminary hearing. If the grand jury finds probable cause, the suspect will be arraigned with formal charges filed and/or bail set. Following the arraignment, plea bargaining may occur with the suspect pleading guilty in exchange for a more lenient sentence. Otherwise, the case will move forward to trial. If the defendant is found guilty, the next step in the system is disposition, with the sentencing determined. The case may then be appealed at higher courts. Otherwise, offenders are then turned over to the correctional authorities. An offender may be sentenced to probation, incarceration in a prison or jail, community supervision, or some other form of sentencing. However, an offender could be sentenced to probation, which involves a contract between the offender and the court, which allows the offender to remain in community under promises of good behavior and to adhere to conditions set forth by the court. Other possible sanctions, short of incarceration, include fines, forfeiture, restitution, and community corrections.

Prisons are the primary type of institution for housing offenders, convicted of felonies. In the United States, prisons are operated by the state, private and Federal government. However, prisons are not synonymous with jails, which are detention facilities run by local jurisdictions, including county police and municipal governments. Jails are used to detain suspects prior to trial, if they are ineligible or cannot afford bond. Jails also house offenders convicted of misdemeanors, with short sentences (usually, a year or less).

In the United States, separate facilities are used to house male and female offenders, as well as juvenile offenders. Furthermore, the severity of the offense determines the security of the jail to which each offender is sent. They range in levels from minimum-security prisons that mainly house non-violent offenders to medium-security facilities, and maximum-security prisons and

super maximum security for potentially dangerous inmates. Upon serving the sentence or through parole, the offender is then released or sent into the community to do the remaining time in some form of community labor. In some countries, sanctions beyond incarceration include execution, which has been prohibited by the Act of European Union. In the United States, twelve states have also abolished the death penalty because of its cruelty.

Two major branches of law include civil law and criminal law. There is substantive criminal law, which defines what is illegal and sets punishments for those offenses. Decisions as to what is illegal are made by legislatures, such as city council, parliament, or congress. The criminal justice process begins when a crime is reported to the police, or, in some instances, the police may discover the crime through informants, proactive investigation, or other means. The police will follow up with an investigation, determining the legitimacy of the allegations, and establish that a crime has been committed. The next step is to identify a suspect, who may then be arrested and taken to the police station for booking. The booking process establishes an administrative record for the suspect. At this stage of the process, the suspect is placed in custody, and may be photographed, fingerprinted, placed in a lineup, and interrogated.

Thereafter, the police then present the case to prosecutors, who decide whether to file formal charges in court or not. If charges are filed, the suspect then makes initial appearance before a judge or magistrate who decides whether or not probable cause and sufficient evidence exists. At this stage, bail is set and pretrial release is considered. If the suspect is indigent and cannot afford an attorney, one will be provided for the defendant. Next step is a preliminary hearing.

Criminal justice is distinct from the field of criminology, which involves the study of crime as a social phenomena, causes of crime, criminal behavior, and other aspects of crime. Criminal justice emerged as an academic discipline in the 1920s, beginning with Berkeley police chief August Vollmer who established a criminal justice program at the University of California, Berkeley in 1916. Vollmer's work was carried on by his student, O. W. Wilson, who led efforts to professionalize policing and reduce corruption. Other universities such as Indiana University, Michigan State University, San Jose State University, and the University of Washington followed suit. http://en.wikipedia.org/wiki/Criminal_justice-_note-savelsberg#_note-savelsberg. As of 1950, criminal justice students were estimated to number less than 1,000. Until the 1960s, the primary focus of criminal justice in the United States was on policing and police science. In the late 1960s, with the establishment of the Law Enforcement Assistance Agency (LEAA) and associated policy changes that resulted with the Omnibus Crime Control and Safe Streets Act of 1968, LEAA provided grants

for criminology research, focusing on social aspects of crime. By the 1970s, there were 729 academic programs in criminology and criminal justice in the United States, noted Jeffery (1990).

The Kola Nut: Ibo Tribe Cultural/Ceremonial Administration before Colonialism in Nigeria

Kola nut (called Oji in Ibo language) is an Ibo cultural and social symbol in the cosmology of the Igbo people of Eastern Nigeria. Ukaegbu (2003:1) notes that there is no Ibo cultural symbol that has received an overwhelmingly attention as the kola in social and cultural life of Ibo people. This nut is culturally known as “Oji Ibo” which translates to the nut that belongs to Ibos, because Ibo people love to use it in almost all cultural and social gatherings. The botanical name for “Oji” (the kola nut) is “acuminata.” The kola nut has more than two cotyledons or seed leaves which are the material that is always chewed. Ukaegbu, (2003:1) also noted that Oji Awusa or Kworo (or botanically cola nitida), has only two cotyledons. Awusa people are an Islamic religious group that lives in the northern part of Nigeria. Awusa people and the Yoruba of Southern Nigeria love Kworo or cola nitida. Unfortunately, in the traditional Ibo rituals and ceremonies such as marriage, opening meetings, title making, or all occasions of social and cultural origin, the Ibos discriminate against or abhor the use of “kworo” Oji Awusa. It is the Ibo cola nut “acuminata” which is unanimously accepted for the above occasions. The reason for unacceptability of kworo by Ibos would be treated clearly below. Ukaegbu contends that there is a popular but cheap etymology or the supposed acronym for the kolanut Oji. The letter “O” stands for Omenala, which means customs; the “J” for Jikotara, which means unites; and the “I” for Ibo, the people who speak Ibo and who live in the Eastern part of Nigeria. Thus “Oji” according to Ukaegbu is expanded to mean “Omenala jikotara Ibo,” that is “custom that unites the Ibo” people. It is noted that cola acuminata and cola nitida are both regarded as having the same symbolism in general and in private cases except on occasions such as serious Ibo traditional ceremonies like marriage, sacrifices, and title ceremony, where only the Ibo kola nuts are used.

Eze Silver Nnanyere Ugo Ibeme Ugbala, Eze Ugo III of Okporo in Olu community made a revealing research on some aspects of Ibo culture, and Oji symbolism featured prominently in his exercise. The kola nut and the tree are regarded as the first tree and fruit on earth. Consequently, the dry wood of the kola nut tree is not used as firewood for cooking (Ukaegbu, 2003). Indeed, the kola nut is a symbol of life, and for this reason, many profound and mys-

terious interpretations and formalities are accorded to it. The Ibo kola nut is always accompanied by wine or drink, because the Ibo people maintain an irrevocable functional link between the kola nut and drink: “Onye nyere oji ga enye ya mmiri o ga eji elofe ya”—“One who gives a deity kola has to give him water with which to assist him swallow it.”

Ibo Interpretation of the Kola Nut

Dr. Ukaegbu went further in his research to dissect kola nut and to give its composition specific significance way beyond ordinary assertions. According to Ibo cosmology, a kola nut with one cotyledon is a dumb kola or Oji ogbi. It is called oji mmuo, that is, kola of the spirits. It is not accepted by any deity. Kola with two cotyledons is equally a dumb kola and it is not also accepted for some serious rituals and deities. This is the main reason why the Ibo people do not use the gworo or cola nitida for rituals or for serious traditional celebrations. Kola with three cotyledons is called oji ike oji ikenga, that is, kola of the valiant. As a matter of principles, only warriors or brave men and consecrated or ordained persons are permitted to eat this kola, as a matter of principle. (Ukaegbu, 2003:2). Kola with four cotyledons is called “oji udo na ngozi”, that is, “kola of peace and blessing.” It is the normal kola because in Ibo symbolism the number four is very sacred. Kola with five cotyledons is “oji ubara mmadu, omumu na ukwoma” which symbolizes increase in procreation, protection, and good luck. Exceptionally, there are kola nuts with six cotyledons (“oji ndi mmuo na ndi mmadu jiri gbaa ndu) which indicates communion with our ancestors. The smallest part or cotyledon is not eaten but is thrown away for the ancestors to eat. In like manner, human beings do not eat a kola nut with one cotyledon; it is not broken during ceremonies because it belongs to the ancestors, an attitude reminiscent of the direct link between the living and the dead in Iboland (Ukaegbu, 2003:3).

Presentation of the Kola Nut

Ukaegbu documented that Eze (King) Ugo III of Okporo says that “The kola nut is the ‘bread’ of Ibo sacramental communion, and must therefore be specially presented, broken, shared and partaken by all the parties and families in every marriage ceremony as the final consummation and blessing.” The reference to the bread of Ibo sacramental communion reminds us of the fact that in Ibo traditional religion, everyone present at a sacrifice participates in the consumption of the sacrificial meal, and the children are not left out. The importance of the people’s communion in Ibo native rites is analogous to the priest’s communion in the Catholic Church in the sense that every priest who

celebrates is bound to partake of the communion. No other symbol represents Ibo communal spirit more than the kola nut. The Eze goes on to talk of kola presentation. “Ojị is the first thing served in every function or ceremony, personal or communal agreements, welcoming of a visitor to an Ibo home, and settlement of family disputes.” G. T. Basden records that Ibo welcome is not complete without the sharing of the kola nut. Immediately after the prolonged greetings in the traditional manner:

The kola nut is brought forth on a dish or saucer or, what is more correct, on a wooden platter (really a small box fitted with a vocer) prepared and kept for the sole purpose of presenting kola nut. In the dish are one or more nuts. The owner first receives it from the servant attendant or one of his wives. He takes a nut and puts it to his lips, thus signifying that it is about to be offered in good faith and that he did not add poison to kill anybody. This symbolic action proves him to be free from malice. The dish is, thereupon, passed to the visitor. (Ukaegbu, 2003:5)

Dr. Ukaegbu notes that the symbolism in the kola presentation comes out clearly, when many people are in attendance. The social aspect is clearly brought out because the ojị is carried from one person to another according to kinship relationship starting from the home of the host, in the direction of left to right movement and back to the host. This symbolic action is a manner of headcount or a way of checking the identity of all the people in attendance in any gathering before any type of discussion could be heard. The kola presentation symbolizes peace and welcome; and if one makes a mistake while carrying the kola round, (‘ipa ojị or ire ojị ’), he is reprimanded according to norms of different communities. Such an error is considered as very grave and indicates that the offender is not so responsible and may not be a reliable person, in the society.

Blessing of Kola

The blessing of kola (igọ ọfo) is the right of the eldest person in any gathering or it may be that of the Eze (king) as the case may be. However, the oldest person is preferred in most cases because he is the custodian of truth and is closer to the ancestors. In the evolutionary trend of the tradition, an ordained minister or one consecrated to God now takes precedence in the blessing of the kola; but the eldest person or the Eze (King) who has this right will give or transfer it to minister as a privilege, not as a right (Ukaegbu, 2003: 3).

Ukaegbu emphasizes that Ndi Ichie Akwa mythology gives an account of the blessing of the ojị in Igboland. “The principle behind this Igbo kola culture is that the nut cannot be broken without saying prayers or incantations by the eldest in the gathering. This gave rise to the proverb ‘He who brings kola brings life’, because in the kola nut prayers, by the elderly. In

addition to his wise sayings, the elder normally requested for peace, prosperity, long life, happiness, and protection from all ill fortunes.” Not only do the Ibo say prayers before the breaking of the kola nut, but no traditional Ibo would drink or eat without sharing at least, with the ancestors. E. Elochukwu Uzukwu acknowledges that the “kola nut [as] a symbol of life and commensality which is never omitted in the morning cult, is broken. The traditional part for the spirits (the radix) is given to them, and those who are present share the rest.” Ukaegbu notes that the kola libation or blessing is employed on all occasions, formal and informal. There was the case of an old man Akpuobi, who called his sons to give them his final blessings before he joined the ancestors. The meeting opened with the normal blessing of kola when they were all seated. He took one kola nut and said to his dead father: “These are the sons, the sons “EZE KEREŪWA”, you gave me, and to whom I am now giving my blessings as you my father once gave to me.” He raised the kola and said:

Eze kereŷwa, this is kola; refers to creator of the earth. My father and the ancients, this is kola; refers to my father and ancestors. Iyiafo, this is kola; refers to diety. This is kola four days that makes eight, this is kola. Refers to the days that makes a week in Ibo land

Eze kereŷwa is one of the Ibo names for God; in this case it means “the One who created the world.” Akpata Eze Ekepechu is a local deity to whom the town’s markets, Nkwo and Eke are dedicated. A brief analysis of this kola-prayer shows that all beings, spiritual and human are invited to partake of the kola and therefore accompany this family meeting. Ultimately, the blessings to the sons come from Eze Kereŷwa (God) through the deities and the ancestors. This cosmic meeting is made possible, thanks to the kola symbolism of commensality. Here the kola symbolism unites man, the ancestors, cosmic forces, the deities and God. As a symbol of life, the kola libation makes clear this truth whenever it is celebrated (Ukaegbu, 2003).

Why the Kola is always broken with a Knife

Many of the answers received from the questionnaire indicate that the kola is always broken with the knife instead of with the finger for health reasons. Some people say it is because the kola is sacred and should be treated holily—“*Sanctae sanctae tractata sunt.*” In olden days and on most occasions, the tradition was for the elderly people to use their long fingernails to break the kola nut. Today, the popular reason for using the knife is that the kola is broken with a knife as a mark of honor to it. However, the remote

reason is essentially religious, for people who have shed blood develop a “strong hand”—“aka ike” that has been soiled by human blood from battles. Consequently, they may not break the sacred kola for others using the soiled or profaned hand or bloody hand. The sacredness of the *oḗ* stems from the fact that *oḗ* is Igbo symbol of life (Ukaegbu, 2003:5).

Right of Breaking the Kola

Ukaegbu (2003) also remarks that another consideration linked to the kola symbolism is the person who breaks it. Age is an important factor here. There are two major traditions: in the south of Iboland, the youngest in any group breaks the kola, while in the north-west and northern parts of Iboland the eldest person breaks the kola. In both cases, the breaking of kola helps in the tracing of seniority. The young-man tradition says that the young is preferred because he is presumed to be innocent, and his hands are not polluted by bloodshed in battle. This tradition has a loophole because at times there are gatherings where no one is, in reality, young, or where the youngest in the group is also elderly. This tradition is nurtured by the philosophy of Ibo ethical puritanism (Ukaegbu, 2003). On the other hand, the old-man tradition is preferred because the eldest man blesses the kola, holds the *Ofo*, or ritual and represents the authority of the ancestors. One of the strongest reasons for religious activities in Ibo tradition, like blessings by the eldest person, is that the first born or eldest man in a family or *umunna* (kindred) assumes some priestly functions “*ipso facto*.” It is more by reason of his priesthood and not necessarily because of his age that the eldest man is preferred; and this is why today, the eldest man gives an ordained minister the kola to bless as a privilege (Ukaegbu, 2003:5).

Ndi Ichie Akwa mythology gives what seems to be the solution to the problem of the right of breaking the Ibo kola as regards the two conflicting traditions in question. The Aros people from Arochukwu in Abia State, Nigeria became very powerful during the slave trade mainly because of the one “Ndi Ichie Akwa” which is in their possession. Thus they wished to dominate the Ibo as a whole and with the advantage of the oracle, they hatched a plan as the author puts it: “The Aros then brought an Afa oracle message from God ‘Chuku’. The divine message said that the Igbo tradition of the oldest person’s right to break kola had been abrogated by God so that the right had been transferred to the youngest person. This oracle’s message automatically gave the Aros who were the youngest of Ibo family groups, the right to break kola whenever the Ibo people were gathered as a nation.” Many Ibo communities in the south obeyed the ‘divine message’ and changed their tradition of the eldest man’s right to break the kola. However, the most probable solution is

that the eldest man blesses and breaks the *oiji* and gives it to the youngest in the group to share and distribute. Another probable solution is that the eldest man blesses the kola and gives it to the youngest to break and share. This second alternative will eliminate monopoly of function by the eldest man.

Why Women do not Break Ceremonial Kola

Eze Ugbara of Okporo says that “The high degree of sanctity accorded the Kola nut throughout Iboland is likened to that of the biblical ‘forbidden fruit of Paradise’ in that women are forbidden from either planting, climbing, plucking or breaking the kola nut.” This does not mean that men are holier than women in Ibo society. It is just a question of a mentality similar to the biblical regard for women, even in the Jewish tradition. This is another example of Ibos relationship with the Hebrews. The denial of women’s right to break Ibo ceremonial kola is more a matter of social character and organization and does not imply a let down or diminution of women to a status of inferiority. However, women do break the Ibo kola when they gather in their usual cultural groupings of *umuda* or “Agbadagba,” a women’s organization in Oshiri Ebonyi State, Nigeria. It is also the council of women where no man has an authority. On the contrary, Ibo women have their cultural organizations, which are completely independent of men. Ibo women have many customary rights and privileges in the society so that they may not complain over the kola nut tradition, which is a matter of division of labour or function.

Kola symbolism transcends daily to spiritual functions of reconciliation to affect a covenant between two or more persons. Their eldest brother Elem brought a piece of kola nut, divided it into two, and gave one-half to each to settle a case between two brothers, Ezeakam and Igwe. When settling a murder case in an *Abiriiba* traditional way, kola is normally used to make peace between the defendant and the victim’s family.

In a general sense, the kola nut in Iboland constitutes a remarkable social symbol of hospitality, life, peace, kindness, good will, commensality, fraternity, reconciliation and integrity. The kola is a typical multi-referential social symbol, which existed and informed the daily activities of the indigenous long before the colonizers arrived with their new symbols of power and organization.

While the eldest and youngest persons may break and share kola in social gatherings, it is the exclusive right of the priest to break kola during Ibo rituals to juju, as is made evident in *Abiriiba*, and Oshiri and other Ibo communities. “The kola nut and palm wine are jointly used in the Ibo sacrament of *Igbandu* that is the final reconciliation of man with God in all disputes or

misunderstandings.’ The unconditional attention given to oji symbolism reveals much of the Ibo cultural identity.

REVIEW QUESTIONS

1. Define and explain Frantz Fanon's colonial model as a theory of social change.
2. Define and explain Durkheim, Weber, and Marx's theories of social change.
3. Why do you think that Fanon's theory is superior to the one of Durkheim, Weber and Marx?
4. What is Criminal Justice?
5. What are the institutional components of Criminal Justice?
6. What is a system?
7. What do Ibos mean by Oji?
8. What are the ceremonial purposes of Oji Ibo?
9. Why is it that Women do not break the kola nut?
10. Who is a criminal?
11. What is crime?

Chapter Two

Historical Origin of Nigeria and King Jaja of Opobo's Encounter with European Traders

KEY TERMS

- | | |
|--------------------------|-------------------|
| 1. Republican government | 11. Tariff |
| 2. Constitution | 12. Consul |
| 3. Abuja | 13. Determinate |
| 4. Military | 14. Indeterminate |
| 5. Overthrow | 15. Treaty |
| 6. Brigadier | 16. Palm Oil |
| 7. Persuade | 17. Cession |
| 8. Fernando Po | 18. Supreme |
| 9. Bights of Benin | 19. Protectorate |
| 10. Legitimate | 20. Tribe |

INTRODUCTION

According to *World Factbook* (2006:2), Nigeria is a country on the coast of West Africa, with the area land mass of 910,768 sq km. It has bordered on the west by Benin Republic, on the east by Cameroon, to the northeast by Chad, and to the north by Niger. The *World Factbook* puts the population of Nigeria now to be 131,859,731. Nigeria has a Federal Republican type of government. In December 1991 the new capital was officially opened, and moved from Lagos to Abuja. Nigeria has 36 states; and the capital territory Abuja: Abia, Adamawa, Akwaibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nassarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto Taraba, Yobe, and Zamfara.

Following nearly 16 years of military rule, Nigeria adopted a new constitution 1999 and a peaceful transition to civilian government under the leadership of Olusegun Obasanjo as the President, and the Head of government. Olusegun Obasanjo initially ruled Nigeria as the President from 1976–1979, as a military personnel under the military rule, when General Mutala Mohammed over-threw General Gowon.

IBO COMMUNITIES ON DEMOCRACY BEFORE COLONIALISM

The word “Ibo” is a name given to an ethnic group in the Eastern part of Nigeria. It is made up of the following states: Abia, Imo, Ebony, Enugu and Anambara. The language spoken by Ibo people is called “Ibo.” The word “Ibo” means “Hebrew” because the Ibos have direct semantic lineage with the Jews, with whom they share many features: business, the love for money, circumcision of male children after eight days of delivery, religious practice of burnt offering and libation, and a belief of polygamy marriages.

The Westerners, (colonialists) thought that Africans in their different communities and villages were primitive, disorganized, savage, and undemocratic, and in need of instructions on effective self-government. The colonizers believed their presence would aid the Africans to govern ourselves better. However, the Ibo people have a different notion about these assumptions. A number of Ibo people have argued that they had constitutional democratic government, and its procedure even in the rural levels (village and communities), before the arrival of the Europeans. Such practice were evidenced in the different ways that decisions were made, enforced and carried out in communities and villages. In fact, different groups took part in the process of self-government. My argument is that there were no differences in these processes from the way or the concept of Europeanized self-government. The Ibo Villagers did not enjoy nor regard the imported Western culture, or its representative democracy, as something new; rather, they hated to see or practice a foreign culture.

Before the arrival of the white man, Ibo people had no renowned Chief, such as Emir of Kano in Northern Nigeria, Oba of Benin in Edo State Nigeria, King Jaja of Opobo, Obong of Calabar, to mention but a few. The above-mentioned Chiefs from other ethnic groups of Nigeria were highly respected for their extraordinary wisdom, but Ibo people had no such Chiefs before the arrival of the colonialists. However, the Ibo speaking people had several institutions, such as the council of elders, (Ndi Eze Ikpe) and spiritual leaders (Ndi Dibia) that helped the Ibo people organize their activities (Isichei and

Okechukwu, 1978). In Oshiri in Ebonyi State Nigeria, Onicha Local government area, the "Akpata Eze Ekpechu" Institution helps each village organize itself. This institution as a moral function, as it guides people from committing adultery, theft, and other vices. The government of this town was not vested with wealth like those in other surrounding communities, but they are respected for truth and morality. With the passage of time, all villages in Ibo land had and presently have Chiefs who head the communities' politically and administratively. Beside the Chiefs, each community has the oldest man known as "Onye Ishi Ala" (the head of the land and its inhabitants) and other men who head the affairs of ancestral lineage called Okenye Umunna (the elderly who controls the activities of the ancestral lineage). If any problem or issues affecting the whole community arise, those elderly who resides over individual village affairs (the ndi Ishi Ala) would meet as equals. On such occasions preferences of leadership would normally be given to the village heads, because villages make up a community (Isichei, 1978). Oshiri, the oldest community in Ohaozara, had the prerogative of leadership to sit in the "High Chair", when resolving the issue at hand. He is the one to give prayers before the discussion section starts and to maintain discipline and effect punishment during the course of the deliberations.

After arriving at the decision-making or the verdict, each community leader would go home to relay the verdict reached to the entire community and, the same information regarding the verdict would be communicated through the village head to the entire villagers. Most of the time, women may not be represented, but they have to accept and follow any of the verdict reached by men. They were, however, excluded from grave issues like fighting inter-tribal war. However, women had their own meetings to discuss issues such as village sanitation, which the elderly women attend, but still communicated the verdict reached to the younger women who are responsible for execution of the verdict. It is also noted that all adults, males and female were entitled to attend the village level meetings. The meetings were normally held in the village square. The "Onye Ishi Ala" head of that village called "Ogbu-Nwelom", would present the problem or the issue, already discussed by "Ndi Ishi Ala" in Oshiri Community (Isichei, 1978), and then ask for comments. Each individual in this meeting was free to talk during the deliberation on the issue at hand, but meaningless contributors were frowned at with embarrassing shouts of "our colleague, sit down" (Di Anyi Noro Ala ebeahu). Meaningful contributors were unanimously acclaimed by the clapping of hands and shouts of remarks such as what you said is good or your speech is good (Okwu gi di mma) (Isichei, 1978). The reaction of those present in the meetings helped the Ibo people to know the acceptable line of action. However, it is still very necessary that the "Onye Ishi Ala", (the head of the village or

community), should give the advice necessary to reach a good solution to the problem. If it is a case between two individuals in a village, the head of the village who chairs the meeting would select a few reasonable attendants to go out in secret to vote on the solution by giving a verdict. If they failed to give the verdict, the chair or the head of the village would give the final solution to the problem or settlement—but his final verdict would depend on what the entire people had agreed on. He would never depart from the general agreement from the floor on individual opinions (Isichei, 1978).

After taking the decision at village level, the entire people then retired to the lineage or *umu nna* level. Here almost all adults both men and women were allowed to attend. At times precocious children were admitted to these meetings. The “*okenye umu nna*”, normally the oldest man of the lineage, would introduce the issue already discussed at the village level. It is in this *umu. nna* that people talk as freely as possible, as they are within their very nearest relations. Decisions here are quick, because most people present had heard of the issue at the village level, and because the people saw themselves as very intimate relations that must accept the opinions of the *okenye umu nna* (*onye-ogaranya Ikwu*) Isichei, (1978).

From this *umu nna* level, the next unit, which though small in numerical strength is important, is the family unit (called *ezi na ulo*) where each man heads the decision-making of his family unit. His wife and children normally took orders from him. They could be influenced by him to carry out a village decision or refuse it. So the man in his own house was his own chief over his wife and children (Isichei, 1978). In the same way, decisions could travel from the family to town assemblies, called *Age grade Society* (Isichei, 1978). Nwankwo (1995) notes that *Amagu Village*, as well as other villages, has the feature of the executive function of government, with the sole duty of the youths, through their *age-grade- is organization*. This organization was in different grades, composed of young men of the same age. Each group took a name and appointed the eldest of them as their head. These age grades performed both civic and military duties in the town. They acted as the night watchmen of the town, when threatened by rogues. They also did public works, like clearing the forests and making local paths and roads. These age grades also were charged with guarding public morality through censorship of their members’ behavior. In most cases, they were the people who enforced the decisions of any judicial council, (Isichei, 1978).

We also have another type of government functionary in *Oshiri Villages*. This is the group known as “*umu ada*” made up of women born in the town and married within or without, but in a less distant neighboring town. They brought, and still bring much pressure to bear on any bad things or calamity that was going on in the village where they were born. Particularly, they were

charged with the affairs of the women in general, but they went beyond the call of duty to make sure that women married into the town from other towns were conforming to the norms of the town. They disciplined the offending women through very serious sanctions that ranged from seizure of property, to the isolation of the culprit from their affairs (Isichei, 1978).

In Ibo land, we also have the masquerade cult, "mmanwu" (or a Ghost) as an arm of government, whose function was to effect obedience and sanctions of the town on a culprit (Isichei, 1978). These masquerades could invade a culprit's home, and seize all his or her belongings until the owner paid the stipulated fine for his crime, and again reclaimed his property by a further fine. This police action of the masquerades is generally referred to as "iri iwu." Some masquerades, such as Onye-Ishi nwanyi (head of village women, Chief Ukpa Ogudu or Isaiah Ogudu, the chair of the defunct "Agbadagba" meeting, kept surveillance over the village streams during the dry season, to see that water was not misused or poisoned by fishers who used poison for fishing. In Oshiri we also have another women's group called "Ogbaga" or "Agbadagba" (able bodied and controlling) women. This was a governing and police council made up originally of very aged women. Eventually, energetic middle-aged women joined. This council of Amegu was originally responsible for the sanitation of the town's environment as a whole. This council kept up a day-to-day inspection of all parts of the town, and each village or lineage had a representative to the council on the sanitary situation of her area. If she could not effect a remedy by compelling the people to be clean, she would report to the entire Oshiri Women council meeting. This council would visit the offender and confiscate his or her belongings, which could only be reclaimed after some payments had been made (Isichei and Okechukwu, 1978:3).

HISTORICAL BACKGROUND OF BRITISH COLONIALISM IN NIGERIA

Some people in life enjoy putting others in a box and try as much as they can to stifle those they have held in bondage so that they are unable to achieve anything in life. Sadly, some of those who have been held in captivity ironically live up to the dreams and wishes of their captors. Others, on the other hand, find a niche for themselves within the box they have been held in captivity and remarkably strive to achieve success in life. Their remarkable liberation has been brought about by circumstances beyond human control. Our live is like a book in the creator's hand who unfolds every chapter when he sees fit. "He holds our lives in the palm of his hands and our ways are

constantly before him.” It would therefore be a gross travesty of destiny for one to think he can successfully control and affect another person’s life. Ironically, when it seems to the captor that all odds are against their captives and that everything seems to turn topsy-turvy for them, the captives’ creator provide a path for them to follow to be liberated from their captivity and achieve what they have been destined for. The late King Jaja of Opobo was one of such rare individuals who were privileged to be used by his creator to affect humanity. His imperturbability and sense of focus, despite his captivity and consequent confinement, earned him the respect, dignity and favor even among those who held him captive. King Jaja whose real name was Mbanaso Okwaraozurumba, the third son of Mr. and Mrs. Okwaraozurumba, was born at Úmuduruōha Amaigbo in Imo State in 1821.

The late Mbabaso Okwaraozurumba was sold as a slave at the tender age of twelve to a Bonny trader. He was initially named Jubo Jubogha by his first master and was later re-named Jaja by the British traders. While to some people, slavery would have meant demise to their destiny, to Jaja, and slavery heralded the beginning of better prospects. He learnt his master’s trade (a trade in palm oil) whilst a slave, and later acquired great business skills and acumen. Jaja’s used his incredible, daring and scintillating aptitude in business ideologies and prowess to settle huge debts owed by his late master. He was also able to extend the business by involving other houses, increasing operations in the wastelands and enlarging the number of European contacts. He later became the head of the Anna Pebble House after the death of his King Illoli Anni of Bonny. He also became a very wealthy man.

Jaja was so well versed in his business that he defied the trading rules of the British masters by shipping oil directly to Liverpool, and regulating and levying duties on British traders. He ordered a cessation of trade until one British firm agreed to pay duties. The British traders took his actions as a slap in the face, and subsequently tricked him to a meeting where he was arrested and sent to Accra where he was tried and found guilty of “treaty breaking” and “blocking the highways of trade.” He was sent to St Vincent, West Indies to serve his prison sentence and four years later, he died en route to Nigeria after his release.

The late Jaja was indeed a man of astounding qualities; he was a man who did not allow abduction and slavery to ruin his chances in life. Instead, he used his captivity as a way of helping those around him. Jaja was indeed a man whose zeal and conquest knows no bound. There is no doubt what the late Jaja could have done to change the course of humanity had human greed and selfish interest not stood in his way. He was a remarkable man indeed who made great impact to humanity and society. His life story was captured in the scintillating and inspiring movie entitled “Jaja of Opobo” produced and

directed by Francis Agu, and he is mentioned in websites on the chronicle of Amaigbo.

Direct British influence in the tribes of Upper and Lower Niger, which later became Nigeria, may said to date from 1849, when British trades along the Bights of Benin and Biafra request that a consul be sent to them(Elias, 1966). Because of their request, Mr. J. Beecroft was posted there as the first British consul, with Fernando Po as the headquarters:

Fernando Po, now called Equatorial Guinea was discovered by the Portuguese towards the end of the 15th century, had been ceded to Spain in the 1778, but it was only in the 1827 that Spain permitted the British to take over the administration of the island. The British superintendent was granted a Spanish commission as governor. Mr. Beecroft had been appointed governor in 1843 by the Queen of Spain, as there was no Spanish governor of the island till 1858 (Elias, 1966:14)

The first actual involvement of the British personnel in the tribes of Upper and Lower Niger, which later became Nigeria was the affair of Lagos. On January 1, 1852, a treaty was signed between King Akitoye, chiefs of Lagos, and Commodore Henry William Bruce, who was at that time commander-in-chief of Her Majesty's vessels on the west coast of Africa, and Mr. Beecroft on behalf of the Queen of England. The three major goals of the treaty were to abolish the slave trade, to encourage legitimate trade, and to protect Christian missionaries. To ensure compliance with this treaty, a vice-consul was appointed for Lagos and the Bight of Benin. By this appointment, Lagos, according to Elisa, separated from the oil rivers (the River Niger, Benue, Bonny, Antonio, and Cross Rivers) until 1906. Akitoya was determined to honor the treaty, but revolted under the leadership of Kosoko. Consul Campbell felt compelled to intervene in order to protect the consulate and the missionaries. The British defeated Kosoko and his followers (Elias, 1966). However,

The British government accordingly instructed Mr. H. G. Foote, who was then the consul, to prepare for the occupation of Lagos "because they are convinced that the permanent occupation of this important point in the Bight of Benin is indispensable to the complete suppression of the slave trade in the Bight, while it would give great aid and support to the development of lawful commerce, and would check the aggressive spirit of the King of Dahomey, whose barbarous wars, and encouragement to slave trading, were the chief cause of disorder in that part of Africa (Elias, 1966:14).

Elias (1966) noted that in the following month, on July 30, 1861, the acting consul (Mr. McCoskry) and Commander Bedingfield, the senior naval officer of the Bights Division, invited Decemo to a meeting on board the H. M. S.

Prometheus (a British warship) lying in Lagos harbor, and told him about the proposed occupation of the island (Lagos). According to Elias, Decemo had referred the matter to his chiefs. Two days later, they both went to Decemo's house for a reply and found that he had been persuaded to refuse on the main ground that the treaty of cession, which had been drawn up locally, could not have been done on the instructions of the British government. Before they left, Decemo was told that Legos would be formally occupied in the name of the Queen of England, if by August 6, 1861, he did not agree to cede to the British crown. Elias (1966) also noted that King Decemo and his chiefs reacted sharply against this ultimatum by threatening to use force, if necessary, in resisting British occupation. The presence of H. M. S. Prometheus within gunshot of the town, the party of armed marines that accompanied the consul and Commander Bedingfield to their second meeting with Decemo at the latter's invitation put pressure on Decemo to comply with the British request. On August 6, 1861, according to Elias (1966), King Decemo and four leading chiefs, of Lagos signed the treaty of cession at the British consulate. The British flag was unfurled after a proclamation that the British had taken possession of Lagos in the name of the Queen of England. Lagos was made a colony and settlement in 1862 and placed under the authority of Mr. H. S. Freeman as governor. The new colony steadily grew with Badagry, Palma, and Lekki (town around Lagos Island), followed later by Epe, Jekri, and others. This expansion, according to Elias (1966), took place in all directions as far inland as the heart of Yorubaland. Legitimate trade and commerce increased rapidly.

Elias (1966) noted that within a few months after the establishment of the new settlement (June 1862), a legislative council was set up to assist Governor Freeman in the task of administration. The council existed until 1922, and throughout its short life it always maintained an official majority, although it varied in its composition from time to time (Ezara, 1960). At the time of its dissolution it consisted of the British Governor as the president, six British officials, and four unofficial members, two of whom were Africans (Ezara, 1960). Ordinance No. 3 of 1863 of January 1, 1863 introduced English law into the colony at Lagos and the surrounding areas to take effect from March 4, 1863. The Supreme Court Ordinance No. 11 of April 9, 1863 provided for the better administration of justice within the settlement of Lagos. The British penetration into the hinterland of Lagos had reached such a stage that the colony and protectorate of Lagos had covered most of Yorubaland by 1906. In that year, the colony and protectorate of Southern Nigeria was formed by the amalgamation of Freeman's enlarged colony and protectorate of Lagos with the protectorate of Southern Nigeria, which had been established six years earlier (Elias, 1966). Lagos remained the headquarters of the new ad-

ministration which was divided into the western, the central, and the eastern provinces. The western provinces corresponded to the colony and protectorate of Lagos, while the central and the eastern provinces together made up the former protectorate of Lower Nigeria tribes, Warri being the headquarters of the central provinces and Calabar that of the eastern provinces. Each of the provinces was placed under a provincial commissioner. All of these commissioners were subject to the direct control of the British Governor, whose seat was in Lagos. Sir Walter Egerton was appointed in 1904 both as governor of Lagos and as high commissioner of Southern Nigeria with a view to his organizing the amalgamation of 1906.

According to traditional setup, Nigeria is made up of a number of large ancient kingdoms and other independent small-scale societies. Its boundaries were drawn as a result of trade and overseas territorial ambitions of some Western European powers in the nineteenth century. Flora Shaw suggested the name Nigeria in 1898. She later became Lady Lugard to designate the British Protectorate on the River Niger. Contact between the peoples of Nigeria and Europe began in the fifteenth century through various commercial explorers. By early nineteenth century, the obnoxious trade in slaves, which had flourished in the region, was in the process of being abolished. Consequently, European traders began to turn their attention to trading in palm produce, pepper, ivory and other articles up to the middle of the nineteenth century, British trading activities were confined to Lagos and Delta ports of old Calabar, Brass and Bonny. However, the need to expand trade to the hinterland and to undermine the coastal middle men led the British to some involvement in local politics. Thus, their interferences in Lagos politics following some internal squabbles among the ruling houses were necessitated by a desire to secure the territory in the interest of trade with the Yoruba hinterland. This interference resulted in Lagos being annexed in 1861 when it became a British colony. In order to render the River Niger as a safe gateway into the interior, protectorates were proclaimed in the Delta regions as far north as to Idah. In 1885, the Niger Protectorate was proclaimed oil rivers protectorate and administered by the Royal Niger Company. When the Royal Niger Company's Charter was withdrawn in January 1900, the whole of Nigeria came under direct Colonial administration. The territory was then divided into three main regions:

- (i) The Lagos Colony (1861–1960)
- (ii) The Protectorate of Southern Nigeria (1900–1914)
- (ii) The Protectorate of Northern Nigeria (1900–1914)

In 1914, Sir Frederick Lugard merged the Protectorates of Southern Nigeria. The whole country then became known as the Colony and Protectorate of

Nigeria. Lugard became its first Governor-general and ruled till 1919. Sir Hugh Clifford (1919–1925), Sir Arthur Richards (1943–48), Sir John McPherson (1948–54), and Sir James Robertson (1954–60) succeeded him. After a series of negotiations, Nigeria finally got her independence October 1, 1960.”

Lord Lugard, the successor of Sir Egerton, conceived the idea of amalgamation, which would reduce the territories to single administration, but he was soon transferred to Hong Kong as governor. Elias (1966) noted that after an interval of six years, Lugard was brought back to the Upper and lower Niger tribes (which later became Nigeria) by the British government as governor of both protectorates and was also given the specific assignment of working out the necessary machinery for the merger of the two disparate administrations into a single central government. Lugard quickly gained the support and assistance of the two chief justices of northern and southern tribes and of the senior administrative personnel. On January 1, 1914, the colony and protectorate of Nigeria was formally inaugurated under Sir Frederick Lugard as governor-general (Elias, 1966). That is to say, that it was in 1914 that the name “Nigeria” came into being. Lugard’s successors in Nigeria were referred to as governors until Nigeria was turned into a federation on October 1, 1954, when the title of governor-general was again conferred on the country’s chief executive, a Briton (Elias, 1966:22).

One of the important effects of the amalgamation of southern tribes (Yoruba tribe, including Lagos, Ibo and other small tribes) and northern tribes (Hausa, Fulani, and other smaller tribes), in the judicial sphere, was the introduction of the unified legal system throughout Nigeria. This led to the appointment of two chief justices, one for north and for the south, one chief justice and one attorney general for the whole of Nigeria. Elias (1966) noted that under the central government formed in 1914 and enlarged in 1964, a legislature was established, consisting of the governor, a Briton, as president, seven British officials, two British non-officials, and two Nigerians, of whom one was Mr. Christopher A. Sapara-Williams. This new government was based on the interpretation Act of 1964: Section 45 of the Interpretation Acts of 1964 reads as follows:

45. (1) Subject to the provisions of this section, and except in so far as other provision is made by any Federal law, the common law of England and the doctrines of Equity, together with the statutes of general application that were in force in England on the 1st day of January 1900, shall be enforced in Lagos, and in so far as they relate to any matter within the exclusive legislative competence of the Federal legislatures shall be in force elsewhere in the Federation.

(2) Such imperial laws shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit, and subject to any Federal law.

(3) For the purpose of facilitating the application of the said imperial laws they shall be read with such formal verbal alterations not affecting the substance as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to render the same applicable to the circumstances (Park, 1963:18).

The complete English common law and equity form parts of the Nigerian law, together with certain English statutes were established. Park (1963) noted that there are provisions similar to section 45 of the interpretation act in force in Eastern and Northern Nigeria, but in 1959, the western region (Yoruba tribes) broke away to some extent from the traditional pattern. English common law and equity are still part of the law of that jurisdiction (Park, 1963), but that is no longer true of any English statutes. In all these jurisdictions the reception of English law is subject to section 45(1) of the interpretation act “except in so far as other provision is made by any federal law” (Park, 1963:20). This general provision can carry at least three different specific meanings. First, it may taken to mean that the received English law may be amended, repealed, reformed, added to, or abolished by enactments of the Nigerian legislatures. Secondly, it can be a reference to the statutory rules, which affect specific introductions into Nigerian law of the British law on particular subjects (such as probate, divorce, and matrimonial cases and proceedings). In addition, the third type of the Nigerian statutory rule covered by the phrase is that which provides for the continued operation of customary law, despite the general reception of English law (Park, 1963). The change to English common law and equity also changed the criminal code. Witchcraft, which was a serious crime punishable with death in the Upper and Lower Niger tribes, was repealed and replaced by treason and treachery. This change, the researcher believes, expresses a particular tilt, a specific labeling of human actions by whoever has the power (Nwankwo, 1995).

To understand the general object of this investigation—the legal impact of the colonization on Nigeria by Great Britain—several events are significant. From Fanon’s perspective, the coming of the Christian missions and their condemnation of indigenous customs and institutions of Nigeria as heathen and inhuman (Fanon, 1974) marked the beginning of Great Britain’s colonization of Nigeria. The interposition of English law soon followed with its introduction into the Colony of Lagos in 1863. The extension of same English law into all parts of Nigeria took place in 1900 (Elias, 1963). These events initiated the beginning of the colonial era, which at the same time was the end of the pre-colonial period, and also the end of the authority of

indigenous Nigerian law and customs. These changes ushered in remarkable social cultural, political, and economic changes. Nigeria gained its independence from the British government in 1960, officially marking the end of colonial rule in Nigeria and the beginning of postcolonial Nigeria.

Fundamental changes in the Nigerian legal system flowed from these actions. During the pre-colonial era (that is, before 1861), there was no court system in the modern sense. As earlier discussed, chiefs (such as Obas, Obongs, Ezes, Emirs) in their various native villages in Nigeria presided over cases without regard to their nature and type. These village leaders, along with other high “title” holders, such as the Ogbuinyas, Igwes, and Onyibas were assisted by selected elders of the village or clan in trying all cases against the state or individuals and inflicting punishments on the convicted. Family disputes were always tried by the head of the family, who was assisted by other elders in the family. These institutions used the services of witch doctor, medicine men, juju priests—that is, individuals believed to have magical powers, and oracles to reach final judgment in extraordinarily difficult cases (Parrinder, 1965). The British judicial system of the colonial era of Nigeria abolished trial by ordeal and replaced it with trial by jury. Jury selection in the colonial era was restricted to those who could read and write the English language (Elias, 1962). As a result and on most occasions, British residents in Nigeria formed a majority of the members of the jury (Adewoye, 1977). The Nigerian government of the postcolonial era continued with the jury. The qualified members of the jury were either literates or illiterates who were citizens of Nigeria. Later, the jury system was abolished due to bribery and corruption in the country (Criminal Procedure, Ch. 43; Trial by Jury Lagos Order in Council under Section 335:160). The Nigerian government of the postcolonial era also abolished British-type courts, but continued in part with the British common law doctrine of *stare decisis*, or binding precedent. These courts were geared to the maintenance needs of oppression, especially the changes in the law and severe punishments that followed.

The purpose of this study again is to test the explanatory capacity of the colonial model, as espoused by Fanon, to explain changes in the severity of punishment from pre-colonial to postcolonial Nigeria. The Fanon model therefore dictates the methodology of this study as well as its outline. It begins therefore with a review of crime and punishment, which form the basis of oppression in colonialism. Punishment is correlative to crime, which means that an analysis of changes in the punishment code must also analyze changes in the definition of crimes that are correlated with the punishment. Likewise, severity of punishment presupposes a rank order of punishments and, correlatively, a rank order of crimes. Thus, the study must identify the changes in the definition of crime and punishment that shifts in rank order

during the designated periods of this study (Nwankwo, 1995). Nwankwo, (1995) noted that fleshing out these categories for the colonial and postcolonial periods is straightforward. A content analysis of the criminal code of Nigeria for these two periods will identify the differences, which constitute the changes in question. However, fleshing out the same categories for the precolonial period is more difficult, because the cultural practices during this period did not include legal codes in a written format. Consequently, for this period the writer utilized the only written resources available, two ethnographic and historical studies: *The Nature of African Customary Law*, by Dr. T. O. Elias (1956), and a textbook, *African Indigenous Law*, edited by Elias; Nwabara; and Akpamgbo (1975). Unfortunately, these textbooks did not give specific information regarding the pre-colonial legal code, so it was necessary for the researcher to supplement extant descriptions of Nigerian pre-colonial society and law.

During the pre-colonial era, Nigerian law was unwritten, and it was transmitted orally through chiefs, elders, and councilors. However, the situation changed during the colonial period when Nigerian law was written down and lawyers practiced as a special professional group that utilized “case law” information transmitted by the chiefs, elders, and councilors. Given this historical linkage and arrangement, the researcher conducted interviews in Nigeria between January 25, 1993 and July 30, 1993. More interviews were conducted between December 2005 and December 2006 in the following towns, communities, and villages: Enugu, the capital of Enugu State; Lagos, the capital of Lagos State; Oshiri, an autonomous community in Ebonyi State, now Ebonyi State; Amagu, a village in Oshiri; Amankalu, a village in Oshiri; Abakaliki, a town in Enugu State, now the capital of Ebonyi State in Nigeria; Ukawu, an autonomous community in Ebonyi State, in Abakaliki Capital of Ebony State; and Gboko, a town in Benue State. Lawyers, chiefs, village elders, and councilors were chosen to be interviewed because of their wisdom and expertise in the traditional law and oral history of Nigeria. The experts interviewed were Barrister Njoku O. Njoku, a practicing lawyer in Enugu; Chief Agwu, Alias Osimiri I, traditional chief of Onicha in Ebonyi State; Eze Uneke Nwogo, Eze Nwogo I of Oshiri, a traditional chief of Oshiri in Ebonyi State; Councillor Ogbu Nwelom, a village councilor of Amegu Oshiri; Mr. Njoku Nwelom, a community leader of Amankalu Oshiri; Elder Mark Odii now, passed away, a community leader of Amagu Oshiri; Jacob Onu, an elderly businessman and a Chief Priest of Umuokoha Ovuta in Amagu Oshiri, resident at Ghoko in Benue State; Barrister Sylvester Nqwuta, a practicing lawyer now a judge at Afikpo, Ebonyi State; Barrister Ede Nwali, a practicing lawyer from Ukawu, a community in Ebonyi State he is now a high court judge in Ebonyi State; Chief Daniel

Nnaji, chief and businessman resident in Lagos-Nigeria; and Chief James Njoku Afoke, deputy chief of Idembia Ezza, in Ebonyi state. He is now the general president of Ezeke Una joint communities in Ezza local government area. And also Honorable Linus Nwankwo of Ebonyi State was born in Inyere Ezza, now the Accountant General of Ebonyi State.

This in-depth and detailed-analysis type of interview is more and extremely useful in this type of research with fewer subjects than is the case in a standard survey (Hagan, 1982:82). This gives the researcher the leeway to use in-depth interviews on a list of general topics to be explored, and the discretion and flexibility in the manner, timing, and direction of questioning. According to Merton, Fiske, & Kendall (1956), in-depth interviews are excellent for explanatory research, which is what I am engaged in.

The results of the interview showed that the respondents did not depart from the information gathered from Elias (1956) and Elias et al. (1975). The purpose of the interview was to assess the accuracy and adequacy of the descriptions by Elias (1956) and Elias et al. (1975) of the pre-colonial criminal code of law, since its unwritten status did not permit an external check. A number of theoretical and practical consequences flow from this study. This research will help to clarify the explanatory scope and potential of the colonial model as a generic research tool. Moreover, it will provide the possibility for comparative studies with other generic models as well as cross-cultural studies of this dimension of human culture. With regard to the field of Fanon's studies, this research helps to address the validity of Fanon's "two-revolution theory" of successful decolonization, and to answer such questions as: Does colonialism represent a unique and discrete subset of oppression that is different from racism, sexism, etc.? The research will help to fill a glaring gap in the literature on the changes in the severity of legal punishments, especially in pre-colonial Nigerian culture. The importance of these comparative studies of the Nigerian legal system is obvious. Finally, a number of practical implications, especially for Nigerian policy makers and other postcolonial African nations also flow from this study. Understanding which parts of the colonial system under girded the maintenance-needs of oppression provides tentative guidelines for policy makers, who must decide which features of the legal system inherited from the colonial masters, should be dismantled, revised, or retained intact. A case in point is the use of the common law doctrine of "*stare decisis*," or binding precedent, which is gradually being replaced by statutes and the customary law. Likewise, this study may help in making decisions about which parts of the pre-colonial indigenous system might be resurrected or refurbished for contemporary use.

Additional implications for reforming criminological curricula, in particular core areas and figures follow. The colonial system maintains two cate-

gories of legal power: institutional configuration/belief and value system. In order for the colonial system to continue in power, anti-powerism, inequality of power, hypocrisy, violence, changes in the law and severe punishments must be maintained by the colonialists. Police systems in Nigeria, during the precolonial, colonial, and the post-colonial eras differs from one era to the other both in structure, functions, and functioning. The police have varieties of duties which include, but are not limited to the following: crime prevention, crime detection, apprehension of offenders, the protection of life, property, and various social and economic services, to name but a few. It is noted by (Ngwuta, Onu and Odii, 2000), that the police systems in Nigeria before, during and after the colonial era have changed over time, in terms of structure, function, functioning, and in relationships to the state and the people. In Nigeria, police corruption, brutality, and other misdeeds that obstruct the course of justice have been evident, since the end of the Colonial Era. Bribery and corruption are almost legalized, for it exists locally and among the top government officials and in every business. Giving and/or taking bribes in Nigeria has attained a subculture and the police officers are no exception to the rule. It is interesting to note that the pre-colonial police in Nigeria had their own unique problems such as discrimination based on race, brutality, and oppression in its every day activities, but not corruption. Unfortunately, the postcolonial police system in Nigeria has reportedly abused its powers of prosecution, arrest, search, seizure, and investigation by using those powers in abusive discretion—any way (Ekpenyong, 1987). Generally, police officers in Nigeria, regardless of rank, are not accorded respect due to bribery and corruption and brutality that are inherent in the system. Nigeria has only one level of police force i. e. the Nigeria Police Force (NPF) state, university, or private police systems do not exist in Nigeria. Police system is answerable to the tones of the politicians ranging from the President to the Governors and ordinary local government area chair-persons. They use police officers for their own selfish ends, and for power, as to get what they need and want, such as during elections.

During elections, police officers are used to threaten the citizens to vote against their will and wishes, thereby forcing the election or re-election of people already in power, regardless of whether or not the majority like him/her or not. This explains why the voting system at all levels of election in Nigeria is pregnant with rigging, corruption, and hypocrisy, and most of the times, leads to the tremendous loss of lives and property.

Corrections in Nigeria are popularly known and called “prison.” The federal government prisons in Nigeria; no private prisons or jails exist in Nigeria. However, police custody (for those arrested, waiting pre-trial, trial or prosecutions) exists and functions like jails in the United States. Bribery and

corruption caused jury systems in Nigeria to be abolished. Obviously, there is no trial or grand jury system in Nigeria. The police act as prosecutor and investigator for criminal offenses. Prisons and jails notorious, with many of the country's 40,000 inmates crammed massively in the overcrowded dilapidated cells in old prisons.

REVIEW QUESTIONS

1. When there was no modern court system in the pre-colonial period, who helped in settling cases?
2. What institution acted as the Supreme Court and why?
3. What year did Nigeria obtain its independence from Britain?
4. What is the legal impact of colonization on Nigeria?
5. What is meant by rank ordering of crime?
6. Who is King Jaja of Opobo?

Chapter Three

Literature Review and Methodology

KEY TERMS

1. Investigation
2. Punishment
3. Legal Punishment
4. Colonization
5. Pre-Colonial Era
6. Conceptual Framework
7. Interpretation
8. Direct Rule/Assimilation Policy
9. Chieftaincy
10. Monographs
11. Oppression
12. Data
13. Journals
14. Maintenance Needs
15. Issue
16. Empirical Research
17. In-depth Interview
18. Content Analysis
19. Attitude
20. Pre Mediated

INTRODUCTION

The general object of investigation of this study is the Nigerian legal system, and the changes that took place during the colonial and postcolonial eras. The specific objects of analysis are the changes in the nature and severity of legal punishment of the crime and the mutations in the criminal justice system that took place in Nigeria during the colonial rule. Little or no attention has been paid by researchers to account for changes in the legal system and criminal code in particular in the precolonial, colonial and postcolonial legal systems in Nigeria.

A significant number of studies have addressed the legal system of Nigeria. However, these studies have not attempted to examine the changes in the penal codes that took place during the precolonial, colonial, and postcolonial eras

especially with respect to the severity of punishment. Neither did these studies provide a rationale, if any, for these changes in the rank order of definition of crime. Furthermore, these studies did not utilize the colonial model initiated by Frantz Fanon, which is the conceptual framework of the present study.

In fact, Elias (1953) carried out a study on the Nigerian legal system with specific emphasis on the mischief of the Nigerian jury system, and the elements of Nigerian law. Elias traced the sources of Nigerian law and classified them into six categories: (a) local laws and customs; (b) English common law, doctrine of English equity and the statutes of general application; (c) local legislation and the interpretation based thereon; (d) law reports; (e) textbooks and monographs on Nigerian law; and (f) judicial precedents. He further traced the history of courts from 1861 through 1874, and the structure of the courts before 1861; and the structure of the courts in the postcolonial era, 1960 through 1963. In this study, Elias found that the British administration of Nigeria gave statutory recognition to Nigerian laws and customs by making provisions in Section 20 of the Supreme Court Ordinance for the application of the local laws and customs. These provisions were limited to all matters relating to marriage and the family, land tenure, inheritance and succession to land, and by necessary implication, chieftaincy disputes. The limiting factor, however, was that these laws and customs were to be so applied only if they were neither repugnant to the principles of natural justice, equity, and good conscience, nor inconsistent with any valid local enactment. "On the attainment of internal self-government by the regions (tribes) of Nigeria in the colonial era (1956–1957), and thereafter, the policy, a heritage from our colonial past, was continued."

According to Elias (1963), the country of Nigeria was split up into the Federal Territory of Lagos and a number of regions with different tribes, each having its own legislative powers. High courts were set up in the various regions and in Lagos. The high court law of each region provided for enforcement of customary law based on tribal customs. The Supreme Court of Nigeria is also empowered to observe and enforce the rules of customary law, by Section 16(e) of the Supreme Court Act, 1960. Elias (1962) published a textbook entitled *British Colonial Law* in which he discusses (a) the form and content of colonial law, (b) the organization of colonial legal systems, (c) law-making in the colonies, (d) judges in the colonies, and (e) British policy towards colonial law. He also discussed the main elements of colonial law including: (a) indigenous law and its sphere of operation, (b) the development of indigenous law and Islamic law, (c) criminal law in the colonies, (d) colonial conflict of laws, and (e) land tenure in the colonies. He also examined the judicial process and legal development in the colonies, including (a) evidence and procedural law of the colonies, (b) codification, legal education, and (c)

legal research. Unfortunately, Elias did not describe the changes that took place in the Nigerian legal codes during the precolonial, colonial, and the postcolonial eras neither was he attracted to the changes that resulted to the severity of punishment, the main thrust of this project.

Greene (1965) discussed the principles of native administration: (a) direct rule, and (b) indirect rule, covering the period from 1900 through 1947. Greene documented the speech that the first colonial governor-general made, while in Sokoto (a town in northern Nigeria), concerning indirect rule in both southern and northern Nigeria. He observed and documented that,

. . . the Emirs and Chiefs who are appointed will rule over the people as of old time and take such taxes as are approved by the high commissioner, but they will obey the laws of the governor and will act in accordance with the advice of the resident [that is, a colonist resident in each territory of Southern and Northern Nigeria].

Buying and selling slaves and enslaving people are forbidden, it is forbidden to import firearms (except flint-locks), and there are other minor matters which the residents will explain.

The Aikalis and the Emirs will hold the law courts as old, but bribes are forbidden, mutilation and confinement in prisons are not lawful. The powers of each court will be contained in a warrant appointing it.

Sentences of death will not be carried out without the consent of the resident. The government will in future hold the right in land that the Fulani took by conquest from the people, but if government requires land, it will take it for any purpose. The government holds the right of taxation and will tell the Emirs and Chiefs what taxes they may levy and what part of them must be paid to the government. The government will have the right to all minerals, but the people may dig for iron subject to the approval of the high commissioner and may take salt and other minerals subject to any excise by law.

Traders (i.e. British traders) will not be taxed by Chiefs, but by government. The coinage of the British will be accepted as legal tender, and a rate of exchange for countries fixed in consultation with chiefs and they will enforce it (1965:43-44).

Greene's documentation did portray the activities of the colonial masters, but there was no emphasis on the change in the legal code, or the severity of punishment, economic changes, social changes or changes in law, which is the main objective of this present textbook. However, Greene discussed the principles of native administration in Nigeria, illustrating selected documents from the colonial administration covering the period from 1900 through 1947. The present research will improve upon Greene's research by including the postcolonial era.

The research will go further to describe the changes that took place in the criminal codes during the precolonial, colonial, and postcolonial eras, and to account for the severity of the legal punishments that followed.

Burns' (1977) study attempted to describe and explain, in full detail, the characteristics of different tribes of Nigeria, including regions. However, he never laid emphasis on the changes in the legal codes and the severity of punishment that followed, nor did he attempt to discuss colonialism and its effects on social, economic and legal aspects of Nigeria during the multiple phases of colonialism. Achara (1981) examined what he called the structural dependence of foreign policy. Achara's case study is a structural analysis of Nigerian foreign policy utilizing theories of dependency, dominance, and imperialism. He postulates that the British colonial domination of Nigeria fundamentally re-shaped the modern political, economic, and cultural structures of the Nigerian society, including its foreign policy. The Nigerian colonial experience, according to Achara, reveals its indebtedness to the post independence pro-Western foreign policy between 1960 and 1979. Achara stated that dependency on the West was also shown to have hindered other Nigerian foreign policy objectives, such as regional economic cooperation and liquidation of racism and colonization in Africa.

Achara did not concentrate his studies on the changes in the criminal codes of colonial or postcolonial era, nor did he account for the severity of punishment that occurred due to these changes, using the colonial model initiated by Frantz Fanon, which is the main object of the present study. However, his research evidenced differences in the administrations of the colonial masters and of the indigenous Nigerians. It showed how powerful men—the colonialists—can control and shape the policies of less powerful individuals, and how that can have an impact on the future decisions or policies of the less powerful—the indigenous Nigerians—even after their political independence. Achara's research utilized the center-periphery model and involved historical research and analysis of statistical data, as well as data from government publications, present and former Nigerian officials, and scholarly studies. According to Achara, economic dependency is measured in terms of direction of trade, origin of foreign investments, and sources of foreign aid. Military dependency is measured in terms of sources of arms acquisition and education of military cadres. Cultural dependency is appraised by analyzing the general world view of leading Nigerian elites, including their attitudes toward metro-poles where they received their education (Achara, 1981). Achara's research concluded with recommendations for policies that would enhance a truly independent Nigerian foreign policy that would guarantee its role on the international scene commensurate with its position as a leading African country. Achara did not mention legal dependency, that is, whether or not Nigerians still depend on the legal systems introduced by the

British. The present study will improve upon Achara's study by describing the changes in the criminal codes and the severity of punishment that occurred because of these changes.

Odunsi' (1984) examined the role of the ombudsman in Nigeria, an aspect of administrative jurisprudence. His research reviewed the Nigerian legal tradition before and after the advent of the British colonial administration. His analysis shows that the pattern of administrative law introduced during British rule followed the British tradition and legal principles which empowered the ordinary courts of law to exercise jurisdiction over administrative law issues. Furthermore, Odunsi's study revealed that the British administrative procedural law in Nigeria was uniquely different from the traditional methods of dispensing justice and often seemed ineffective. For instance, the 1963 Nigerian Republican Constitution, and the one which preceded it, did not deviate from the established practice of the colonial administration in relation to the protection of the rights of the citizens. He contended that the only available channel for citizens to challenge any arbitrary and capricious action of administrative officials is the ordinary courts of law and justice in administrative areas. This arrangement, according to Odunsi, often seems slow and wanting. As a result, and in reaction to the magnitude of the problems created by the ineffectiveness of the court system, the military government of the postcolonial era instituted a commission of enquiry to analyze the enigma and find ways to improve the institution. The commission recommended the establishment of the institution of ombudsman, and in 1975, the Murtala Mohammed military administration established the Public Complaints Commission (PCC) as a supplement to the court system to remedy the disregard of basic standards of human rights by administrative officials.

During the eight years of its existence, according to Odunsi, the Public Complaints Commission resolved an average of 1,526 cases annually. A comparative analysis of the activities of the ombudsman in other countries suggests that the PCC was successful in resolving at least a respectable number of cases. Furthermore, a review of testimony by citizens also indicates that some section of the population has come to recognize the activities of the PCC. On the whole, according to Odunsi, it appears that the PCC has achieved some degree of success.

Odunsi's study (1984) concluded, among other things, that the following developments must occur in order to further enhance the impact of the PCC on grievance resolution:

1. The PCC must become autonomous from the civil service structure, and provisions must be made to increase the legal powers and jurisdictional competence of the PCC.

2. A vigorous publicity campaign must be mounted to keep the public abreast of the functions of the PCC. Arbitrary methods of negotiation and in, some instances, medicine men, oracles, juju priests, or shrine heads were used to adjudicate and dispose of extraordinary cases, such as murder, burglary, theft, etc.

Every indication is that Odunsi placed emphasis on administrative law, not the structural aspect of the legal system. He did not discuss in detail the functioning, that is, how the legal system in colonial and postcolonial Nigeria functioned. He did not examine the changes that took place in the criminal codes of these eras nor did he account for the severity of punishment as a result of the changes in the Nigerian law. He totally left undiscussed the legal system of pre-colonial Nigeria. The present research will improve upon what Odunsi left undone.

Nnam (1985) compared Anglo-American and Nigerian jurisprudence in the areas of legal reasoning and concepts of law (custom, tradition, rights, *Omenani*, and religion). Nnam found that there is a problem in those African countries that were colonized by the British. There exists an irresistible tendency for these countries to hold tenaciously to the British common law, equity, and statutes of general application even after they have gained their independence. Nnam found that the British had devised a strategy of making their colonies continue to depend on them despite their autonomy. The law, according to Nnam, has been no exception, since even now the indigenous peoples depend wholly on their former colonial masters for everything, such as firepower (guns, ships, airplanes, etc.) and military organization. Nnam (1985) asserted that the British-colonized countries have still depended on the common law equity and statutes of general application even after they have gained their independence. Nnam however, regretted the lack of concern which the traditional Nigerian legal reasoning and of the pre-colonial concept of law and human rights had suffered. To validate his point, Nnam documented a comparative view of the Nigerian and Anglo-American jurisprudence, showing glaring differences between the two:

1. Whereas Nigeria, with its 250 different languages (not just dialects), is extremely heterogeneous, Anglo-Americans can be said to be relatively homogeneous.
2. Whereas the principle of collective responsibility in Africa emanates from an extended family system that is treasured in Nigeria, individual responsibility prevails in the West.
3. Whereas the traditional Nigerian concept of law is inseparable from religion, ethics, and morals, the Anglo-American legal positivists are determined to maintain a sharp separation of law from morals.

4. Whereas the ultimate goal of every case trial in the Anglo-American systems is to find one party guilty and the other innocent, the goal of every trial in Nigeria is solely reconciliation and pacification.
5. If a legal reasoning in Anglo-American law is logic or reason of the mind, that of Nigeria is logic of the heart (Nnam, 1985). Nnam found that a legal method that works in one of these countries does not necessarily work when it is transplanted to another. From this study of comparison and contrast, we gain a clear understanding of the non-transferability of the law.

Nnam's research presents evidence that native customs and the culture of the peoples of Nigeria determine the legal system and the administrative law to be used. However, Nnam did not describe the changes that occurred in the criminal codes of the colonial and the postcolonial eras nor did he account for the severity of punishment in the three eras of Nigeria, pre-colonial, colonial, and postcolonialism. He was probably not aware of Frantz Fanon's model.

Olumola (1987) examined town planning law and administration in Nigeria. His subject matter was urban and regional planning. He found that pre-colonial Nigerian land ownership was communal and held in trust by the various community heads, such as chiefs, obongs and the emirs of northern Nigeria, who ensured allocation to those in need. This research cited Burns's 1969 work on the Land Tenure System of Nigeria that has hindered mechanical agriculture in the country, and also the control of the powerless by the powerful men (the chiefs, emirs and the obongs) controlling lands for their own economic interests. The power of allocation served as an effective mechanism of planning control, and the British introduced formal land-use planning in Nigeria through the enactment of nationwide planning legislation in 1946. This legislation was modeled after the 1932 British Town and Country Planning Act, which currently provides the legal and administrative basis for planning in Nigeria. Olumola's methodologies involved demonstrations of the multicultural setting of Nigeria and its ramifications regarding town-planning legislation and its ideological basis. Olumola found that there has been little appraisal of policy developments in the country since independence in 1960. Olumola's research basically concerned land-law legislation, while the present research proposes to use Frantz Fanon's colonial model as conceptual framework to concentrate on the changes that took place in the Nigerian law and the severity of punishment.

Gloster (1987) traced the changes that took place in the Maliki legal system of northern Nigeria because of the colonial reforms that Sir Donald Cameron initiated in the early 1930s. Gloster found that the criminal justice system of Maliki law underwent the greatest change from 1930 to 1960. He found that mutilation of the body was traditionally demanded as punishment

for capital crimes, but that the colonial government could not stand aside and allow Maliki justice to take its own course. Even though the law in northern Nigeria was eminently fair in its ideal form, British administrators believed that they the Maliki practices were repugnant to English common law. Gloster further maintained that the colonial administrators approached the northern emirs with the utmost diplomacy to settle controversial issues in criminal law. From 1930 to 1969, the civil law of northern Nigeria changed very little placing civil matters, such as guardianship, inheritance, wills, and contracts of marriage and divorce under the supervision of the Sharia Court of Appeal. His study shows that many of the reforms enacted during colonialism are still considered to be excellent models for the modern pluralistic society of Nigeria. Gloster examined only the Moslem law of the Maliki legal system, but this present research would concentrate on the unwritten criminal code of the pre-colonial era, which Gloster left untouched. The present research would go further to describe severity of punishment, changes in the Nigerian law and the application of the colonial model.

Ekpenyong study (1987) presented general information about Nigeria. She noted the geographical situation of Nigeria, which occupies a total surface area of 356,700 square kilometers, or about one and one-half times that of Texas in the U.S. Ekpenyong noted that Nigeria is a country of heterogeneous cultures and traditions with a complex historical background, and its ethno-linguistic and religious pluralism has had a significant impact on the country's judicial and criminal justice systems. She further discussed the extent and dynamics of criminality in Nigeria, noting that Nigerian crime statistics suffer from serious flaws in reliability and validity. Ekpenyong emphasized that this flaw emanates from the lack of an official agency charged with the task of accounting for crime rates, distribution, volume, and pattern in a regular and comprehensive manner. Discussing the structure and functioning of the criminal agencies in Nigeria, Ekpenyong noted that the Nigerian Police Force (NPF) grew out of the unification of the early colonial constabularies. In the 1970s, Nigeria operated a dual police system as inherited from the colonial power as a legacy of colonialism. Regrettably, the police in Nigeria have been accused of various misdeeds, such as the abuse of powers of prosecution, arrest, search, seizure, and investigation that have obstructed the course of justice.

Among other topics, Ekpenyong discussed Nigerian substantive criminal law, including courses of criminal law, classification of offenses, general principles of law, *actus reus*, defense and mitigating circumstances, age of criminal responsibility, attempt and conspiracy, corporate liability, and penal measures. She also discussed criminal procedure, including sources of the rules of criminal procedure and general principles of criminal procedure,

which “emphasize that every person in Nigeria who is charged with a criminal offense shall be presumed innocent until he is proved guilty” [Section 33(5) of the 1979 Constitution]. Also discussed were parties to criminal proceedings, phases of criminal proceedings, rights of the accused and pre-trial detention, juvenile court proceedings, and the execution of penal measures, that is, corrections. Ekpenyong research covered the postcolonial Nigerian criminal justice system in general, but did not adumbrate the pre-colonial era, nor did she discuss the colonial period in detail. She did not discuss changes in the severity of punishment under Nigerian law, or the application of Fanon’s colonial model, which is the focus of the present research, the object of this study.

Another scholar of note is Iwarimie-Jaja (1988) who examined the origins of the Nigerian court system, the pre-colonial and postcolonial eras, and came out with the finding that there was a form of courts in Nigeria before the colonial period. These early courts, according to him, were village-clans, or family courts, so to speak. These institutions serving as courts were presided over by a chief in Iboland, or by an Oba (family head or elder) in Yoruba Land. The presiding judge, according to Iwarimie-Jaja, was assisted by a council of elders. These courts used arbitrary negotiation methods and, in some instances, medicine men, oracles, juju priests, or shrine heads to adjudicate and dispose of extraordinary cases. When Nigeria became colonized, the British instituted a judicial system to regulate lawful trade in the ports of Benin, Bifra, Bonny, Brass, New and Old Calabar, etc., and to enforce payment of debts by the local customers. Iwarimie-Jaja admits that since the beginning of the colonial period, many courts have been established. Significant among them are the Supreme Court of Nigeria, the Federal Court of Appeal, the Federal High Court, the State High Court, and the Sharia Court of Appeal of a state, the Customary Court of Appeal of a state, the Magistrate Court, and the Juvenile Courts. Although the customary courts have taken a back seat to the modern courts, they are still serviceable because they have particular functions to perform that modern courts are not effective in dealing with. It is also clear that the court system has permeated all facets of life in contemporary Nigeria. Iwarimie-Jaja also found out that Nigerians are reluctant to use the courts, perhaps because of the long time it takes to reach final judgment in a particular case. Moreover, indigenous Nigerians have little confidence in modern courts, which are not efficient in adjudicating customary or traditional cases. Most often, Nigerians prefer to consult oracles, juju, shrine heads or the like in a bid to settle a dispute.

Iwarimie-Jaja further suggests that for the court system to maintain its credibility, relevance, effectiveness, and efficiency, there is an urgent need for more funding, respect for autonomy, less political control and interference,

better conditions of service for officers of the law, and some degree of flexibility, which takes cognizance of the social environment in which the courts operate. Iwarimie-Jaja concluded that the aims of instituting the modern court system were achieved, but that Nigerians now feel that the system is insufficient due to the fact that it is not effective. Iwarimie-Jaja's research shows that the traditional concentration of legal authority in the hands of those who were powerful was extended to the colonial period. It also points out that Nigerians have always been dependent upon customary traditions and beliefs in resolving problems regarding criminal or civil matters. However, the researcher did not explain or discuss the severity of punishment changes in Nigerian criminal codes during the colonial and the postcolonial eras, neither did he apply the colonial model initiated by Frantz Fanon. He did not discuss in detail the functioning and the functions of the pre-colonial Nigerian judicial system that the present study will improve upon.

None of the literature reviewed discussed severity of punishment, changes in the law, nor did the studies apply Fanon's colonial model and his concept of maintenance-needs of oppression in relation to the Nigerian judicial systems during the precolonial, colonial, and postcolonial eras. The purpose of this chapter is to demonstrate the potential of Frantz Fanon's colonial model to explain and predict particulars of a specific change that occurred in the criminal legal code of Nigeria's passage from colonial to postcolonial status. This exercise in causal analysis will explain the main reasons behind the changes in the severity of punishment, changes in law, social economic ladder, and the correlative shifts in the definition and rank ordering of criminal actions in Nigeria's legal code. These changing attitudes towards crime and punishment can be seen again in this simple but telling example: in pre-colonial Nigeria, witchcraft was the crime for which the most severe punishment, the death penalty, was inflicted on offenders. In the colonial era, treason and treachery assumed first rank as the worst crimes punishable with death. In the present postcolonial period, premeditated murder and armed robbery are the worst crimes punishable with death. These changes express a particular tilt, a specific labeling of human action, which, in Fanon's colonial model, demonstrates the maintenance-needs of oppression. The tilt reflects what is regarded as most threatening for the survival and well-being of whoever has the controlling power in the society to define and label what is and what is not criminal. Treason and treachery constitute political crimes, crimes against the government survival and well-being, whereas premeditated murder and armed robbery are crimes against persons and property; witchcraft itself in the pre-colonial era directs the indigenous people's attention to the religion-social dimension of the society and what is regarded as the ultimate threat to the cohesiveness of the community.

DESCRIPTION OF THE METHODS AND PROCEDURES: CASE STUDY METHODOLOGY

Introduction

In this case, the phenomena of oppression and colonialism are utilized. A Case study is an empirical research inquiry that helps to investigate, interpret and understand issues/contemporary phenomena within their real-life context. In a case study, multiple methods and sources of evidence are employed in the collection of data and analysis. This study uses the Frantz Fanon model of colonial inquiry to study and understand the severity of punishment changes in Nigerian law. It also looks at the changes in the economic and social domains, as well as changes in the degree of criminal sanctions to predict the maintenance-needs of oppression.

Case Study Protocols

According to Frantz Fanon, colonialism is not a type of individual relations, but the conquest of a national territory and the oppression of a people; it is not a certain type of human behavior or a pattern of relations between individuals” (Fanon, 1964:81). Colonialism has been and still is an issue confronting its advocates and also the third-world countries. Many third world countries gaining their independence must decide which features of the legal system inherited from the colonial masters should be discontinued, revised or remain intact, especially as the legal system was one of the more visible vestiges of colonialism left behind by the retreating colonial masters. The maintenance-needs of oppression in the colonial system help policy makers in their decisions. A review of the criminal legal codes in the colonial and post-colonial era of Nigeria provides useful information related to the research questions. The case study procedures provided the researcher with a descriptive and detailed account of the policy-making process in the pre-colonial, colonial, and postcolonial eras in Nigeria.

Between 1993 and 2004, the researcher carried out the in-depth interviews with seasoned legal experts on the unwritten criminal code of Nigeria for the precolonial period. When the results were compared with the colonial and postcolonial legal code the differences were remarkable. These differences and changes presupposed a concomitant level of changes in the definition of crimes that are correlated with the punishment. In addition, severity of punishment presupposes a rank order of punishments, and correlatively, a rank order of crimes. With these methods, the researcher identified crimes/punishment seriousness that occurred and how they were classified and graded during the three periods under study.

The content analytical method, one type of the quantitative method included here, was to make inferences about the content in which the data was found. Consequently, a phenomenology of oppression and a phenomenology of colonialism were inferred from Fanon's colonial model, which dictates that colonialism is a subset of oppression geared to the maintenance-needs of the colonizers (Holsti, 1978; Kerlinger, 1973; Polit & Hungler, 1978). Krippendorff (1980) defines content analysis as a technique for making inferences about the context in which the data are found. It is a useful method for answering questions about two or more people, e.g., who says what to whom with what effect and why. The analytic method was used in this study to answer the "why" question, describing the phenomenology of oppression, the phenomenology of colonialism, the criminal legal code of Nigeria in the colonial and the postcolonial eras. The answer to the puzzles lay in the in-depth interviews conducted by the researcher on the criminal code of the pre-colonial era, which was unwritten, and the rank ordering of crime and punishment severity. The analysis is to infer the main objectives behind the specific change in the criminal legal code of the colonial era, and the correlative severity of punishment that followed. Content analysis is also a useful method for determining documentation as a reflection of the attitudes, interests, beliefs, and values of a group of people, such as, the attitudes, interests, beliefs, and values of the colonialists in Nigeria from 1861 to 1960 (Nwankwo, 1995).

A case study approach was used for the inquiry to allow for in-depth explanation and prediction of changes in the Nigerian law based upon Fanon's colonial model. This approach is to keep the data set to a workable size and to examine the problem in depth and apply a combination of methodologies.

Scope of the Study

The population of interest for this study was Nigeria. To further limit this study, three specific periods were chosen: before the colonial era, i.e., before 1861; colonial era (1861-1960); and the postcolonial era (1960-present).

Document Collection

The documents serving as data for this study were collected from several indexes to government documents and in-depth personal interviews. The in-depth personal interviews were for the pre-colonial era, including the arrangement of crimes and severity of punishment in rank order, because the cultural practices during this period did not include a criminal code of law in a written format, and because crimes and severity of legal punishments were not rank-ordered. The documents included for the colonial and postcolonial eras were the congregational information services, court decisions, criminal legal codes, and constitu-

tions. Other data were derived from library textbooks, professional journals, census data, police records, court records, colonial administrative documents, i.e., Great Britain Colonial Office Report on Nigeria, 1950, 1951, 1952–1960 and charters from British trading firms in West Africa. An anatomy of oppression by William Jones (1993) included on video tapes and presentations were also used. Textbooks from advocates of colonialism are also included, among whom are Weil (1958), Richard E. Lapchick and Urdang (1982), Grygier (1954), Carmichael and Hamilton (1992), Memmi (1965), and Sartre (1968), Strongman (1996), Clifford (1989) Achebe (1959), Kamari-Mbote (2001), Lawson (1994), and Osterhammel (1995), to mention a few.

Interview Methodology

One of the most important sources of information in this case study is the in-depth interview for the pre-colonial era and for the colonial and postcolonial rank ordering of crimes and punishment severity. This is so because of the unwritten status of the criminal legal code and because crimes and severity of punishment were not ranked. The first step was to identify professionals of Nigerian population including judges, lawyers, chiefs or emirs, elders and councilors for their unique roles. Judges and lawyers were used because they practiced as a special group of professionals that utilized “case law” information transmitted by the chiefs/emirs, elders and councilors. Nigerian community liaison provided the names such as the chiefs/emirs, elders and councilors who were directly or indirectly involved in the policy-making process passed to them orally by their pre-colonial predecessors. Interviewees were selected based on their knowledge and involvement with case law procedure and their expertise in the traditional law and oral history of Nigeria. The researcher established an interview strategy in order to develop a rapport with the interviewees and to clarify the purpose of the study. Before the interview started, the researcher introduced himself as follows:

1. The researcher’s name and profession
2. State of origin in Nigeria/school in attendance or attended
3. The respondent’s permission to tape-record the responses, if need be.
4. The purpose of the study
5. The freedom to interrupt or ask questions for clarification

Information Required for Analysis

The units of analysis for this interview were:

- (a) the criminal legal code of different tribes of the upper and lower “Niger River” before colonialism;

- (b) different types of crimes committed in the pre-colonial era and also the most serious ones;
- (c) types of punishments; and
- (d) the rank order of crime/punishment severity for the pre-colonial, colonial, and postcolonial eras.

The information gathered from the in-depth oral interviews was analyzed. The researcher used the individual information gathered as a criminal code for the pre-colonial era. The information gathered was also useful for putting the severity of punishment into rank order. Neither the criminal legal codes of the colonial and postcolonial eras nor Elias's book for the pre-colonial era arranged the legal punishments in rank order of severity.

Research Questions

1. What types of crimes existed and still exist in Nigeria?
2. Were or are some crimes more serious than others?
3. How many punishment patterns were available in Nigeria?
4. Were there severe punishments in Nigeria other than the death penalty?
5. Who inflicted these punishments?
6. What type of courts existed in Nigeria?
7. What acted as the Supreme Court in Nigeria?
8. Who acted as today's police officers in Nigeria?
9. Did prisons exist before the British colonialists?
10. Were legal punishments rank ordered?
11. How were people in Nigeria proved guilty of a crime?
12. Who presided over the courts?
13. What role did diviners, witch doctors, and juju priests play?

Interview Questions

1. Based on your research and information gathered orally, what crimes were the most serious crimes in pre-colonial Nigeria?
2. How were these crimes ranked based on severity?
3. What types of punishments were inflicted on the offenders for crimes?
4. How would one rank-order punishments based on severity in the pre-colonial era? For example, what crimes were punishable by death penalty, deportation, imprisonment, shaming, fine, etc?
5. What punishment was the most severe in the pre-colonial era?

6. Who was responsible for inflicting legal punishments on offenders? How did the pre-colonial overlords arrive at whether or not to punish an offender?
7. What specific procedure did they use in proving someone guilty of an offense in the pre-colonial era?
8. What type of courts existed in the pre-colonial era?
9. What acted as the Supreme Court in the pre-colonial era?
10. Who presided over the Supreme Court in the pre-colonial era?
11. Who acted as police officers during the pre-colonial era?
12. Did prisons exist in the pre-colonial era?
13. Were legal punishments and crimes arranged in order of severity in the pre-colonial, colonial, and postcolonial eras? How were they arranged in order?
14. What specific duties did diviners, witch doctors and juju priests have in the pre-colonial era?

The result of the interviews showed that the respondents did not depart from information obtained by Elias (1956) and Elias et al., *The Nigerian Indigenous Laws* (1975). One purpose of the interviews was to assess the trustworthiness, credibility, and dependability, and to confirm the findings, of Elias and Elias et al. on the indigenous laws of Nigeria, i.e., the pre-colonial criminal code of law, since its unwritten status did not permit an external check for consistency. Findings on the rank order of punishment severity departed from the order in which the crimes and punishments that followed were written in the criminal codes of the colonial and postcolonial eras of Nigeria. However, the judges, lawyers, and chiefs interviewed helped the researcher to arrange the crimes and severity of punishment in rank order.

REVIEW QUESTIONS

1. Why was it that a fairly large number of studies have not researched on the pre-colonial Nigeria?
2. How did Nigerians give statutory recognition to Nigerian laws and customs?
3. What type of matters did the judges apply to the customs of Nigeria?
4. What were the main elements of colonial law?
5. How does one measure military dependency, according to Achara?
6. What was the impact of witchcraft in the pre-colonial South Eastern Nigeria?

7. The pre-colonial era Nigeria made use of death penalty in which crimes?
8. Was the death penalty the worst or the most severe legal punishment in the pre-colonial era of Nigeria?
9. What is content analysis?
10. Explain the main characteristics of a case study method.

Chapter Four

Inseparability of Colonial and Postcolonial Eras and an Imagery of Wole Soyinka's Ake Town

KEY TERMS

- | | |
|-----------------------|---------------------|
| 1. Westernization | 11. Genotype |
| 2. McDonald | 12. Phenotype |
| 3. Hamburger | 13. Assumption |
| 4. Blonde | 14. Colorism |
| 5. Citizen | 15. Dark-skin |
| 6. Ethnical group | 16. Sub-Saharan |
| 7. Consequent | 17. Aborigine |
| 8. Weakness | 18. Symbols |
| 9. Military coups | 19. Nationalism |
| 10. Post-independence | 20. National Anthem |

INTRODUCTION

Wole Soyinka's *Ake* is an autobiography of his childhood in Nigeria, but for one jarring moment he shifts his reader's attention to a store-lined street in Ake during the early 1980s. By contrasting Western images of "McDonald's," "coca-cola," and "disco sounds," with the memories of his idyllic (and distinctly Nigerian) childhood marketplace, Soyinka expresses disgust at the Westernization of his homeland (Paull, 1991). Paull further notes that the hawkers' lyrics of leaf-wrapped moin-moin still resound in parts of Ake and the rest of the town, but along Dayisi's Walk there is also a shop that sells moin-moin from a glass case, lit by sea-green neon lamps. It lies side by side with McDonald's hamburgers, Kentucky Fried Chicken, hot dogs and dehydrated sausage-rolls.

Despite his clear distaste for Western commercialism, Soyinka shows us a world, which has not been forced on the people of Ake but has been chosen by the younger generation. It is also not a world in which the Nigerian culture of his youth has disappeared but one in which African tradition coexists with Western capitalism. The moin-moin seller of the past exists alongside McDonald's, the emblem of commercialization. Neither culture is subsumed, neither is independent (Paull, 1991).

In spite of the loss of its African roots, Ake is a typical postcolonial town. With the exception of this brief, modern scene, Ake takes place in Nigeria, which was under British rule, yet for much of the book we are allowed to forget this. Soyinka describes Ake as a town rich in traditions, images, and folklore that sharply distinguish it from any type of European society, but the marching band to a British military compound introduces the British occupation directly, (Paull, 1991). Thus, we are reminded that colonization does not obliterate the previous culture but finds some way to meld with it. Here colonial culture has evolved from the precolonial culture and taken up a new face, a new context to adjust to the competing colonial culture. Thus, African culture remains visible no matter the natural hatred of colonialist to destroy or supplant it with their culture.

Similarly, post-colonial Ake grows out of colonial Ake. Nigeria gained political independence from Britain, but, as Soyinka demonstrates through his use of Western images, cultural separation does not follow. Just as colonial Nigeria was shaped by precolonial Nigeria, postcolonial Nigeria is inseparable from the previously emergent culture. Consequently, the novel reveals that colonialism and postcolonialism, colonization and decolonization are not distinct from one another, but part of a continuum of evolution in which each new layer of culture relies on the preceding layers for its base (Paull, 1991).

Pre-European-contact Colorism and Post-colonial Racism in Asia and North Africa

It is noted that the European imperialists are often blamed for introducing the idea that "lighter skin is righter" mentality to indigenes of colonized lands in Africa and Asia. Critics of this mental colonization don't always acknowledge in the same breath that many North African and Asian cultures had placed a premium on light skin PRIOR to European exposure. Indian folk songs praised the beautiful woman who has "the color of butter" (Indian butter is white, not yellow) Paull notes. Pre-colonial Indonesian women used plant-based skin treatments to make their complexion pale in preference to the color discrimination endemic in their culture (Fanon, 1961). However, the fact that pre-colonial colorism exists does NOT absolve Europeans of their

responsibility for indoctrinating non-European populations with harmful racial ideologies. Pre-colonial colorism was fundamentally different from modern Western racism; the vocabulary and assumptions used in the discussion of modern racism are not necessarily helpful or relevant in understanding pre-European-contact attitudes towards complexion *per se*.

Pre-European-contact colorism occurred in the context of members of the same “race” and was linked to socio-economic status. Wealthy people, noted Paull, did not have to work in the sun, and thus were lighter complexioned than poor workers and peasants who always work under the intensity of the sun and were burnt dark, as in Haiti in West Indies. Fatness, another physical characteristic associated with a lifestyle of prestige and plenty, was also deemed attractive, even in several African countries. Famed medieval North African writer Ibn Battuta described “the most perfect of women in beauty” as “pure white and fat” (Paull, 1991). Furthermore, pre-modern Chinese and Japanese paintings depicted gods, warriors, and other attractive men with ample bellies, as features of physical stability and economic sufficiency. The Chinese euphemism for getting fat literally means “getting wealthy” (Paull, 1991; Fanon, 1965). Ihara Saikaku, a 17th century Japanese writer, contrasted the beauty of the black-haired, pale-skinned urban youth to the unattractiveness of orange-haired, sun-tanned rural boys. Peasant boys who worked outdoors had their black hair bleached orange by sun and sweat. Thus, for the pre-modern Japanese, pale hair and dark skin came to be signifiers of an under-privileged lifestyle, just as black hair and pale skin symbolized urban sophistication and privilege.

However, when Europeans started exporting their ideas of the white European master race to colonized lands, the toxic reaction between old lifestyle-based colorism and new Western racism produced a harmful new compound which associated European features with power, wealth and beauty. Some European-descent whites absolved themselves of responsibility by maintaining that “racism took root so easily in Japan/the Philippines . . . because the people there already had similar ideas about race and color.” What these Europeans failed to understand was that while the new ideas of racism may wear the clothes of old class/lifestyle-based colorism, it is a completely different concept. Firstly, the fact that other indigenous preferences that accompanied traditional colorism—such as the preference for fatness, black hair, black eyes and round flat faces—have declined demonstrates that the new Eurocentric standards of beauty are based on assumptions different from those of traditional colorism (Paull, 1991; Camus, 1961, Fanon, 1961; Memmi, 1965). Staples (1975) notes that American pop culture hairstyle replaced the original Japanese ideal of jet black hair with the phenomenon of Japanese dyeing their hair red, blonde or orange. In a similar vein, many modern Filipinos see the

'high-nosed', oval-faced European as beautiful, some openly expressing the wish for a higher nose or more oval face. But this preference has not always existed. Prior to European colonization, the ancient Visayans of the Philippines considered the very opposite of high noses and oval faces handsome. Visayans, as well as some other Austronesian peoples in Malaysia and Indonesia, compressed their babies' skulls to achieve broad faces with receding foreheads and flat noses (Paull, 1991; CarMicael, 1992).

Secondly, the modern concept of 'race' itself is a Western import. This new racial 'colorism' is no longer framed on the old idea that "lifestyle/social circumstance determines appearance", i.e. "if you are wealthy, you will have certain physical characteristics as a result of your lifestyle." Post-colonial racism is in fact based on the opposite concept: that one's genotype, and by extension, its phenotypic expression, determines one's circumstance in life. That is to say, "if you are white, you will have certain privileges as a result of your biological heritage". This idea of "biology=destiny" is what undergirds modern Western racism (Fanon, 1965; Jones, 1994). Sadly, many non-whites today do not examine the roots of their admiration for the white-skinned, high-nosed and light-eyed, and assume that their desire for whiteness is "natural" or "traditional". Some non-black people of color even speak of their "instinctive" fear of black people (Fanon, 1964). Even without interacting with black people, some brown and yellow individuals have unthinkingly internalized European colonialist attitudes of a racial hierarchy with white at the top and black at the bottom (Fanon, 1952).

In other cases, some Asians who assume that individual blacks are poor or uneducated may be possibly acting on traditional colorism. These Asians make the same erroneous assumptions about darker persons of their own 'race'. Instead of justifying our preferences natural, hormones and emotions, and therefore defying logical analysis, we may want look at more refined reasons for these color and physical biases. Perhaps our individual motivations are very benign. But perhaps if those who unconsciously subscribe to class-based colorism realize the origins of their preference for the light-skinned was based on wealth and not race, their idea that "black = poor" will fall flat because it should be obvious that people from dark-skinned races, regardless of economic situation, are dark-skinned. Therefore, using skin color as a gauge of economic status is not as relevant for sub-Saharan Africans and aboriginal Australians as it is for North Africans and Asians (Fanon, 1965; Fanon, 1961; Paul, 1991).

Even if 'race' is completely out of the picture, the next step is to acknowledge the classiest implications of pre-colonial non-racial colorism. Some people find it appalling to marry for money, but the same people excuse preferences for spouses of light complexion as purely physical attraction. It is documented that they do not recognize the wealth-based roots of color prejudices, and fail to see

the role of social conditioning in constructing desire. The purpose of this text or chapter is not to induce people to change their desires, for no one has the power to dictate what is attractive to another. The chapter merely suggests that we should understand the causes of our individual preferences and how these preferences affect our daily lives and the lives of those around us.

There are a number of similarities between the political history of the United States and the histories of African countries. One of the most striking similarities is the fact that prior to independence in 1776; the thirteen territories that became the United States were colonies of a European power—Britain. Moreover, the United States gained its political independence only after waging a war for independence, i.e. American War of Independence. Of course, all African countries, with the exception of Ethiopia and Liberia, started out as colonies. And just as with the American War for Independence, some African colonies, such as Angola, Mozambique, Namibia, South Africa and Zimbabwe gained their independence only after waging war against their colonial masters. While the majority of African countries gained independence without having to resort to a revolution, in each of the countries independence was won only after the people organized themselves in a struggle against colonialism. The rise of political activism through nationalist political parties and organizations united people in demanding political freedom (Ezara, 1960; CarMichael, 1992). Independence brought great joy and optimism that after decades of foreign rule political freedom and independence, the new African governments would be able to use their political and economic resources to provide the citizens with basic social and economic services: education, health care, housing, employment (Paull, 1991).

The new nation-states of Africa, following the example of nation-states in other regions of the world, developed the flag and the national anthem as special symbols to represent their unity and sovereignty (Cook, 1997). Indeed, the significance of the flag and the national anthem are reflected, especially in the US, in their adornment of public buildings, schools, governmental establishments, churches and at public events. Each African country shares the same pride about their flag and national anthem (Paul, 1991, Colonial Report on Nigeria, 1950). Americans are not unique in giving special honor to the flag and national anthem. In the new nation-states of Africa, national anthems and national flags are very important symbols of national identity and national unity

National Anthems

Below is the national anthem of Ghana, one of the first African countries to gain independence in 1957. Carefully read the text and then answer the

following questions. If your computer has a sound card, you can hear a musical rendition of the national anthem by going to <http://countryreports.org/anthems/>.

God bless our homeland Ghana,
 And make our nation great and strong,
 Bold to defend forever
 The cause of Freedom and of Right.
 Fill our hearts with true humility
 Make us cherish fearless honesty,
 And help us to resist oppressors' rule
 With all our will and might evermore.

Hail to thy name, O Ghana
 To thee we make our solemn vow;
 Steadfast to build together
 A nation strong in Unity;
 With our gifts of mind and strength of arm,
 Whether night or day, in the midst of storm,
 In every need whatever the call may be,
 To serve thee, Ghana, now and evermore.

Raise high the flag of Ghana,
 And one with Africa advance;
 Black star of hope and honor,
 To all who thirst for liberty;
 Where the banner of Ghana free flies,
 May the way to freedom truly lie
 Arise, arise, O sons of Ghanaland,
 And under God march on forevermore.

Source: <http://countryreports.org/anthems/>

1. According to the first stanza, what will help make Ghana a great nation?
2. The second stanza begins with the line "Hail to thy name, O Ghana." Why is it important for citizens in a new nation-state to "hail" or respect the name of the country?
3. According to the anthem, what are the duties of Ghanaian citizens to their country?
4. The third stanza honors the flag of Ghana. Why is this important?

Optional Activity: Go to the website <http://countryreports.org/anthems/> and select National Anthems from two additional African countries. Copy or download the anthems and place them in your Exploring Africa Web Journal. As you read the anthems, look for the following themes: praise for the peo-

ple and history of the country; calls for national unity and strength; special duties of citizens to their country.

FLAGS

In addition to being very important symbols of nation-states and national unity, flags are made up of designs that have specific meanings. For example, the flag of the United States is comprised of thirteen stripes representing the 13 original colonies that declared independence from Britain in 1776. The U.S. flag also has 50 stars- one star for each state of the union. Flags of independent countries in Africa are also made up of symbols that have importance to the nation. Here is an example of the national flag of Zambia, a country in Africa. Each of the colors of the flag and the eagle has a meaning.

The Eagle is a strong and powerful bird. It represents the potential power of Zambia, and the country's ability to soar above its problems.

The green backdrop represents the land of Zambia. This color pays tribute to the importance of agriculture and other natural resources to Zambia.

The copper colored bar represents the importance of Zambia's mineral wealth, an

important component of Zambian economy of Zambia.

The black bar represents the people of Zambia.

The red bar represents the blood shed by Zambians during their struggle for independence.

Can you see how a national flag can develop into an important national symbol of a nation-state?

Just for fun: Look at the national flags of Africa countries. There are a number of ways you can access these flags. On the web, you can go to the World Flag Database at <http://www.flags.ndirect.co.uk/index.htm>. Or you can go to your school library and look for flags in an encyclopedia. As you look at each flag, identify each symbol and color on the map. Try to figure out what each color and symbol might represent.

Political Issues in Post-Colonial Africa

It is customary to pick up a newspaper in North America or Europe, or watches the news on television, without reading or seeing much news from or about African countries. However, when there is news coverage, it is most likely that it will be a report on a crisis or problem. In recent years, the news

media has focused on stories of hunger and HIV-AIDS in Africa, or on political issues such as civil wars or political chaos, or dirty homes thatched or roofed with grass. Today, parts of Africa have been literally ripped apart by civil wars which have caused tremendous damage and suffering to the local people. However, these countries represent a microscopic minority of the independent countries in Africa.

In trying to understand the causes for political (or economic, or social) problems in Africa, as in North America, Asia, and Europe, it is important not to look for quick and simple answers. The reasons for political violence, authoritarian governments, or corruption in some African countries, are complex and not a reflection of the inability of Africans to govern themselves as some news writers indicate and as people always think. How would you feel if news reporters from Europe or Africa concluded and revealed that the recent shootings at American schools demonstrate an American tendency towards violence? Such an interpretation hides the fact that the vast majority of American students would never resort to violence. Moreover, such a simplistic interpretation does not recognize that there are many factors that contributed to the shooting in each locality or institution of learning, and that we can not take each situation as a general tendency. Similarly, it is just as important that we use the same discretion and rationale to understand political crises in Africa. In fact, history gives us the only reliable components of the political legacy of colonialism and postcolonial Africa (Paull, 1991):

- Colonial states and governments were weak and lacked capacity to meet the huge social and economic needs of their countries. The inability of governments to meet the legitimate needs of their citizens is a key cause of political dissatisfaction and un-rest.
- Colonial states were not democratic and had little respect for human rights. It is difficult, but not impossible, to develop democratic institutions and practices on a political foundation that is un-democratic. Moreover, as African leaders faced opposition, partially because of their inability to meet the needs of their citizens, it was easy for them to fall back on the un-democratic examples of the colonial states. Many post-colonial governments resorted to the same un-democratic practices the colonial masters used to control and deal with opposition (Paull, 1991, Fanon, 1965, CarMichael, 1990).
- Ethnic conflict is a major political problem in many African countries. Ethnic rivalry over scarce resources and political power to control resources led to political conflicts and occasionally to serious violence. Ethnicity and ethnic rivalry, which emanated from the colonial policy of “divide and rule” and “indirect rule,” new developments in Africa, they are often rooted in colonialism (Paull, 1991; Fanon, 1965). These practices helped to establish

ethnic rivalries that have become a common part of politics in post-colonial Africa.

Post-colonial Politics: 1960–1990

The first African governments after independence were faced with a multitude of urgent political problems which could conveniently be grouped into three large categories: sovereignty and security, national unity, and basic human services.

Sovereignty and Security

Sovereignty is a fancy term for authority and power to insure security. The brand new African governments inherited countries that were created and maintained by the forces of the colonial governments (Fanon, 1956). Not without cause, the new independent governments were concerned that once colonial rule ended, there would be a strong chance that newly independent countries would face the possibility of disintegration. Consequently, one of the top priorities of the new governments was to ensure the sovereignty and security of their new nation-states.

National Unity

With the exception of a few colonies such as Swaziland and Somalia, European powers created colonies in Africa that were comprised of many different language, religious, and ethnic groups. Moreover, colonial governments, through the practice of indirect rule *and* divide and rule, created colonial societies that were often deeply divided along ethnic lines. Central to the very idea of a nation-state was the need for national unity (Paull, 1991). A nation-state has no such chance of remaining a nation-state if it is deeply divided along ethnic or religious lines. Consequently, a top priority of the new African governments was the development of national unity. There was need for citizens to develop a stronger loyalty and identity to the nation than to the various ethnic groups.

Basic Human Services

Colonial governments paid little attention to meeting the basic social needs of citizens, such as education, health-care, housing and adequate employment opportunities. New nationalist governments came to power on the promise that they would work towards meeting these important needs for all citizens.

The legitimacy of the first independent governments in Africa depended on their ability to meet these needs, and failure to meet them always resulted in strife and revolutions (Paull, 1991).

What advice would you have given African governments in 1960 on how they should deal with these important issues? What type of policies, programs, and institutions should have been developed to address these very important issues? Take ten minutes to think about this with your teacher. Did you come up with easy answers? Can you understand the political difficulties that confronted the new African governments immediately after independence?

Types of African Governments 1960–1990

At their independence, each Africa country had a constitution that, like the U.S. Constitution, established the “rules and regulations” of government. These constitutions often reflected the systems of government of the colonial power. One should remember that Britain and France had the most colonies in Africa (Paull, 1991). The governments of Britain and France are multi-party democracies. In this system, two or more political parties compete in regularly scheduled elections to control the government. The French and British territories had constitutions that resembled that of their colonial power. The French system of government is sometimes called a presidential where, like in the United States, the president and executive branch have considerable power. State power is shared by the national assembly, or legislative branch. French colonies, such as Senegal, Cote d’Ivoire, and Mali inherited this system in which there is a balance of power between the executive and legislative branches of government (Paull, 1991; Strongman, 1990). Britain, on the other hand, has a parliamentary system. In a parliamentary system, the electorate votes members of the House of Commons. The House then selects the executive cabinet from electorates, from the number of seats in majority from which the Prime Minister, who controls the government, will be appointed. The Queen in the House of Lords appoints the prime minister from a party that won more seats in the commons. British colonies such as Nigeria, Ghana, and Sierra Leone inherited a parliamentary system. However, Nigeria now runs a semi-Presidential type of Government like that of the United States. Consequently, the colonies modified the structures of the colonial governments which they had inherited. If you looked at these governments in 1980, twenty years after independence, they did not look like the British and French models imposed at independence.

The reasons for these modifications are quite complex. In fact, professional political scientists studying Africa do not agree on an answer to this question.

However and based on what you have learned so far, one can provide some good clues or answers to the puzzle:

- The government structures inherited by independent governments were weak and lacked capacity. However, governments were called upon to provide social services and develop economic infrastructure. Colonially inherited government structures were not suitable, it would seem, to meet the new political demands of independent African countries. These structures did never work well; hence, the need for new or modified structures.
- The constitutions that were developed for the newly independent countries were different from the political systems developed by the colonial state. As one can imagine, there was tension between the old colonial system and the new constitutional system (Paull, 1991).
- African economies demonstrated the economic difficulties that faced newly independent African nation-states. Underdeveloped economies provided scarce revenues for governments to use in meeting the great demands for social services and to stimulate economic growth. With limited economic means, governments were not able to meet the legitimate needs of its citizens. Lack of government response led to growing popular dissatisfaction in many African countries. Even when and where the situation was better, the African leaders were corrupt and greedy to assist the citizens. This situation put tremendous strain on the political system.
- Finally, there was the problem of ethnicity and ethnic rivalry. One of the most difficult political problems newly independent governments faced was that of developing national unity among people who were divided along ethnic, language, religious and, geopolitical lines. Countries divided along ethnic lines were particularly vulnerable to discrimination when newly independent governments were not able to meet the expectation of the citizens. Faced with growing opposition, governments often used limited resources on specific groups of people in an attempt to gain support of that group, not knowing that these groups were ethnically different from each other. The favored group was often the ethnic or language group of the political elite (Paull, 1991). This led to increasing ethnic tensions as the ethnic groups not favored struggled to receive what they considered to be their fair share of government support. At the same time, the favored group not wanting to give up their position of privilege, attempted to maintain their privilege. Indeed, weak governments, with limited resources can provoke ethnic tensions that in turn further weaken the political system.

Given these factors above, many African governments faced serious political problems within a few years of independence. One of the ways to deal

with political crisis was to change the system of government. The 1960s witnessed the initiation of two types of governments that were responses to political crisis.

Military Governments

Almost all African countries that gained their independence in the 1960s started out with multiparty systems (Paull, 1991). However, by the end of the 1960s, only a handful of African countries maintained a multiparty system. Indeed, by 1970, half of the independent countries in Africa had military governments, where the military took over control of the government through coups d'état. Instead of elected civilians, the government was controlled by the military (Paull, 1991). (See chapter two about several coups d'état in Nigeria.) Some coups d'états were quite violent. In the process of taking control, the soldiers killed members of the civilian government, including, at times, the president. However, surprisingly, sometimes the coups d'états was non-violent. In these cases, the military simply surrounded the presidential palace and the civilian government surrendered peacefully (Paull, 1991).

Why do you think that there were so many military coups just a few years after these countries became independent? Take a few minutes and discuss possible answers with your teacher. In thinking about how to answer this question, think back to the discussions on the legacy of the colonial state and the political demands placed on newly independent governments.

One can see how the answers you came up with compare to that of political scientists who study African countries. Just as there was probably disagreement among members of your class as to the main reasons for coups d'états, so too, there is disagreement among political scientists as to the main causes of coups in African countries. Here are a few of the reasons given by some political scientists:

- African governments inherited a weak political system from the colonial era due to exploitation and the exportation of resources from African countries to colonial masters' homeland in Europe. Consequently, the first African governments did not have the capacity to govern effectively. Military leaders, afraid that their countries would fall apart politically, decided that they could do a better job of governing, but the military did not do better.
- Given the under-developed economic systems they inherited, many African governments were unable to meet the social and economic needs of their countries. This situation often led to a crisis of legitimacy. That is, the citizens became disillusioned with governments that could not provide basic

social and economic services, such as jobs, education, adequate health-care, and academic training denied by the colonial over-Lords. Military coup leaders in Africa often justified their taking power because the prior civilian government had been unable to meet these basic needs. Unfortunately, the military rules in African countries were worse than the civilian rules.

- The political environment of the early post-colonial years gave rise to ethnic tensions that at times became so severe as to threaten the political system. The military claimed a right to intervene and take power in order to stop ethnic and regional rivalries from developing into a civil war. Again, these military leaders could not prevent the civil wars.
- The strains on the political system in the early years of independence provided an environment in which corruption became widely practiced in many if not all African countries. Government officials, often frustrated by their inability to be effective, used their government position to benefit themselves and members of their family. Military leaders often used the pretext of widespread corruption to justify their taking power (Paull, 1991; Fanon, 1963).

The above, though not exhaustive, is a list of weaknesses in the post-independence governments in Africa. Indeed, so fed up were the citizens of some countries that they actually welcomed the early military coups. However, military regimes are not democratic; indeed, one of the first things that military governments do is dissolve the legislative branch of government. Moreover, military governments in Africa were less successful than civilian governments in addressing the political, social, and economic issues, which nurtured the environment in which the coup d'états took place.

In spite of popular opposition to military rule, between 1960 and 1985 there were 131 attempted coups in Africa, of which 60 were successful (Paull, 1991)! Three countries have had six successful military coups! Indeed, out of 54 independent African countries, only six countries have not experienced an attempted or successful coup since they became independent. (To be discussed by the teacher in class.) The picture of these unfortunate turn of events lead to inevitable questions:

What should we make of this trend between 1960 -1990 towards military governments?

Do Africans support democracy?

Is there something about Africa that leads to military regimes?

The answers to these questions lie in the legacy of colonialism and the nature of political and economic systems inherited by the post-independence

governments. They also lie in the rise of democratic movements all across Africa in the 1990s, the last section of this chapter.

THESE ARE AFRICAN COUNTRIES IN QUESTION

In the first thirty years of the post-colonial era, more than half of the African countries experienced military rule. Only one African country, Botswana, maintained a multiparty system. What happened in the other twenty African countries that did not have military governments? In the 1960s and 1970s, these countries developed into single or one-party systems. In a one-party system, only one political party exists. The presidents, the cabinet members, the members of the national assembly (legislature) all belong to one political party. When there are elections, all the candidates belong to same party. Nigeria maintained the multi party system for years even though it is corrupt and otiose.

Constitutionally, two types of single party systems developed in Africa. Some countries became *de jure* single party states. That is, the countries changed their constitutions so that only one political party was allowed in the country. Other African countries became *de facto* single party states. In these countries, the constitution was not changed to mandate one party, but in reality, the ruling parties in these countries gained and kept a monopoly power, dominating all branches of government. The answer to why the single party systems developed in Africa goes back to the political weaknesses of the post-colonial African political systems.

Julius Nyerere, the first president of Tanzania, and Kenneth Kaunda, first president of Zambia, were the most eloquent promoters of the single party state in Africa (Paull, 1991). Each of them defended vehemently the benefits of such political arrangements citing internal peace, unity, tradition, development, and patriotism as the push behind the single party system.

Are reasons given in this speech for creating one-party systems? What is the relationship between one-party systems and democracy according to Kaunda? Does he believe that it is necessary to have a multiparty system to realize democracy? Do your research for these answers as assignments in class.

1. Tradition

Supporters of one-party systems claimed that multi-party systems were not part of Africa's pre-colonial tradition. They argued that traditional African

kingdoms were governed by a king or chief and their advisors. The system did not allow for organized opposition to the king. In many African societies that were de-centralized, decisions were made through discussion and consensus, not through argumentation by opposing groups. Proponents of a one-party system claimed that tradition supported their position (Paull, 1991).

2. Direct Democracy

Proponents of the one-party system argued that the state and government systems inherited from the colonial governments were too far removed from the people to allow for democratic participation. They argued that the Party (often the party that was responsible for winning independence) was a better instrument to listen to and represent the will of the people. This was the case in Nigeria with Nnamdi Azikiwe First President of Nigeria with his Party (NC. N.C). (Also see Nnamdi Azikiwe in Chapter 2)

3. National Unity

In the immediate post-independence period, most African countries had multi-party systems. However, many of the political parties were ethnic or region based. This meant that political parties often represented ethnic or regional interests. Proponents of one-party systems argued that multi-party systems in Africa encouraged ethnic and regional rivalries. Only a single national party could heal these divisions and help achieve national unity (Paull, 1991).

4. Development Orientation

Proponents of the one-party system asserted that in a one party system, the ruling party would not have to spend most of its energies on winning elections and staying in power. In a one-party system, a secure Party would focus its energies on listening to the people and developing policies that meet the social and economic needs of the people (Paull, 1991).

Given the above claims for a one-party system, it is fair to ask: what is their record in Africa? Only citizens of the countries that had one-party systems can answer these questions with accuracy. However, a clue to the success or failure of the single party system lies in the reaction of the countries to the idea of change when the opportunity arrived. When, in the 1990s, citizens were given the opportunity to choose between the continuations of a one-party system, the citizen of each country overwhelming voted for a system that allowed multiple voices to be heard.

REVIEW QUESTION

1. Discuss Wole Soyinka's Ake.
2. What is "Ake"?
3. What is colorism and Post-Colonial Racism? Explain in detail.
4. Why does pre-European contact colorism occur in the context of members of the same race? Explain with examples.
5. Why did Europeans succeed in exporting their ideas of the white European Master race to colonized lands in Africa, Asia, and India?
6. Do you believe that the concept of race is a Western import? Explain with examples.
7. Draw the map of Africa and locate all the former British Colonies.
8. Visit the internet to locate other African Flags. Interpret the colors of the flags in connection with their National Anthems.
9. Discuss why African countries have so many ethnic problems and civil wars.
10. Discuss the ills, and the importance of colonization, if any.

Chapter Five

Frantz Fanon's Colonial Model

KEY TERMS

- | | |
|----------------------|--------------------|
| 1. Potential | 11. Wretched |
| 2. Black Skin | 12. Personality |
| 3. White Masks | 13. Unconscious |
| 4. Dying Colonialism | 14. Rationalism |
| 5. Culture | 15. Simplification |
| 6. Professionalism | 16. Natives |
| 7. Exploration | 17. Niggers |
| 8. Mental Disorder | 18. Village |
| 9. Mental Diseases | 19. Manichean |
| 10. Trauma | 20. Inferior |

INTRODUCTION

The purpose of this chapter is to describe and illustrate the components of oppression using Fanon's model. Fanon maintains that colonialism is a subset of oppression, geared to the maintenance-needs of oppression. These maintenance-needs include, but are not limited to inequality of power, hypocrisy, changes in the law, severe punishment, etc, specific set of beliefs and values and to the institutional configuration, that oppression/colonialism requires to continue their existence. Although Fanon's theory was developed in a particular historical context and geographical location—Algeria, his adopted country, the theory was formulated and advanced to explain the realities of all colonized nations, not

only that of Algeria, thereby giving it its transcultural applicability and broad explanatory potential.

The components of oppression in Fanon's colonial model are derived from his works and personal experience and clinical notes as a psychiatric doctor in Algeria. Geismars (1971) study of Fanon's works reveals that Fanon's first book, *Black Skin, White Masks*, published in 1952, was actually a diary of a black intellectual recovering from the trauma of a delayed introduction to the white Western world. His second book, *A Dying Colonialism*, an extended commentary on a society undergoing a thorough restructuring, was an original description of a colonial people winning self-determination (Geismar, 1971:3). By the time his book, *The Wretched of the Earth*, was published in 1961, Fanon was convinced that the third world's agricultural masses had replaced the urban proletariat as the dynamic force for change in modern history. Fanon's *Toward the African Revolution* (1964) is indeed an elaboration of his theory. His article, entitled "Racism and Culture," on the same theme, was a lecture he delivered in 1956 before the first Congress of Negro Writers. Most of his professional publications deal with the phenomenon of colonialist alienation seen through mental diseases.

Fanon explored local traditions and their relationship to colonization. He asserted that the disturbed individual had to be rehabilitated within his proper social context, since neuroses could be related to ever-present environmental circumstances more than to youthful trauma. As quote in Geismar (1971:13), Fanon noted that

The neurotic structure of an individual is simply the elaboration within the ego of conflicted clusters arising in part out of the environment, and in part out of the purely personal way in which the individual reacts to these influences.

In a way, Fanon reformed the Jungian theories of the collective unconscious by moving it from the unconscious in the inherited cerebral matter, to the "sum of prejudices, myths, [and] collective attitudes of a given group." To him, attitudes and fears make up the unconscious, and that these could change with a reformed society. Given a certain amount of time, Fanon argued, scars in personality could heal and the health of the unconscious improves. Consequently, the collective unconscious was a social and cultural phenomenon, not inherited but acquired (Fanon, 1964). The Martiniquan people, both black and white, according to Fanon, had what he termed a "European collective unconscious," one that associated darkness with evil and blackness with sin, an unconscious that transformed the black man into a sexual animal, rather than a rational human being (Fanon, 1961).

Exploitation

Fanon maintained that Europe was literally the creation of the third world build on the wealth which was stolen from the underdeveloped peoples (Fanon, 1961:81). But, in order to exploit, the following components of oppression must apply.

Institutional Structures of Oppression

Fanon asserted that oppression thrives through institutional structures. In *Toward the African Revolution*, Fanon asserts that the oppressed system of reference has to be broken and the social structure of the oppressed is destroyed; values flaunted, crushed, and emptied (Fanon, 1964:33). This calamity leads to racism which is a cultural element in the colonized world, for there are cultures with racism and cultures without racism. In the colonized countries, the cultural values, including local languages, religion, and dress techniques are devalORIZED (Fanon, 1964:33). Fanon noted that exoticism, which characterizes the colonial system, allows no room for cultural confrontation, since the local cultures are totally annihilated.

Belief and Value System

In order to exploit, there must exist in the colonies a belief and value system, to operate as the subjective component of oppression (Fanon, 1961). The colonialists believe that the colony is a world without spaciousness; men live there on top of each other, and their huts are built one on top of the other. The native town is a hungry town, starved of bread, of meat, of shoes, of coal, or light. The native town is a crouching village, a town on its knees, a town wallowing in the mire. It is a town of niggers and dirty Arabs. To Fanon, the local society lives against a background of tradition where the traditional structure of society has remained intact, whereas in the industrialized countries it is just this traditional setting which has been eroded by the progress of industrialization. The colonized peasant who stays put defends his tradition stubbornly, and stands for the disciplined element whose interests lie in maintaining the social structure (Fanon, 1961:90). Antagonism does exist between the native who is excluded from the advantages of colonialism and his counterpart who manages to turn colonial exploitation to his account. The colonialists make use of this antagonism in their struggle against the nationalist parties, which do not organize the country districts. Instead of using existing structures and giving them a nationalist or progressive character, the colonialists try to destroy living tradition in the colonial framework (Fanon, 1961:91).

HIERARCHICAL ARRANGEMENT INTO ALLEGEDLY

Superior and Inferior Classes

According to Frantz Fanon's theory, the inner logic of oppression affirms a two-category system. It divides the human family into at least two hierarchically arranged groups: superior and inferior classes, rich and poor; master and slave; etc. In the case of the colonial system, oppression strategy breaks the human family into two distinct groups also hierarchically arranged into allegedly superior and inferior classes that correspond to human beings and natives. The colonial world is a Manichean world in which the settler paints the native as a sort of quintessence of evil (Fanon, 1961:33). What matters in the colony is not so much the individual's position in the process of production, but rather his belonging to a race:

In the colonies the economic substructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich. This is why Marxist analysis should always be slightly stretched every time we have to do with the colonial problem. It is neither the act of owning factories, nor estates, nor a bank balance which distinguishes the governing classes. The governing race is first and foremost those who come from elsewhere, those who are unlike the original inhabitants, "the others" (Fanon, 1961:32–33).

Although colonization is claimed to be non-racial in its basic assumptions, argued Fanon, it offered only relatively few people the opportunity of rising from the level of native to the status of human being through a process of Europeanization, i.e., complete alienation from their own history and culture. It thus caused frustration, compensatory phenomena and psychosomatic illnesses, all because of colonial alienation (Fanon, 1952:223). However, the racist created his inferior as illustrated by a variety of examples drawn from literature, films, and from Fanon's practice as a psychiatrist. Fanon noted that from time immemorial, in Europe whether concretely or symbolically the black man stands for the bad side of the character (1952:189).

These stereotypes, Fanon argued, are imparted to children of the white society at a very tender age through fairy tales and educational maxims taking the form of proverbs. The native is a persecuted person whose permanent dream is to become the persecutor (Fanon, 1961:42). Fanon therefore painted a bleak picture of the world: a world divided into compartments, a motionless, mechanistic world, a world of statues: the statue of the general who carried out the conquest, the statue of the engineer who

built the bridge; a world which is sure of itself, which crushes with its stones the back flayed by whips.

Imbalance of Power

This hierarchical arrangement of people into allegedly superior and inferior classes in the colonies is correlated with a gross imbalance of power, access to life-extending and life-enhancing resources and privileges. The non-natives, as the superior group or class, possess the un-observed surplus and the natives, being in the inferior class, possess a grossly disproportionate deficit. The allegedly superior group has the most of whatever the colonized country defines as the best, and the least of the worst. In stark contrast, the allegedly inferior class, "the native," has the least of the best and the most of the worst. For centuries, the colonialists have behaved in the colonized world like nothing more than war criminals. Deportations, massacres, forced labor, and slavery have been the main methods used by the colonialists to increase their wealth and to establish their power while reducing the wealth of the natives (Fanon, 1961:79). In the colonial system, the native is a being hemmed in by a system of apartheid. The first thing which the native learns is to stay in his place, not to go beyond certain limits, while the colonialists go beyond any limits, thereby possessing the un-observed surplus (Fanon, 1961).

Fanon (1961:109) noted that colonization uses two types of natives to gain its ends: the traditional collaborators—chiefs, caids—and witch doctors. The mass of the peasantry is stepped in a changeless ever-recurring life without incident, and they continue to reverse their religious leaders, who are descended from ancient families. The traditional chiefs that helped the colonialists to gain their ends are always ignored, and sometimes even persecuted. That is to say, power is never balanced within the two classes—the colonizer and the colonized. A clear-cut imbalance of power exists in the colonial system of justice, when the native is tortured, when his wife is killed or raped by the colonizers and his cohorts (Fanon, 1961:72). The oppressor's government can set up commissions of inquiry and of information daily if it wants to; in the eyes of the natives, these commissions do not exist because the native have no access to the results of such inquires. Fanon noted that in Algeria there had been seven years of crimes and there had not yet been a single Frenchman indicted before a French court of justice for the murder of an Algerian (Fanon, 1961:72). Criminal acts were encouraged by the fact that to the laws never applied to the colonizers who were above the law. The laws of the colonial master were therefore just empty formulas.

THE HIERARCHICAL DIVISION AND THE ESP

Inequalities Are Institutionalized

In the colonial system, this hierarchical division and the economic, social, and political (ESP) inequalities it expresses are institutionalized. Fanon noted that the French assimilation policy has inculcated into the colonized the idea that he might escape his underprivileged position only by wholly adopting French culture with virtually no opportunity of reinterpreting its form and content according to his own mental outlook (Zahar, 1974:89). Fanon noted that injustice is institutionalized in the colonial system, whereby the native “loses no time in lamentations and he hardly ever seeks justice in the colonial framework” (Fanon, 1961:66). In order to survive, the native has to lose his or her identity in favor of a French identity. Consequently, learning the language of the colonizer is institutionalized, i.e., one has to pass the colonizer’s language with a letter grade of “C” or better in the high school final-year examination in order to gain entry into a university or to have a decent job.

Fanon noted that learning the language of the colonizer is a prerequisite for any social advancement, for the mother tongue is completely banned from public life: from the administration, postal services, and transport, invoices, train schedules, or road signs. The unfortunate colonized who has no opportunity of learning the foreign language is a stranger in his own country. The rest lose their mother tongue and become proficient in a foreign language in order to belong, to survive. This problem was particularly ponderous in the Caribbean, where to survive, “The Negro of the Antilles will be proportionately whiter—that is, he will come closer to being a real human being—in direct ratio to his mastery of the French language. The bourgeoisie of the Antilles did not speak *creole*, which their children are taught to look down upon at school. Only a person capable of expressing himself in good French in the French colonies is feared and respected, albeit only by his equals. Both his colonial master and Europeans from the metropolis, for whose recognition the colonized has been striving by learning their language, show him their contempt. Irrespective of his proficiency in the language, Fanon noted, the colonial masters continue using a pidginized type of language when speaking to the locals (Fanon, 1952:18).

To facilitate this system of oppression, the colonial regime carved out certain channels to control the natives. They change the nature of the country’s export and not their destination, and reexamine the soil and mineral resources and the rivers using foreign capital of all kinds, technicians, engineers, skilled mechanics, and so on. Their argument was that they did not “believe that the colossal effort which the under-developed peoples are called upon to make by their leaders will give the desired results” (Fanon, 1961:79).

The colonial system did not care about the existence of different tribes. They separate and regionalize them for easy administration and for economic purposes, creating an atmosphere ripe for eventual intertribal wars. Fanon stated it this way:

By its very structure, colonialism is separatist and regionalist. Colonialism does not simply state the existence of tribes, it also reinforces it and separates them. The colonial system encourages chieftaincies for native administration for collection of taxes and keeps alive the old Marabous confraternities (Fanon, 1961:73).

The Creation of Suffering

Colonization can also be interpreted as a form of suffering created by the oppressor. The suffering is reducible to a form of inequalities of power or importance. The suffering created by the oppressor is (a) maldistributed, (b) negative, (c) enormous, and (d) non-catastrophic. This suffering is tantamount to ethnic suffering. The suffering created by oppression is not spread randomly and impartially over the total human race. Rather, it is concentrated in particular oppressed group or the colonized group resulting from their exploitation and their deficit of power. Human agents, the colonialists, cause this type of suffering.

As discussed in chapter 4, culture is everything humans have created or made, i.e., all human activities and products that enhance survival and well-being. The colonialists denied the colonized their culture, thereby creating suffering for them. According to Zahar (1974:89), the French assimilation policy unceasingly inculcated into the colonized the idea that he could escape his underprivileged position only by wholly adopting French culture and ways or outlook. The French modified local cultures using "exoticism," which thereby reduced cultural confrontation. Indeed, it was a form of cultural improvement whereby (as noted earlier) the learning of the language of the colonizer became a prerequisite for any social advancement. The mother tongue or the original language of the colonized is deprived of its written form and is completely banned from public speeches, including those made in the Parliament. Fanon noted that many politicians and writers from colonized countries and those still under the colonial rule are always in the dilemma of being unable to make themselves generally understood except in the language of the colonizer (Fanon, 1952:18).

Racism is one of the ethnic sufferings created by the colonists. Fanon noted in his book, *The Wretched of the Earth* (1961:30) that the most characteristic feature of the colonial situation is racism, which underpins ideologically the division of society into "human beings" and "natives" caused by the colonial

process of production. He argued that racism reduces the indigenous people to a natural object, a chattel, and turns the colonized into perpetual criminals and to everlasting poverty. In his discussion of racial discrimination, Fanon stated that racial discrimination, which is mediated by all the institutions of a colonial regime, determines the individual and social conduct of the colonized people, both in their living together with the other colonized and in their relations with the colonist. He states that the reasons for this can be found in the actual bipartition of the colonial world, characterized by domination and exploitation on the one hand, and in the imposition of a foreign culture and civilization, which is always a concomitant of oppression, on the other. The culture conflict, Fanon noted, to which the individual is exposed by growing up in a family of the traditional type, which conveys to him his own culture and religion, while at the same time being constantly confronted with the imported culture and its values, leads to uncertainty and anxiety in his behavior. He adapts to the foreign norms suggested to him by the school, the press, the radio, books, films, and publicity, and in the countryside with the help of the Christian missions (Fanon, 1968:162). This means at the same time that the racial stereotype of the colonized is internalized by the victim himself. Fanon argued that the victim reacts to this dilemma by mechanism of compensation, over-adaptation, and finally, self-hatred. This position is strongly supported by Zahar's (1974) in "Psychological Reactions."

Fanon further argues that alienated behavior on the part of the colonized can be discerned first of all in his attitude toward the institutions, language, and norms of his own traditional society and toward those of the colonial, mostly industrialized society. The colonial situation determines interpersonal relations even in their most intimate aspects: the secret behavior of the colonized who lives in close social contact with the colonial power assumes specific features conditioned by colonial racism. These stresses inevitably lead to psychosomatic illness and an abnormally high crime rate in the colonized society.

The Initiation of Violence through the Oppressor

From the beginning of colonialism, oppression has been initiated through the violence of the oppressor. History reveals that the oppressor always initiates violence as means to establish the economic, social, and political inequalities. That is, before the establishment of a relation of oppression, violence has already begun. Indeed, Fanon's definition of colonialism as the organization and the domination of a nation after military conquest presuppose the existence of violence. Fanon (1961:31) also noted that the colonial world is a world cut in two. The dividing line and the frontiers are shown by barracks

and police structures. In the colonies, it is the police officer and the soldier who are the officially instituted go-betweens, the spokesmen of the settler and his rule of oppression. In the colonial countries, the police officer and the soldier, by their immediate presence and their frequent and direct action, maintain contact with the native and advise him by means of rifle-butts and napalm not to budge. Bringing violence into the home and into the mind of the native through the police officer and the soldier helps in the exploitative ideal of the oppressor. The natives are sobered by fear.

Fanon (1961:67) conceived of violence as a process in which two faces can be distinguished, i.e., an initial violence by the oppressor, and revolutionary violence by the oppressed that is a response after the initial violence through the oppressor. In the first phase of violence by the oppressed, violence is directed spontaneously, without organization and as yet without any political concept against the foreign intruder, the colonial master. In the second phase, which extends into the period of formal independence, violence becomes organized and dovetails into the socialist revolution. During the first phase, argued Fanon, violence tends to do away with the psychological torpor and alienation of the colonized, and during the second phase, it changes the capitalist colonial structure, which produces alienated behavior (Fanon, 1961:67). The colonial world, in Fanon's view, is a bipartite world in which colonizer and colonized face each other without any chance of reconciliation or compromise. The colonized knows, according to Fanon, that his desperate situation allows only one solution: taking the colonizer's place by violent means. Whenever the colonized comes in contact with the world of his master, the latter demonstrates his strengths and superiority to him. The borderline between the world of the colonizer and that of the colonized is marked by army cordons and police posts. By killing his oppressor, by chasing him away through violence, the colonized cures himself of colonial neurosis and thus achieves his freedom of action which seemed to have been lost in apathy and torpor (Fanon, 1961:33).

Fanon argued that apart from the liberating psychological effect, violence has an integrating function, both politically and with regard to the dynamics of the group. It is only by performing an irrevocable action, an act of violence that the individual qualifies for a political activity in the resistance movement. But such action, he argued, may only take place symbolically and thus virtually check violence rather than unleash it (Fanon, 1961:72). Violence is thus seen as comparable to a royal pardon (Fanon, 1961:67). Fanon pointed to the un-political character of spontaneous outbursts of violence that expresses certain doubts on the part of revolutionary leaders as to the uncompromising attitude of the oppressed towards the colonial system. This spontaneous outburst of violence, however necessary it might be as psychological preparation

of the colonized for the liberation struggle, must be very quickly organized and channeled to productive venues before it runs out of control (Fanon, 1961:108).

Oppression and Anti-Powerism

It is necessary to differentiate anti-powerism from powerism. Anti-powerism regards power as essentially negative or evil, while Powerism expresses a quite different understanding about the role, state, and value of power in human affairs. Power from this angle of analysis is neutral, neither evil nor good; rather, its quality depends upon who wields it and for what purpose.

The colonialist conditions the colonized toward the philosophy of anti-powerism. The powerful among the oppressed are always subjected to powerlessness; in effect, a whole generation of the oppressed turns out to feel that power is essentially negative or evil. The native has always known that his dealing with the settler would be a difficult one. The powerful leader among the natives loses no time in self-pity and lamentations, and he hardly ever seeks for justice in the colonial framework. Instead, the native struggles to create blocs against the colonizer: "We must form ourselves into groups of two hundred or five hundred and each group must deal with a settler." For the natives, this powerful act represents the absolute line of action. Unfortunately, the powerful colonizers tend to win the day. In Algeria, noted Fanon (1961:67), all the men who called on the people to join in the national struggle were condemned to death, to be forgotten forever. Their birthdays were not celebrated until Algeria was liberated from colonial rule. This is an example of anti-power. As part of anti-power, the traditional chiefs who collect taxes for the colonial administrators are ignored, sometimes even persecuted. The old men, surrounded by respect in all traditional societies and usually vested with unquestionable moral authority, are publicly held up to ridicule (Fanon, 1961:92).

Inconsistency or Hypocrisy of the Oppressor

Colonialism theorists have noted that the oppressor's own deeds and dogma do reveal a fundamental inconsistency or hypocrisy. For instance, the process of colonization, which initially was about making treaties for trade, eventually ended up with domination and the rule of the oppressed. Colonial conquest, colonial administration, and exploitation, which are based on the oppression of the natives, are always justified as an attempt to bring the natives up to the level of rational human beings. Fanon (1964:83) noted that occupying forces represented by the soldiers, the police, and technicians control the

colonies. Under those conditions, noted Fanon, the colonialist's own people take refuge in ignorance of the fact and claim to be innocent of the ills of colonization. French assimilation policy, that implanted into the psyche of the colonized the idea that he could escape his underprivileged position only by wholly adopting French culture, eventually suffered rejection and alienation arising from colonization (Fanon's *Studies of Colonialism and Alienation*, 1964:89).

Since Fanon analyzed the colonial system as a form of oppression, the application of Fanon's theory is a basis for predicting the changes in the Nigerian legal code during the colonial era as a form of oppression of a people to maintain the colonial power.

REVIEW QUESTIONS

1. What is the component of oppression in Frantz Fanon's colonial model?
2. List the textbooks written and utilized by Frantz Fanon in his colonial model. Explain each textbook in detail.
3. Do you believe that some races are either inferior or superior to others?
4. What is alienation?
5. Compare racism and oppression of the people with the idea of colonialism as noted by Fanon.

Chapter Six

Application of the Colonial Model

KEY TERMS

- | | |
|----------------------|-------------------|
| 1. Advocate | 11. Majority |
| 2. Maintenance | 12. Threat |
| 3. Cultural Identity | 13. Colonialism |
| 4. Metropolitan | 14. Direct Rule |
| 5. Culture | 15. Indirect Rule |
| 6. Primitive | 16. British |
| 7. Amalgamate | 17. Counterpart |
| 8. Civil War | 18. Proletarian |
| 9. Minority | 19. Empire |
| 10. Initiate | 20. Expatriate |

INTRODUCTION

This chapter sets out to describe and analyze the changes that actually took place in the criminal legal code of Nigeria during the precolonial, colonial, and postcolonial eras as predicted by the maintenance-needs of oppression in Frantz Fanon's colonial model. Advocates of the colonial model have shown great interest in the relationship between colonialism and oppression and neo-racism. Among the advocates of the colonial model are Fanon (1952, 1961, 1964), Memmi (1965), Sartre (1968), Geismar (1971), Zahar (1974), Staples (1975), Kelly and Hamilton (1992), and Jones (1993), whose views on the updated colonial model and neo-racism were obtained through class lecture notes, VCR workshop presentations, personal conversations, and selected

published manuscripts. These theorists have argued that colonies were established for exploitation and trade rather than for settlement. In most instances, the colonizer merely ruled and exploited; he did not, however, seek to replace the colonized (Kelly & Altbach, 1978:21). Fanon (1961:81) argued that colonialism is not a type of individual relations, but the conquest of a national territory and the oppression of a people.

However, there are other social theorists, for example in the fields of sociology and criminology, who would summarily dismiss Fanon's model as lacking any relevance for understanding the relationship between colonialism and oppression and neo-racism. This application to the Nigerian case study merits a hearing since many countries in the so-called third world are still under indirect colonial rule. Those countries, supposedly decolonized, still depend on their former colonial masters for political reasons and for technology. Kelly and Altbach (1978) called this dependency neocolonialism, because it is still an integral part of the broad thrust of colonial relations emanating from the historical past, with these theorists see the industrialized nations attempting to maintain the status quo at the expense of independent development in the third-world countries. These countries, whether colonized or decolonized, tend to give this relationship considerable credence. Each country has used violence to attain political emancipation. Indeed, a number of revolutions have occurred as a result of colonialism and neo-racism. There have been also several civil wars or tribal wars within these countries, whether colonized or independent. These tribal wars resulted from wrongful boundary adjustments by the colonizers. Different tribes of Nigeria could have been different countries, but they were amalgamated for economic purposes and also for easy administration.

The colonizers viewed the colonized nations, or the so-called third-world countries, as underdeveloped, primitive peoples who needed protection and control (Zahar, 1974). Everything of the colonized nations was regarded by the colonizers as inferior, in need of being replaced by the metropolitan cultures. From the colonizers' viewpoint, the cultural heritage of the colonized had to be abandoned and replaced with that of the colonizer. Based on this analogy, it is more useful to view changes in the severity of punishment in the Nigerian criminal code as politics, injustice, maintenance need, and cultural identity, rather than to apply any generic non-colonial definitions. Fanon's theory of colonialism (discussed in detail in chapter 3) argues that colonialism is a subset of oppression, and that the colonial system is geared to the maintenance needs of the colonialists, i.e., the colonial system uses means and methods that include structured and institutional practices, specific beliefs, and a value system to achieve these ends. Thus, elements of the indigenous culture are changed, abandoned, or

left intact depending upon the colonial structural relation to the colonial system and its effective oppression.

The essential features of colonialism are manifest in Nigerian society. Nigerians have been, and remain, a group subjected to economic exploitation and political control; they lack the ability to express their cultural values without incurring serious consequences at the hands of the former colonial masters. They fight each other because they cannot afford to fight the real enemy (Zahar, 1974). During the colonial era, Nigerians were denied their right to equal justice under the law. The right to justice is an inalienable right; but for indigenous Nigerians during the colonial era, it was a privilege to be granted at the caprice and goodwill of the colonizer, who controlled the machinery of the legal system and were the agents of social control. The only thing the four British West African colonies (Gold Coast- Ghana, Gambia, Sierra Leone, and Nigeria) had in common according to Crowder, was their currency and the West African Frontier Force. However, in 1936, the British government appointed a governor-general for the four colonies for economic purposes and for easy administration (Crowder, 1978:239). Nigeria in particular and the other three countries were divided into "colony" and "protectorate." The colony represented the original coastal enclave in which the inhabitants were technically British citizens, for example, Lagos Colony in Southern Nigeria. The protectorate was the vast hinterlands, the inhabitants of which had the status of British-protected persons, meaning that these inhabitants were primitive and in danger, and were protected in their own country by the British government.

Crowder (1978:240) noted that the protectorate of Nigeria was divided into two distinct sets of provinces representing the former colonies of Northern and Southern Nigeria which Lord Lugard, the first governor-general of Nigeria, had amalgamated in 1914. In the interwar years, Northern and Southern Nigeria were administered progressively by a governor, lieutenant governors, and chief commissioners (Ade Ajayi, 1974; Crowder, 1978). Crowder also noted that the lieutenant-governors in British West Africa in general, and Nigeria in particular, had a great deal more independence and initiative than their French West African counterparts, particularly in administrative as distinct from economic policy. Administratively, Northern and Southern Nigeria were treated by the colonialists almost like two separate countries, with the north-south boundary often being referred to as "the frontier" in the correspondence between district officers and their residents. The political officers spent their lives in the exclusive service of either the north or the south, but almost never serving in both. This then raises the question as to why Lord Lugard, the first colonial governor-general of Nigeria, amalgamated Northern and Southern Nigeria in 1914. This was a wrongful boundary adjustment for

economic purposes and for easy administration (Zahar, 1974). The peoples of northern and southern Nigeria are distinctly different in culture, religion, and other aspects of life. The amalgamation of the north and south by the colonialists was the root cause of the tribal problems Nigerians are facing today. In fact, the Nigerian civil war of 1968–1970 was a direct result of the amalgamation of the north and south glossing over the deep-rooted material and political conflict that separate them. Nigeria could have been four distinct and separate countries: north, the Hausas; east, the Ibos; southeast, the Efiks and Ibibios; and west, the Yorubas. These four tribal groups of people are distinctly different in all aspects of life in appearance and culture.

The principal source of legislative authority in British Nigeria was the colonial governor, not the colonial office in London. Ade Ajayi (1974) noted that in 1923, the constitution introduced by Governor Clifford made the governor in council the principal source of legislation for Southern Nigeria, while the Northern provinces were ruled by him through proclamation. However, while a governor in council could initiate legislation, the colonial office, even after the governor had given it his assent, could disallow it in the name of the British monarch (Crowder, 1978). The legislative councils themselves were comprised mainly of the principal and more senior colonial officials. A few members of the council, mainly European, were nominated to represent the commercial interests of the British companies (Ade Ajayi, 1974; Crowder, 1978; Obaro Ikime, 1970). Nigerians in the legislative council, who were elected, constituted such a small minority that they were limited to criticizing bills, which they had no power to reject (Crowder, 1978). The legislative council, according to Crowder, provided little check on the authority of the governors. As earlier noted not until the Second World War were Africans nominated to the governor's executive council, composed of a majority of officials with two nominated non-official members. Non-official members in the governor's executive council were Africans who served as puppets, obeying the will of the governors (Crowder, 1978:241). Governor Graeme Thomas, the colonial governor in 1938, considered proposing two Nigerians to membership in his executive council, but members of his existing council persuaded him to drop the idea (Tamuno, 1970: 52–58). British West African governors, with their power to initiate legislation and subject to few checks from London or within the colony itself, were much more powerful than even the governor-general of French West Africa. This was so due to the size of the British Empire, the difficulties of communication, and the ignorance about the colonies that prevailed in the colonial office in London (Crowder, 1978:241). On the other hand, the governor-general of French West Africa was not the source of authority (Crowder, 1978:236). The governors-general and governors often drafted laws, but did not make them, and they were

limited to policy-making within the framework of the laws. This is the most obvious illustration of the highly centralized nature of the French administrative system, unique to France alone in the history of colonial administration (Crowder, 1978:236).

VIOLENCE, LAW, AND ORDER INITIATED BY THE OPPRESSOR

One of the key elements in securing the citizenry's obedience to a nation's laws is the belief of the citizens that the laws are fair (Staples, 1975). Although the purpose of law is controversial among jurists, there is, however, a common ground of agreement that law is a functional element in any society. The application of law, as indicated earlier, may have varied ends—the keeping of peace and order, the maintenance needs of the social status quo, the furtherance of the economic interests of the dominant class or, as this dissertation attempts to show, the stabilization of a colonial regime by outsiders over the indigenous people. But whatever goal is set for it by its manipulators, law is basically a device, a technique of social ordering, a means of practical action, and a means to maintain the needs of the dominant classes. In the colonial era of Nigeria, law was written by the colonizer for the protection of the colonizers and their property, to be enforced by the colonizers against the colonized in general and against those who threatened to oppose their administration in particular. Historically, there are arguments that the function of law in colonial Nigeria was to regulate the colonial relationship between Nigeria and Great Britain. Initially, the colonial system was established by laws and treaties signed by Nigerian leaders, emirs, and chiefs, which legitimated the oppression of the colonizers in Nigeria. The legalization of the colonial order was best represented in the colonial constitution itself. Adewoye (1977) noted that in 1880, most of the treaties concentrated more or less on peace and friendship with Britain, freedom of trade, assistance to British subjects in time of difficulties, and freedom for the propagation of the Christian faith. According to Adewoye (1977), Crowder (1978), Ajayi (1974), and Ikeme (1970), there was a noticeable change in the tone and even the objectives of the treaties and agreements made after 1880.

The scramble among Europeans for territories in Africa reached a high pitch at Berlin conference in 1885. Most treaties afterwards, according to Adewoye, began to enjoin local rulers not to enter into any treaty relations with other nations except with the knowledge and sanction of the British government. After 1880, in her treaties with some areas, Britain was demanding exclusive rights to work their timber, minerals, and other economic

resources, and was insisting on full and exclusive jurisdiction, civil and criminal, over British subjects and their property, in her treaties with other areas (Adewoye, 1977). This was easily achieved through corruption. As A. N. Cook has written, “the usual method of making treaties was to send political agents armed with blank treaty forms to the various kings, chiefs and headmen” (Cook, 1977:91). The provisions were then explained to the ruler by an interpreter before obtaining the ruler’s signature (Adewoye, 1977). Interpreters, for the most part, were half-educated Nigerians who, because of their own limited education, could not have conveyed to the indigenous rulers the full implications of the documents they were signing. There were instances where the interpreter did not understand the language he was supposed to interpret. Adewoye (1977) noted that the British preoccupation with treaty-making in Nigeria and elsewhere in colonial Africa revealed the British use of force and law in the occupation of territories overseas. The same traditional treaty-making methodology was used by the British in their colonial ventures in the West Indies, and in India, and on the American continent. Even before the treaties were signed, the Foreign Jurisdiction Act of 1843 had empowered the British Crown to establish laws and institutions and to constitute courts, officers for the so-called peace, order, and good government of Her Majesty’s (the Queen’s) subjects and others within existing and future settlements on or adjacent to the coast of Africa (Adewoye, 1977). The major goals of these treaties, as mentioned earlier, were to abolish the slave trade, to encourage legitimate trade, and to protect Christian missionaries (Elias, 1966).

Indirect Rule and Assimilation Policies

British Nigeria did not make use of confinement or cleansing as an administrative style, but the colonial government did use other administrative styles: cloning and “indirect rule.” The French applied the policy of assimilation in their administration, but the British applied Indirect Rule, a type of native administration, whereby the indigenous taxation system and the administration of native justice were given to the local chiefs and emirs, who were in turn authorized and supervised by the colonial governor (Crowder, 1978:119). It was also referred to as a cloning strategy, whereby the indigenous cultures of the tribes that made up Nigeria were cloned into the British culture. The two administrative styles—indirect rule and assimilation—used by Britain and France respectively in their West African colonies were very much similar (Crowder, 1978:119). Both styles, noted Crowder, depended on indigenous chiefs; that is to say that both powers had little alternative to the use of existing political authorities

as a means of governing their protectorates. Consequently, the nature of the function and power of the chiefs is very important in this analysis.

Indirect rule created inequality of power and position in the British system. The chiefs, under the indirect rule system of British Nigeria, ruled as "sole native authorities" (Crowder, 1978:119). They were permitted to administer traditional justice, which in the case of certain emirs in the Moslem areas of the north, included trying cases of murder for which a death sentence, subject to confirmation by the governor, could be imposed (Crowder, 1964). These chiefs and emirs were elected to office by traditional methods of selection, and only in the case of the election of a patently unsuitable candidate to office would the colonial power refuse recognition (Ade Ajayi, 1974; Crowder, 1978). In the case of the system of assimilation, however, the French rejected all ideological pretense to assimilation when it became clear that assimilation might ultimately lead to the colonized exerting power over the colonizer. The French realized, noted Kelly and Altbach (1978:23), that "if they allowed all Senegalese to vote and have proportional representation in the French National Assembly in Paris as the Four Communes of Senegal had . . . they [would] take over the Assembly." This realization made naturalization laws in other French colonies so rigid as to prevent Vietnamese, Algerians, and other colonized people from acquiring real French citizenship. The French people realized that as the colonized, the natives could be ruled; as citizens the natives would rule (Kelly & Altbach, 1978). The system of indirect rule, in British Nigeria with modifications, was practiced whenever possible in British colonies in West Africa and in most of her other African territories (Crowder, 1978). However, there were notable exceptions, for instance in Eastern Nigeria, where the absence of identifiable executive authority in most communities made indirect rule as practiced in Northern Nigeria almost impossible to apply. In such societies as in Iboland, the British assiduously made chiefs or invented them through democratically elected councils closely corresponding to the traditional methods of delegating authority (Ade Ajayi, 1974; Crowder, 1964). Crowder noted that the chiefs under the assimilation policy did not, except in rare cases, represent traditional authority. According to him, they were the agents of the colonial power for carrying out its more unpopular measures, such as collecting taxes and recruiting for labor. In most parts of West Africa, French colonies resented their chiefs, although the chiefs retained no traditional judicial authority such as that of their counterparts in British West Africa in their native courts. They were just agents of the law (Crowder, 1964). In theory, these local chiefs ruled under the guidance of the local administrator; in practice, they were the scapegoats who were made responsible for the col-

lections of money and men. For instance, Greene (1965) documented this servile relationship in a speech made by the first colonial governor-general of Nigeria in Sokoto, a town in Northern Nigeria. He stated:

The government holds the right of taxation and will tell the emirs and chiefs what taxes they may levy and what part of them must be paid to the government (pp. 43–44).

In return, the chiefs and emirs enjoyed the colonial administrator's favor. They had certain privileges, usually good houses and land, and in a few cases subsidies; but "unless they were completely subservient, they risked dismissal, prison, and exile" (Crowder, 1964). Assimilation, as practiced in the French West African colonies, was a highly centralized form of direct rule. It was a political assimilation into the metropolitan country through representation of the colonized in the General Assembly in Paris. The French were not prepared to undertake the massive work of transformation and discrimination in their colonies, thereby revealing the underlying concept of racial equality that characterized assimilation, as against the British tendency to the color ban of "racial inequality" (Crowder, 1974).

Economic and Social Policy (ESP) Inequalities

Is the notion of alienation as evolved by Marx and Hegel adequate for an analysis of colonial conditions? In order to give an answer to this question, the researcher must determine the level of economic development of the so-called underdeveloped countries, that is to say, all those countries which used to be, or still are, under colonial domination. Only a very few of these countries, noted Fanon, now poor, were not colonized. Zahar (1974) contended that the colonized countries were forced to become the supplier of raw materials for the metropolitan countries. Colonialism had reduced the natives (the colonized) to the status of proletarians who had to work in mines and on plantations (Marx & Engels, 1974). The colonized people were compelled to gear their production to the demands of a market economy, i.e., to cultivate products which they were no longer able to use for their own subsistence (Zahar, 1974:12). The case in point is the economic and social policy of British Nigeria. The major principles of the colonial economic relationship were to stimulate the production and exportation of cash crops (palm produce, groundnuts, cotton, rubber, cocoa, coffee, and timber). Other objectives included the encouragement of the consumption and the importation of European manufactured goods; and the provision of markets for exports and imports, with the metropolitan country concerned.

In order to achieve these objectives, new currencies, tied to the currencies of the metropolitan countries, replaced local coinage and barter trade. The

colonial economy was measured not by the welfare of Nigerian peasant producers, manufacturers, consumers, businessmen, or taxpayers, but solely by the increase of exports and imports in favor of the colonizer's home country (Crowder, 1978; Ikime, 1970). In theory, the colonial government adopted a *laissez-faire* policy of the state, thus encouraging but not directly interfering with trade. In practice, colonial currencies, banking facilities, navigation, judicial processes, customs regulations, and other measures, according to Crowder, ensured the domination of the economy by a relatively small number of large expatriate firms, such as The Royal Niger Company. These firms operated in collusion and agreed not to compete in one another's major spheres of interest. They also agreed on other monopolistic and discriminatory practices that effectively eliminated African businessmen from the import/export trade. As a result, African producers in general and those of Nigeria in particular did not enjoy the benefits of a competitive market in relation to either the price of their exports or the price of the imported goods they bought. When these expatriate firms needed labor, instead of paying a competitive price to the local laborers, they fixed a low wage. Sometimes, the political officer enforced this low wage through recruitment of contract and obligatory labor (Ade Ajayi, 1974). The price fixing was extended to freight charges whereby the West African Shipping Conference, representing the major expatriate firms due to their monopolistic characteristic of import/export shipping, imposed higher rates on nonmembers. As a result, the European firms, not the locals, reaped the benefit of the expansion of the colonial economy in the decade between 1919 and 1929 (Crowder, 1978). A few Nigerian merchants who had survived from the pre-colonial period found themselves in increasing difficulties. According to Crowder, these merchants tended to hold too much of their capital goods without reserves of cash for the difficult years, and the European banks would not aid them. The slump in the economy in 1920 ruined most of them, and the depression after 1929 virtually wiped them out of the export/import business (Ade Ajayi, 1974; Crowder, 1978; Ikime, 1970). Their resentment was one of the major factors in the rise of nationalist politics in the inter-war years (Crowder, 1978). The collection and the transport to the coast of export crops and the retail marketing of imported goods, which were exclusively in the hands of Nigerians in 19th century, were gradually passed to the expatriates: the large European firms, the Levantines and a few Greeks and Indians (Crowder, 1978). The European firms and banks showed greater confidence in these non-European expatriates by extending to them credit and banking facilities which were denied to Nigerian competitors.

The wretchedness of the third world countries today was indeed brought about by colonialism (Fanon, 1966). For instance, railroads were constructed

only in the areas that produced cash crops, such as palm produce, cocoa, rubber, cotton, etc., in order to export them to the metropolitan countries and import the goods made of them back to the colonized countries at high prices and taxes. Those areas that produced food crops, such as yams, cocoa yams, sweet potatoes, and vegetables were virtually denied the extension of motor vehicles and railroads. They were even denied schools, hospitals, and other amenities for survival and well-being. In principle, only those areas that had potential for growing cash crops or that had mineral resources were opened up by roads and railways financed by the colonial government (Crowder, 1978). A map of the railways and major roads in the 1930s represents a grid draining the exportable resources of the hinterland, or interior, towards the coastal ports. Ade Ajayi (1974) noted that the roads and railways were not built for the specific purpose of developing internal trade. In the 1930s, goods from Ibadan in Southern Nigeria to Enugu in the east had to be railed via Jos, a town in the northern region. The colonial regime in Nigeria, and Africa in general, did not encourage the manufacture or the production of local goods or commodities like yams, cassava, cloth, kolanuts, cattle, poultry, dried fish, etc. which had no export value to them (Crowder, 1978).

Infliction of Suffering

The British in Nigeria did draw the line at the alienation of land to Lever Brothers, a European firm, for plantations, but the agricultural research stations that were financed with the Nigerian taxpayers' money were exclusively restricted to cash crops (Ade Ajayi, 1974; Crowder, 1978). As a result, subsistence farming declined leading to the starvation and hunger prevailing in the so-called third world countries today. On a much smaller scale, the British colonial government used tariffs and other measures to reserve colonial markets as much as possible for the trade of metropolitan companies. There was no encouragement for the protection of the locally manufactured goods. No new industries were created to process the cash crops locally (Crowder, 1978). Not even the shells of peanuts were removed in Nigeria during the colonial era. This is because they did not want to introduce such technology into Nigeria.

To sum it up, the colonial regime in Nigeria and in other West African countries pursued only a one-sided laissez-faire policy. As far as the interests of the European firms were concerned, the successive administrations placed their resources at the firms' disposal to the disadvantage of the colonized people. Where the interests of the colonized were concerned, the administrators were indifferent and left the field free for the privileged Europeans to compete unfairly with the colonized (Crowder, 1978). That was the essence of

colonial exploitation (Ade Ajayi, 1974). The important case in point is public works—the roads/railways exporting the raw materials and minerals, and the harbors to ship the raw materials and cash crops. The colonists opened a few elementary schools to train interpreters and clerks, and a few hospitals to treat producers of cash crops. These have been a source of pride to colonial regimes, echoing that they developed the third-world countries, when in truth they exploited them.

The colonial system, noted Fanon, was based on a hierarchical order dividing everything into superior and inferior. Everything of the “natives,” including their culture, was inferior while that of the metropolis was superior. The indigenous cultural values, language, and religion of the natives had to be dropped as inferior, only to be replaced by the colonizer’s own cultural values. For example, the coming of the Christian missions to Nigeria that followed colonization condemned the traditional religion of the people of Nigeria as paganism, heathen and primitive (Talbot, 1968; Zahar, 1974). As a result, the indigenous religion of Nigeria was replaced by Christianity (Elias, 1956). The educational system and the language of instruction in schools, churches, the parliament, and business sectors had to be changed to the English language. The educational system had to be changed to the English system. The British in Nigeria concentrated a disproportionate amount of available resources on safeguarding the health of Europeans, British officials in particular, and paid only limited attention to the health of the Nigerian farmers whom they exploited (Crowder, 1978:247). Similarly, the colonial regime in Nigeria left the vital subject of education to a *laissez-faire* policy. Government involvement was very much limited to a few schools like the Yaba College of Technology, Lagos, for the sons of chiefs and emirs, intended to produce clerks, interpreters, chiefs and other agents of colonial administration (Ade Ajayi, 1974; Crowder, 1978). The colonial administrations, noted Crowder, supervised and eventually began to subsidize Christian missions to produce more clerks and interpreters needed by the commercial firms or for the grades of staff in the administrative and technical services that were too expensive to import from Europe. Those Nigerians and Africans in general who acquired higher education during the colonial era usually did so through their own efforts or the encouragement of the Christian missionaries. The locals who had gone overseas for further studies faced the insurmountable problem of unemployment, as a calculated technique used by the colonialists to discourage higher education and to keep the colonized in servitude and ignorance.

Furthermore, the colonialists used administrative measures to restrict the movements of Christian missionaries when it was acknowledged that the Christian missions were expanding faster in building schools and a few roads.

This was particularly true of the Moslem parts of northern Nigeria (Crowder, 1978). In all the impressive statements of the colonial officials, annual reports, official gazettes and other colonial publications, there is a little evidence of any conscious purpose or plan of the colonial regimes to create a new and improved social and economic order for Africans, in general and Nigeria in particular. Africans bore the cost of colonial administration, public works and services, while large European groups combined and enjoyed these services and drained the wealth of Africans. Thus, the colonial regime was merely for exploitation.

INEQUALITY OF JUSTICE: THE COLONIAL COURTS IN ACTION

The colonial courts had problems of personnel. The court of equity and their immediate successors, noted Adewoye, had no officer qualified in law. They administered their own notions of fair play and justice. The courts dealt with such cases as slave-dealing, firing on trade canoes, adulteration of palm kernels, and various types of civil disputes using individuals with no qualifications other than the knowledge of the environment, long patience, self-command and firmness (Adewoye, 1977). For instance, merchants dominated the court of equity and the supreme court of the Royal Niger Company, a British firm, between 1886 and 1899, in its area of jurisdiction, similarly did not operate with the usual formalities of an English law court (Adewoye, 1977; Elias, 1963; Obilade, 1979). In the trial of criminal offenses, the accuser was usually the crown prosecutor in Lagos or the district commissioner in the other areas of Nigeria. The judge sometimes played the role of accuser himself, as in the case of *Regina v. Ogundipe, Sadare, and Ajibara*, a case of robbery and assault tried in Lagos on September 6, 1875 (Adewoye, 1977). It was a usual practice, noted Adewoye, for Benjamin Way, chief magistrate 1863–71, to frame indictments for his own court and act as prosecutor and judge in the same case. The clerk of the court of civil and criminal justice selected jurors entirely at his own discretion. Illiterate Nigerians were not selected as members of the jury; jury duty was restricted only to those who could speak and write the English language. Those who were selected as members of the jury had questionable reputations and credentials in Lagos (Adewoye, 1977).

Corruption and indiscretion were not limited to the clerical or junior officers of the courts. Adewoye (1977) has clearly documented instances of miscarriage of justice: in 1871 a police magistrate, Josiah Gerard, was partial in his rulings in favor of a European merchant and The Queen's advocate, at

least until 1890, was taking private cases. The liberty given him to take private cases was supposed to be an economic measure. Intrusion of color prejudice into cases where Africans, Nigerians in particular, were involved was a bane of judicial administration in the Lagos Colony, as in some other British West African colonies (Adewoye, 1977; Crowder, 1978). The suppression by the colonial administration of the slave trade in its later stages that had been encouraged earlier by the same administration, involved three cases—*Regina v. Bickersteth*, *Regina v. Palmer*, and *Regina v. Ogoo*. These three men, according to Adewoye, were tried in July 1980; the cases involved alleged slave-dealing on the banks of the Niger River. In examining the circumstances of the trials of the three men, it is difficult to escape the conclusion that the criminal court in Lagos was bent on convicting the Nigerians (Adewoye, 1977). Their requests for jury trial were turned down; instead, they were tried by panels of assessors (non-Nigerian membership) with members ranging from three to five people. Outside Lagos Colony, colonial courts were used even more brazenly to further the interests of the colonial administration in grave matters of policy. The trials at the consular courts of some prominent Nigerians who resisted British penetration into the Niger Coast Protectorate towards the end of the 19th century provide ample evidence for this viewpoint. Those involved in the case included Nana Olomu, a great Itsekiri middleman trader in the Niger Delta who in 1880 collaborated with the British, but later was at loggerheads with them. Another trial was that of Chief Jaja of Opobo, a town in the present Akwalbom state, and other chiefs. In these cases, A. F. Locke, a consular agent for the Niger Coast Protectorate, accepted hearsay evidence, an unusual court practice in the home country of the colonialists.

Anti-Powerism

Most of the Nigerians named above were convicted and hanged publicly; some committed suicide instead of submitting to the disgrace of public hanging at the hands of the British. Chiefs Nana and Jaja were exiled from their home towns, and were later sentenced to penal servitude for life and forfeiture of goods (Adewoye, 1977). The paramount aim of Nana's and Jaja's trials seems to have been to secure their removal from the Niger/Opobo River deltas. Their presence was seen as a serious obstacle to the establishment of British rule and trading activities. Natives were forbidden to celebrate the birthdays of these great kings. Their greatness was acknowledged only after the end of colonial rule. In the eyes of the colonialists, these great kings and chiefs who opposed British penetration into the interior of Africa for exploitation were repugnant and rebellious, but to Africans, they are famous he-

roes. This is an anti-powerism philosophy inherent in an oppressive society such as the colonial system.

As of January 1, 1900, as modified by local legislation and by imperial acts extended to Nigeria (Colonial Office Report on Nigeria, 1950), the law applied in the Supreme Court and magistrates' courts was that in force in England:

The court may apply such native law as is not repugnant to natural justice, equity and good conscience, or to any other law for the time being in force, and must do so where the parties are natives, unless it appears that the transaction was one intended to be governed by English law or was one unknown to native law (Colonial Office Report on Nigeria, 1950:89).

It was noted in the Colonial Office Report on Nigeria (1950) that the law administered in a native court was the native law and custom prevailing in the area of the court's jurisdiction. These included any subsidiary legislation enacted by a native authority, and in force in the same area, and in addition to such ordinances as the court might be authorized to enforce by order of the colonial governor. The Moslem law was administered by the native courts in the Islamic areas of the northern region. Obilade (1979:83) made distinctions between the customary laws in Nigeria. He asserted that customary law consists of customs accepted by members of an ethnic community as binding among them. In Nigeria, he stated, "Customary law may be divided in terms of nature into two classes, namely, ethnic or non-Moslem customary law and Moslem law" (Obilade, 1979:83). He argued that ethnic customary law in Nigeria is indigenous. The system of such customary law applies to members of a particular ethnic group. Furthermore, Moslem law is religious law based on the Islamic faith and is applicable only to members of that faith. In Nigeria, he argued, Moslem law is not indigenous law; it is received customary law introduced into the country as part of Islam.

The colonial administrators of law and justice made it possible and necessary for the indigenous and the received customary laws to be tested and proved in both native courts before its application in the native courts among the litigants. It had to be proved that it was not repugnant to natural justice, and that it was equitable, and in good conscience. However, where there was conflict with the English customary law, the later took precedence (Obilade, 1979)

Marx and Engels (1947) noted that forms of production were characterized by the fact that the individuals as members of the indigenous community, owned the means of production, primarily the land, but in Nigeria during the colonial era, the rights of the indigenous people over their land were not acknowledged. The speech of the first colonial governor-general of Nigeria in

Sokoto Northern Nigeria attests to this fact. Among other things, the governor-general stated:

The government will have the right in land and to all minerals, but the people may dig for iron subject to the approval of the high commissioner and may take salt and other minerals to any excise by law. (Greene 1965, pp. 43–44)

Changes That Actually Took Place in Nigeria

Many changes actually took place in Nigeria during and after the colonial eras. In the precolonial era, (i.e., before 1861), there was no court system in the modern sense; chiefs or emirs in their indigenous communities presided over cases and settled them amicably (Onu & Odii, 1993). Other titleholders, such as Ogbuinyas, Igwes, Onyibas, Obas, and other selected elders of the community (Afoke, 1993; Odii, Nwelom, Nguata, & Nwali, 1993), assisted the chiefs and emirs. These institutions, according to Odii, Nwelom, Ngwuta, and Nwali (1993), used the services of witch doctors, medicine-men, and juju priests, i.e., individuals having magical powers. They also employed oracles and oath swearing to reach final judgments and to determine guilt in the difficult cases involving witchcraft and poisoning (Idowu, 1973; Parrinder, 1965, Nwali & Odu, 1993). The precolonial code of law made witchcraft capital punishment. However, the British in Nigeria during the colonial era (from 1861 to 1960) abolished these institutions and set up British-type courts as well as the jury system (Elias, 1962). The British colonial administration also abolished trial by ordeal as barbaric and inhuman, and replaced it with their own trial methods by the use of colonial judges, lawyers, and jury. Jury selection in the colonial era was restricted to those who could read and write the English language, thereby restricting and disqualifying many Nigerians from direct participation (Elias, 1962). The Nigerian government of the postcolonial era retained the use of juries, but abolished the British-type courts and instituted its own style of courts. In the postcolonial era, people who qualified to sit as members of a jury could be literate or illiterate, provided that such members were Nigerian citizens. Later, the jury system was abolished due to bribery and corruption in the country [Criminal Procedure, Ch. 43] trial by jury (Lagos) order in council under section 335:160]. However, the postcolonial Nigerian government continued in part with the British common law doctrine of *stare decisis*, or binding precedent. The constitution of Nigeria is presently based on the Nigerian statutes and the customary law (Obilade, 1979). There are, however, conflicts between English law and Nigerian customary law (Obilade, 1979:146). Rules governing internal conflicts between English law and customary law are contained in the various state high court enactments (Obilade, 1979:146).

In the colonial era, witchcraft was abandoned as the most serious crime and was replaced with treason and treachery as the most serious crime. Severe punishment, the death penalty, was inflicted on the offenders. Treason and treachery constituted political crimes, crimes against the colonial government's survival and well-being. The severe punishment of death for the crimes of treason and treachery was a threat to the potential perpetrators of these crimes, and served to maintain the needs of the colonialists, i.e., maintenance of the survival and well-being of the colonial government. This was in contrast to witchcraft, whose spiritual nature was regarded as the ultimate threat to the cohesiveness of the community, and thereby punishable with death. The significance of witchcraft lay in the belief that human beings and crops could be destroyed in secret, and that both males and females could be made barren.

Furthermore, the colonial system used the agency of natives to gain its ends, and the first of these agencies were the traditional collaborators—chiefs, caids, and witch doctors (Fanon, 1961:109). As we have already seen, under the indirect-rule policy of the British in her West African colonies, chiefs or emirs were allowed to maintain their status in order to collect taxes and to help in recruiting natives for forced labor. They administered political units that corresponded to those they had administered before the arrival of the colonial power. In theory, these local chiefs ruled under the guidance of the local administrators; in practice they were the scapegoats who were made responsible for the collection of money and men (Crowder, 1978: 199–203). Other maintenance-needs of the colonialists included a hierarchical arrangement which may be correlated with a gross imbalance of power and infliction of suffering, i.e., cloning of the indigenous culture, such as language, religion, etc., to that of the metropolis. The use of violence, “the first phase” (Fanon, 1961), and anti-powerism, a method of suppression of powerful native chiefs who opposed colonial administration, were meant to maintain the needs of the colonialists. The colonial schools' curricula, even though sponsored in large part by the Christian missions, were designed to produce clerks and interpreters, not professionals such as teachers, lawyers, doctors, or engineers. The railroads were designed and constructed to pass through the towns and villages that produced palm products and minerals to transport these raw materials to the metropolitan countries of Europe, not to facilitate communication and transportation, and improve the lives of the native people.

SUMMARY

This chapter applied Frantz Fanon's colonial model as a basis for predicting the maintenance needs argument in the colonial administration in Nigeria.

Indeed, Fanon analyzed the colonial model as a form of oppression. Fundamental maintenance needs are needed to preserve the two categories of legal power: institutional configuration/belief and value system. Maintenance needs of oppression include violence initiated by the oppressor, institutionalized configuration—i.e., indirect rule and assimilation policies, economic social and political inequalities, infliction of ethnic suffering, inequality of justice, inequality of power, anti-powerism, changes in the law, changes in the rank order of crimes, and changes in the rank order of severity of punishment.

The application of the colonial model in this chapter actually reflects the colonial rule which the researcher considers to be the maintenance needs of the oppressor.

REVIEW QUESTIONS

1. Discuss the advocates of Colonialism.
2. Who is Frantz Fanon, and what contributions impacted his colonial theory?
3. Discuss the ills of colonialism as an international crime.
4. What are the consequences of imperialism?
5. Explain the Colonial regime in Nigeria.
6. Discuss oppression and racism as applied in colonization.

Chapter Seven

Global History of Police, Law Enforcement, and the Police System in Nigeria

KEY TERMS

- | | |
|--------------------------------|-------------------------|
| 1. Conceptualize | 11. Origin |
| 2. Prosecution | 12. Corruption |
| 3. Discretion | 13. Biafra |
| 4. Constraint | 14. Constabulary |
| 5. Legitimacy | 15. Antiparty |
| 6. Inspector General of Police | 16. Project |
| 7. Recruit | 17. Royal Niger Company |
| 8. Intruder | 18. Regiment |
| 9. Espionage | 19. Dramatic |
| 10. Surveillance | 20. Obong |

HISTORY

Ancient Era (3000 B. C.–400 A.D.)

According to Konrad (2005), in early times, there was kin policing, with its liking for blood feuding and traditions of tribal justice/ cum intra tribal injustice. Many primitive villages or communities were and are believed to have had a moral form of law enforcement derived from the power and authority of kinship systems, rule by elders, or perhaps some form of totemism or naturism (Carter, 1995). In kin policing, the family of the offended individual was expected to assume responsibility for justice by capturing, branding, or mutilating the offender. To be sure, there were also theocratic institutions (religious temples, magic fortune tellers such as Igwe Nzi in Awka and Ibina

Ukpabi at Arochuku Abia State Nigeria shrines, and grand viziers), but these were probably used as a system of appeals (sanctuary, refuge), and for purposes not associated with justice. They were void of bribery and corruption (Konrad Adenauer, 2005).

Since war has existed, the police function has been somewhat inseparable from the military functions. Ancient rulers always kept elite, select units (bodyguards) close at hand to protect them from threats and assassination attempts, and although it was more theocratic than militaristic, the argument could be made that the first known civilization started in Egypt was a police state (Carter, 1975). In Mesopotamia, the rise of cities like Uruk and Ur was widely regarded as the “birth of civilization” (Konrad, 2005). However, these cities were in a state of constant warfare, and in terms of looking at which residents bore the closest resemblance to police officers, the argument could be made that captured Nubian slaves were the first police force. This group was often put to work as marketplace guards, Praetorian guards, or used in other mercenary-like positions. As a police force, their different color, stature, and manner of dress made them quite visible among the Mesopotamians. According to Konrad (2005), the idea of visibility then became the first principle of crime control.

With the rise of the city-states, came forms of criminal justice that could be regarded as chief or king’s policing. It is conventional to note that things like the Code of Hammurabi marked the first known system of criminal law and civil law jurisdiction as well as the start of other practices such as trials and sentencing. The Hebrews developed the Mosaic Law, and a rudimentary adversarial system. The Greeks experimented with highway patrol and jury trials in Athens as well as secret police and mercenary systems of Sparta (Konrad, 2005). Across Africa, trials were being conducted while sitting down on the *three-legged stools of justice*. Violators were brought before thrones of justice in the name of the crown, and to keep the peace meant, for the most part, keeping the king’s peace of mind. Greek philosophy (Aristotle and Plato) were largely responsible for popularizing the majesty of justice by associating good law and order with virtue (Zaire, 1998).

It is widely recognized that the first organized police force were the Roman vigils, the first group of nonmilitary and non-mercenary police. They were created by Gaius Octavius, the grand nephew of Julius Caesar, around 27 B. C. (Zaire, 1998). After his uncle was assassinated, little Octavius swore revenge and rose to power with a desire to reform Roman society (Craines, and Vaughn, 1999). Once he became ruler, he took the name Augustus Caesar, or more simply Augustus, the first emperor of Rome (Zaire, 1998; Konrad, 2005). Let’s take a close look at the steps involved in the establishment of the world’s first organized police force:

- Walker (1997); Walker (1988), Tonry and Morris (1992) and Reynold (1923) note the following steps of an organized Police force. What Augustus did was create a special unit, called the Praetorian Guard, to protect him from raids and assassination. 9000 men were selected and divided into several cohorts of 1000 each. Some of these cohorts operated as undercover operatives housed among the civilian residents. The Praetorian Guard eventually became involved in assassination plots themselves, and were reabsorbed by the military, to fight in the hot war zone.
- The second thing Augustus did was to create a daytime city for fire brigade men of 600 slaves and spread them among 14 separate precincts. The slaves proved to be incompetent and were disbanded, but the prefect (precinct) system proved workable (Konrad, 2005).
- The slave fire brigade was replaced by urban cohorts, headed by a prefect of the urban cohorts. These were a less select military unit of men who weren't good enough to get into the Praetorian Guard. They were several thousand of them. They were primarily responsible for fire safety during daytime hours, and they were fairly inadequate at it (Berg, 1998).
- The urban cohorts were supplemented by nighttime cohorts, and there were several thousand of them, recruited and selected from among freedmen only. Baley (1999) notes that there were known as the vigils (watchmen) of Rome, and were empowered not only to fight fires or Arsonists, but to arrest law violators. The prefect of the vigils eventually became a powerful man, passing judgment on most offenders/defendants, except for serious lawbreakers who had to be turned over to the prefect of the urban cohorts. The vigils were armed with clubs as well as short swords, sticks etc. They eventually took over the duties of the urban cohorts (Bopp, 1997).

Middle Ages (400 A.D.–1600 A.D.)

The middle ages either had no system of law enforcement or one of two systems, depending upon what part of the world you were in. Where law enforcement existed, it was most likely a variety of the watch system—a system premised on the importance of voluntarily patrolling the streets and guarding cities from sunset to sunrise (2 a.m. and all's well). The predominant function of policing became class control (keeping watch on vagrants, vagabonds, immigrants, gypsies, tramps, thieves, and outsiders in general). Despite some innovations during this period (the Magna Carta of 1215 being a notable example), most of this era was characterized by lawlessness and corruption. By the 1500s, there was no country in the world with more robbers, thieves, and prostitutes than England. Other countries, too, experienced lawlessness to

Table 7.1. Gendarme and Pledge Systems

<i>Gendarme System:</i>	<i>Pledge System:</i>
<p>The gendarme system was created by Charlemagne and is associated with centralized policing found in French speaking and Romantic language countries. The closest word in English to “gendarme” is “marshal” although “inspector” might be a close second.</p> <p>All gendarmes are considered agents of the crown, and can travel anywhere to bring anyone to justice. Gendarmes charge fees based on performance.</p> <p>Gendarmes were feared and respected professionals.</p>	<p>The pledge system was created by Alfred the Great (England) and is associated with decentralized policing by constables or deputies. This comes from the word frankpledge, a Norman version of the old Saxon tithing or hue and cry system.</p> <p>Each citizen is pledged to perform some kind of police work unless excused by a “shire-reeve” who appoints “constables” from among the watchmen. Constables were beloved amateurs.</p>

(Source: Internet Resource Links for Justice 2005)

such a degree that citizen groups, known as vigilantes, sprang up to combat crime (History of the British metropolitan Police, internet source).

Prior to 1066 (the Norman Invasion), the little villages of England operated under mutual assistance pacts known as the tithing system. All men over the age of 12 were required to be in a tithing, which was responsible for the behavior of its membership. If the tithing failed to apprehend an errant member, the entire tithing was required to pay restitution to any injured party. The chief tithing man was responsible for raising the hue and cry, or call to arms, whenever someone needed to be apprehended (Zaire, 1998; Bailey, 1981). Under the *frankpledge system* (1066–1300), ten tithings were organized into a “hundred,” supervised by a constable whom the local nobility appointed. The primary duty of the constable was to quartermaster the equipment of the hundred and raise forces quickly. Ten hundreds were further organized into a “shire,” supervised by a “shire-reeve.” Shire-reeves were considered the local representatives of Norman royalty, and had judicial powers along with judges who traveled the realm to hear cases. They also shared correctional powers with town bailiffs. Over time, the position of constable also came to represent the power of the crown, but it was a position that blended Norman authority with Saxon tradition (Berman, 1987, Mosse, 1915). When the English countryside was eventually divided up into parishes with aldermen and wards, it was the constables who emerged as the most important parish officials because the shire-reeves were mostly brutal, corrupt, and eventually run out of town (Zane, 1971).

An understanding of the Statute of Winchester of 1285 perhaps best summarizes the state of affairs. Among other things, this law did the following:

- it required every able-bodied man to possess a weapon (assize of arms)
- it made everyone in the countryside accountable in assisting with the apprehension of offenders (hue and cry system)
- it established a watch and ward night patrol to augment the daytime constables (watch system)
- it formalized the parish constable system known as *the frankpledge system* (Zane, 1971; Walker, 1999)

Colonial Era (1600 A.D.–1800 A.D.)

For the most part (some would say wholesale), the U.S. adopted the English version of the watch system (Bopp and Schuitz, 1972), which eventually became an unorganized American watch system. Shire-reeves became sheriffs; towns had constables who organized groups of security guards who in turn helped organize citizen volunteers. The mayors usually had a high constable or marshal as their right-hand man. It is important to note that primarily because of adoption of the English system, the U.S. system is characterized by: (1) limited authority (legitimacy problems); (2) decentralization (local control and variation); and (3) fragmentation and noncoordination of services (Rafel, 1977; and Conrad, 2005). The irony is that toward the end of this period, England was moving to abandon its watch system because institutions that are more efficient were springing up. The first among these were the Bow St. Runners in 1750 (the first detectives) and the Bobbies in 1829 (named after Sir Robert Peel, who were also called Peelers—“I spy blue, I spy black, I spy a peeler in a shiny hat”—the first professional police force in the world). Peelian reforms, as they would eventually be called, became the world standard, and included such things as discipline, appearance, recruitment, and visibility -omnipresence (Bailey, 1999; Reynold, 1926).

Walker (1997) noted that the American watch system primarily operated on the basis of hue and cry, which resulted in rather silent and unseen policing. Boston’s night watch, formed in 1631, was the first of this kind and consisted of 6 watchmen, 1 constable, and hundreds of volunteers. Although professionals were paid, unpaid volunteers did most of the work. In 1652, New York City (then called “New Amsterdam”) followed suit with a rattle watch, where patrol officers communicated with one another by shaking little wooden rattles (10-codes). NYC also adopted the Roman precinct system, using volunteers mostly made up the slave patrols to roam the South. Smith (1925) contends that the Carolina colony’s slave patrol of 1704 was the model for this meticulous policing, establishing the concept of knowing every square inch for 15 square miles—the police beat. American watchmen were often so dull

and were called leather heads, and sometimes minor offenders were sentenced to police work as punishment (Villa, and Morris, 1999).

Spoils Era (1800 A.D.–1900 A.D.)

The 19th Century required American police to adapt to large-scale social changes. It's called the spoils era ("to the victor go the spoils") because by the end of this Century, municipal police was firmly in the hands of big-city political machines. In fact, the history of the union workers' right to strike is part of the history of the well-known police "paddy wagon" to round up the often intoxicated Irish factory workers on picket lines (Conrad, 2005 and see important days in Police History on Internet Reserve).

Starting around 1835 and continuing until the 1890s, a series of industrial and race riots began sweeping across America, mostly involving Irish and Native Americans. Bopp and Schultz (1972) note that cities responded by assigning their police forces the riot control function, but they soon discovered that a volunteer, night-oriented watch system was inadequate. Day watches were likewise ineffective. Full-time, salaried police officers were needed. 1845 in New York City is the generally accepted date and place for the start of paid, professional policing in America (Carte, 1975). They were called Coppers, after the copper stars they wore as badges on their Peelian uniforms. They were available to control riots 24 hours a day and 7 days a week; they were also trained to think of themselves as better than the working class they were recruited from (Carte, 1975). They were armed with guns (like most citizens at the time) even when policy or public opinion prohibited it. Other cities followed and expanded on the New York model: Philadelphia with the use of wanted posters and a Rogues Gallery (mug shots); Boston with the use of informants, lineups, and detectives; Chicago and Detroit with rapid response via horse patrol or horse-drawn "flying squads." Rapid response caught on with most Americans, and soon municipal police came to be known by it. By 1911, all were motorized and exemplified the service function, or in Egon Bittner's words, fulfilling the need for "something ought not to be happening and something ought to be done about it now." The service function fit well with a spoils system, for obvious reasons (Walker, 1977).

Indeed, this era also saw the beginning of state police agencies. Although the Texas Rangers (founded 1845) are said to be the first state police organization, they became the stuff of legend only because of the atrocities they committed, like wiping out Comanche tribes or slaughtering thousands of Mexicans. Originally starting out as Rangers of the King, a group of henchmen for cattle baron, Richard King, the Texas Rangers personified the Western motto, "shoot first, and ask questions later." It's widely accepted that the

first professional state police agency was the Pennsylvania Constabulary who were originally formed to assist mine owners in breaking coal strikes. The Massachusetts State Police were also an early group, and Western states other than Texas had Rangers (Walker 1977; Walker, 1978). Furthermore, this era also saw the beginnings of federal police agencies, which were prompted in part by the California Gold Rush of 1848. Some of the first ones were the Postal Inspectors, IRS, Border Patrol, Secret Service, and what would later become the FBI shortly after the turn of the century. The model for federal investigators was Allan Pinkerton, a barrel maker who founded Pinkerton's Private Security Agency in 1855. Pinkerton's Agency busted strikes, secured the railroads, ended horse theft (via photography), provided military intelligence, and protected presidents. Pinkerton offices captured national attention on signs displaying an eye and the motto "We Never Sleep" were in almost every American city during the 1800s. This opened the way to other private security firms, like the Holmes burglar alarm company and the Brinks and Wells Fargo armored truck delivery services (Villa and Morris, 1999).

Progressive Era (1900 A.D.–1920 A.D.)

The first couple of years in the 20th Century saw a number of innovations, most notably the shift in policing from brawn to brain, and the end of miscellaneous duties like dog catching, verifying, and licensing. The spoils system was gradually repealed and replaced by a civil service system with the first anti-corruption Laws, "the Pendleton Act," which focused on eliminating nepotism (the hiring of relatives) while increasing job security (for others). Originally passed in 1883, the act was not enforced until 1900, and generally marked the end of spoils system (Gaines, Kappelen and Vaughn, 1999). Professionalism took place at the top with formation of the International Association of Chiefs of Police (IACP) in 1902. Its first president, Richard Sylvester, chief of the Washington D. C. P. D. was widely named and rewarded as the father of police professionalism. He believed in a citizen-soldier model, and was responsible for the development of the many paramilitary aspects of policing. August Vollmer, chief of the Berkeley Police Department, would become the patriarch of police professionalism by 1918. He advocated for a scientific crime fighter model, and was responsible for introducing America to crime labs, fingerprint repositories, and uniform crime reporting. Across America, bigger police stations were being built as job titles changed (from town marshal to chief of police, commissioner if elected and superintendent if appointed) (Villa and Morris, 1999).

Professionalism took place at the bottom with police unions. Technically, police unions don't exist as there are only benevolent associations that function as

if they were unions. The Fraternal Order of Police (FOP) was created in 1915, and was soon followed by American Federation of State County Municipal Employees (AFSCME), Teamsters, and the umbrella group, International Conference of Police Associations (ICPA). Police unions are unique (some would say non-union) because they cannot strike (Villa and Morris, 1999). Collective bargaining arrangements are much more common, with municipal police officers protected by them in 72% of departments (46% in sheriffs' offices) (Villa and Morris, 1999). The actual percentage of cases where an association actively represents a police officer as a union official is 36% (11% in sheriff's offices). Citizen groups became involved in police reform. One group that served as a model for the rest of the nation was the Chicago Crime Commission. Not an investigative commission, but a civilian oversight or review board, groups such as this helped bring intellectual ideas about the causes of crime to policing. For the first time, policewomen were given a chance to do real police work, not just work as juvenile matrons or undercover decoys. Interest developed in the idea of higher education being important for police officers as well as the idea of enforcing the law in neutral fashion- to serve and protect.

Gangster Era (1920 A.D.–1950 A.D.)

Reiner (2002) noted that the Gangster era started out with the Volstead Act (more commonly called the 18th Amendment or Prohibition) of 1919. A decade of trying to enforce an unenforceable law followed. Thereafter, a decade of widespread unemployment (the Great Depression) followed. Both events produced “big-time” gangsters, such as Al Capone, John Dillinger, Baby Face Nelson, Machine Gun Kelly, Bonnie and Clyde, who became heroes to the American people. It was inevitable that crime fighting would become the main function of policing in this era as police struggled hard to become as effective as the criminals seemed to be at becoming organized. Prohibition changed everything. The Volstead Act placed police officers in an adversarial role for the first time. Previously, they allowed public opinion to influence much of law enforcement policy, but then, they found themselves in the forefront of something called—vice control. The public had no intention of giving up alcohol, and the police had to resort to brute force and dirty tricks. To make matters worse, every time the police seemed to be successful at enforcing the alcohol ban, the power of organized crime increased. A lot of petty criminals (bootleggers) became organized criminals (gangsters) during Prohibition. Police had their hands full. New crimes like joyriding, drive-by shooting, ransom kidnapping, daylight bank robberies, etc, were emerging daily and very fast (Rainer, 2002).

In response to these changing situations, there was a need for leaders who could restore a perception of police as effective crime fighters. Two personalities emerged: J. Edgar Hoover and Elliot Ness. Between 1924 and 1964, Hoover rose from the ranks of the FBI (the G-men) to become its Director (the Boss). In 1929, Elliot Ness, who headed the Prohibition Bureau (later the ATF) also made a name for himself and his T-men. Both men were masters of public relations, and the image they instilled would keep organized criminals wondering who was going to get them—the G-men or the T-men. Hoover denied the existence of organized crime on definitional grounds, and concentrated on the depression-era folk heroes (and political subversives) (Reiner, 2000). He personally arrested the last of the Ma Barker gang in 1959. Both Hoover and Ness regularly used wiretapping, spy techniques, and the latest technology to ply their trade. They believed in their agents being above reproach and untouchable, and one of Hoover's most important contributions turned out to be the FBI National Academy which became a citadel of expertise in law enforcement (Villa and Morris, 1999).

Behind the scenes, there were others, perhaps more significant, contributors to police effectiveness—people who were not particularly good image makers, but simply innovative municipal police chiefs (Carte, 1975). They started movements, established legacies, and made real reforms. They included August Vollmer (Chief—Berkeley); O. W. Wilson (Chief—Wichita & Chicago); William Parker (Chief—Los Angeles), and William Wiltberger (Director of San Jose State University's Police School). Vollmer was accredited for founding the field of American criminology in 1941 (see *History of American Society of Criminology*) (Jeffery, 1990). Wilson went on to become a Dean of Criminology at Berkeley; Wiltberger founded an association known as the National Association of College Police School Administrators; and Parker went on to become a consultant for the TV show *Dragnet*, which he believed accurately portrayed his ideal for policing on the principle of “Just the Facts, Ma'am” approach to professionalism. Let's look at some of these historical figures in some detail.

August Vollmer

Vollmer was the police chief for Berkeley, California from 1905 to 1932, and professor of police administration at the University of California Berkeley from 1932 to 1937 (Jeffery, 1990). He is perhaps best known as the founder of the “college cop” movement and the author of the Wickersham Commission Report of 1931. If Richard Sylvester is to be regarded as the “father of police professionalism,” Vollmer is to be regarded as the “patriarch of police professionalism.” He successfully implemented a vision of police as scientific crime

fighters, and introduced America to such things as stop lights, police car radios, crime laboratories, and lie detectors, just to name a few of his many laurels (Villa and Morris, 1999; Reiner, 2000, and Bopp, 1972).

Vollmer's "college cop" movement Vollmer started initiated the idea that every police officer should have at least a bachelor's degree. At first, it was a short-lived movement, lasting from about 1921 to 1943, cut short by the demands of returning World War II veterans who did not have college degrees and wanted hiring preferences, regardless of other qualifications. However, in the early 1950s, a "second college cop" movement started with a push for master's degrees. This second push chronicled in published theses in the *Journal of Criminal Law, Criminology, and Police Science* and the spread of justice programs in academe by Berkeley graduates across states like Michigan (4), New Jersey (3), Washington (3), Pennsylvania (2), Florida (2), Indiana (2), Illinois (2), Kentucky (2), New York (2), Arizona, District of Columbia, Maryland, Missouri, Nebraska, North Carolina, Texas, Puerto Rico, the Netherlands, and China. There was also a "third Ph. D. college cop" movement started in the early 1990s. Back in 1941, however, Vollmer was really more interested in "high Intelligent Quaceint" since a lot of police jobs across the U.S. back then were regularly filled by people who were rather dull and feeble-minded, called "leatherheads" (Jeffery, 1990). For example, on the IQ tests available at the time, police officers in the city of Detroit scored an average of 55 while Vollmer's force scored an average of 147. Vollmer supported the police-woman movement precisely because he believed women had higher IQs than men. He also hired the first black person to work in law enforcement (Bayley, 1999; Berg, 1988).

Moreover, colleges and universities back then did not offer the kind of curriculum Vollmer thought "college cops" needed. What passed for criminology, for example, was either sociology or Lombrosian ideas about atavism. Vollmer had established a police training academy on the campus of UC-Berkeley, but it was widely renowned for courses in bicycling, photography, law, biology, and chemistry. Vollmer and law professor Alexander Marsden Kidd also established a summer session program in criminology (1916–1931). In 1928, he proposed the establishment of a school of criminology and in 1931, criminology courses in the regular school year sessions at the University of California at Berkeley. By 1933, Criminology became a major course, and by 1939, a Bureau of Criminology in the Department of Political Science and a Master's program in Criminology in 1947 were already established. The nation's first and only formally designed university "School of Criminology" at Florida State University was later established in 1950. It was only natural, then, for UC-Berkeley to house the first department of crimi-

nology in the nation, and Vollmer helped create it, eventually becoming Dean of the School, supervising a curriculum based on public speaking, sociology, psychology, abnormal psychology, and statistics (Jeffery, 1990; Young, 1997).

At various speeches during IACP meetings, Vollmer advocated a number of reforms, mostly related to the need for standardized training or modernization of law enforcement. One of the reforms he proposed was the establishment of a Uniform Crime Reporting system (UCR). After all, part of the success Berkeley Police Department enjoyed in reducing the crime rate to zero was due to its exceptional record-keeping system (ID and MO files). J. Edgar Hoover, of course, ended up getting the credit for the idea of a national crime reporting system—the UCR (Jeffery, 1990; Villa and Morris, 1990). The Wickersham Report was written almost entirely by Vollmer. It represented the first set of baseline standards for comparison and reform of police departments. Most of these eventually became CALEA standards for accreditation, but the Report contained a number of other recommendations needed and put into the effect, such as:

- Personnel standards—removal of employees, even the chief, “for cause”
- Communications & records—modern systems based on Berkeley model
- Salary & benefits schedule—fair schedules of pay and promotion by grade
- Separate units—for crimes involving juveniles and vice
- State information bureaus—crime data collection and analysis centers
- Training academies—creation of regional ones, such as the Northwestern Traffic Institute, Southern Police Institute, Wichita, San Jose, Michigan State (Villa and Morris 1999; and Conrad, 2005).

Orlando (O. W.) Wilson

Orlando Wilson, whom Vollmer called his “excellent college cop,” worked for Vollmer at the Berkeley PD and later became the police chief for Wichita from 1928 to 1939 and Chicago from 1960 to 1971. Wilson used up the years in-between as a postwar Civil Administrator in Europe and Dean of the School of Criminology at UC-Berkeley where he began the famous San Jose model of criminal justice education, involving “tracks” in law enforcement, corrections, and criminalistics on a criminology. He is perhaps best known as the architect of the *Police Code of Ethics* and the definitive police science textbook, *Police Administration*, co-authored with Roy McLaren. The book is a masterpiece of principles, tables, and formulas. It instigated such things as roll call training, swing shifts, and patrol allocation (Villa and Morris, 1999; Reiner, 2000).

Wilson's career seemed to intertwine with the move to remove politics from law enforcement. He started off with a strong push in Wichita, quickly firing or demoting over 22 employees, including a group he referred to as "deadwood detectives." He initiated integrity, psychological, and IQ testing, small spans of control, semi-rigid chains of command (commanders to captains), divisional structures, and eventually earned a reputation as a strict disciplinarian. He also directed the training academy in Wichita, which later became the West Point of law enforcement, and it placed so many chiefs around the country. While in Kansas, he wrote the *Square Deal Code*, which the IACP copied (not giving him credit) and proclaimed as the Police Code of Ethics (Ville and Morris, 1999; Reiner, 2000).

In Chicago, Wilson directly confronted the "Irish Style" of policing, a system of patronage where needy Irishmen got city jobs, by replacing police commissioner Tim O'Connor with himself as police superintendent. On an almost daily basis, he confronted the power of Mayor Daley and machine politics. He brought a number of blacks into law enforcement, putting a stop to the flat feet criteria that was used to discriminate Blacks. He modernized the duties of patrol officers, adding responsibility for preliminary investigations and expecting them to be computer literates. Psychological profiling was used on his officers as well as UNSUBs, and it was Wilson who helped solve the Richard Speck case. Just when he thought he had the Chicago Police Department under control and could ease into retirement, the police officers overreacted during the 1968 Democratic Convention, giving his legacy, the city, and law enforcement everywhere a reputation that would last several years (Jeffery 1990; Morris and Villa, 1999, Reiner 2000).

Revolutionary Era (1960–1970 A. D

The 60s were a time of civil rights, student rights, Vietnam, and the counter-culture movements. The nation experienced various assassinations and witnessed the beginning of alarming trends such as mass murder and serial murders. The number of police officers wounded or killed in the line of duty became a serious concern. About 100 police officers, along with over 300 citizens a year were killed (Villa and Morris, 1999). Despite wars on poverty and on crime, the crime rates escalated, tripling during the years in question. The police had to deal with major urban riots, and at least one Commission, The National Advisory Commission on Civil Disorders (1968), blamed the police officers for starting the riots by escalating routine traffic stops with their racism and discrimination. The police had lost whatever legitimacy they had earlier. Even the Supreme Court punished them. *Mapp v. Ohio* (1961) handcuffed the police with the exclusionary rule. *Miranda v. Arizona* (1968)

required them to read criminals their rights from little cards. The death penalty was abolished from 1967 to 1977 (Villa and Morris, 1999; Reiner, 2000).

One of the most noticeable commissions in criminal justice was the President's Commission on Law Enforcement and Administration of Justice, hereinafter known as the President's Commission. President Johnson formed it in 1965, and it issued several reports in 1967 called the Task Force Reports. In those days, colleges that offered criminal justice courses only had these reports to use as textbooks (Conrad, 2005). Each report addressed a specific area of criminal justice (Villa and Morris, 1999). The executive summary was called *The Challenge of Crime in a Free Society* (Reiner, 2000). The Task Force reports were extremely critical and influential. They provided the first model for the overhaul of the criminal justice system. Later, it became known as the "gun" model found in the opening pages of almost every criminal justice textbook today (Berg, 1998). The reports popularized the phrase "criminal justice system" which provided a body of knowledge. By 1976, colleges and universities soon started creating 2-year and 4-year programs in criminal justice. Computerized police information systems (NCIC, SEARCH) also sprang up at this time period. Interest grew for emerging fields such as police planning or criminal justice planning, and most academic programs called Administration of Justice were designed for producing such careerists (Villa and Morris, 1999).

The following year (i.e. 1968), Congress enacted and passed the Omnibus Crime Control and Safe Streets Act. There have been numerous Acts since then with the words "Omnibus" (comprehensive) and "Crime Control" in them, but most people would probably know which one we mean, which is the big one when one just says "the Omnibus Act" in criminal justice. The Act called for a great influx of money into the criminal justice system for a better law enforcement. It initiated and created the largest bureaucracy in the U.S. federal government through the Law Enforcement Assistance Administration (LEAA), which provided over \$7 billion for research, development, and evaluation of programs, 60% of the money being used up on police hardware. To give individuals some idea of the money involved, \$7 billion works out to about \$200,000 a year for any average sized police department who asked for it (Villa and Morris, 1999). Money was also provided for police education through a program called Law Enforcement Education Program (LEEP). For police who signed up for college classes (or students majoring in criminal justice), this program provided for tuition subsidies, book purchases, and in some cases, \$300 a month to spend anyway the recipient wanted as long as he or she promised to continue or find work in the criminal justice field. The LEEP, more than anything else, including the Task Force reports (which were the textbooks), had the effect of creating most of the academic programs

(LEAA clones) in criminal justice that exist at colleges and universities today. NCJRS (even as large as it is) is but a remnant of how large the LEAA-LEEP bureaucracy was (Reiner, 2000, and Bopp and Schultz, 1972).

Current Era (1970–Present)

The 1970s started out with an interest in Police Community Relations (PCR) and other innovations, such as the short-lived Team Policing experiment (involving demilitarization, blazers instead of uniforms, and patrol officers and detectives working side by side without any difference in rank). PCR was the dominant concern, and many private think tanks were started to help police out in this regard (PERF, Police Foundation, ABF, RAND, Mott Foundation). Some of the first successful programs were Open Houses and Ride Alongs, pioneered by the St. Louis Police Department among others. Some departments experimented with citizen self defense training, citizen police academies, or coffee klatches (community meetings or town halls). Police soon discovered through these outreach activities the importance and meaning of their public safety function. Fighting the fear of crime was just as important as fighting crime itself (Bayley, 1999; Villa and Morris, 1999).

Commissions, some formed by citizens and financed by private donations or community groups, to investigate police corruption (the oldest problem in law enforcement) were also active during the Seventies. The New York City Police Department has been the target of investigation by the largest number of commissions; so often, it almost seems like a 20-year cycle, for as depicted in Table 7.2.

The Knapp Commission was particularly influential in reminding police departments how important it was to maintain strong Internal Affairs units that did proactive integrity checks as too many departments at the time relied on reactive measures such as snitch boxes. The Knapp

Report also inspired some lines of research into police corruption, but in the end, it succumbed to the continued use of internal measures like snitches and Internal Review Boards. The Mollen Commission found, essentially, that

Table 7.2. New York City Police Department Investigations

1894	Lexow Commission	Tammany Hall machine politics
1913	Curran Commission	gambling, prostitution corruption
1932	Seabury Commission	alcohol corruption
1949	Brooklyn Grand Jury	gambling payoffs
1972	Knapp Commission	drug corruption (Serpico)
1993	Mollen Commission	drug corruption (Buddy Boys)

Source: Internet: Important Dates in Police History

the drug war was unwinnable. The temptation was too great when officers regularly made routine traffic stops, opened the trunk, and found suitcases filled with millions of dollars. The Buddy Boys were a whole precinct where the officers involved were actually buying (busting) and selling drugs. In recent years, the LAPD has also been the target of investigative commissions. In 1991, the Christopher Commission was appointed to look into charges of police brutality with the involvement of 15 officers and the brutal beating of Rodney King. Its close look at racism and especially the tapes from the computerized consoles officers communicated with during the chase led to the Commission's adoption of an anthropological approach to the study of police culture (Gaines and Kappeler, 1999).

The current era (1980s and beyond) is identifiable with the latest reform in policing—the community policing movement. Actually, the idea of problem-oriented policing came first, as focusing on a somewhat centralized approach to pinpoint problems and coming up with creative solutions. Community policing is decentralized and tries to go beyond PCR in implementing “a philosophy based on good citizens and police working together with informants in creative ways to help solve contemporary problems related to crime, criminal fear of crime, disorder, and decay.” Both are examples of the brokerage function of policing, where police could be the information and implementation specialists in a network of community services and untapped resources. Community policing focuses on crime, not really the criminals hence it doesn't give up the crime fighting function. It also focuses on fear of crime, therefore it recognizes this as a separate war and takes an ongoing public safety and service functions and functioning. Thirdly, community policing focuses on disorder (Broken Windows), which are non-arrestable offenses, hence it returns policing to a constable-era order maintenance need function. Community policing focuses on decay and notable informants, which are the physical signs of disorder (broken windows), involving police in such things as graffiti removal, beautification, and quality of life concerns (Tonry and Morris, 1992). Since Sept. 11, 2001, police have been trying to integrate homeland security functions into their role in society. Much of this has involved getting as many police officers as possible screened for security clearances, but much of it also has involved grants for complete technology and other communications forensic technical being used today (Gaines and Kappeler, 1999). But how the Nigerian equation fits in is the focus of the next sections.

Introduction

The police systems in Nigeria, during the pre-colonial, colonial, and the post-colonial eras, had different functions and structures (Ijetta, 1988). Its relationship

to the state and the people has also changed very dramatically (Ngwuta, Onu, & Odi, 2000). Police corruption and bribery and other misdeeds that obstruct the course of justice have been evident since the end of the colonial era. However, while the pre-colonial and colonial police officers were relatively uncorrupt, they were brutal in their law enforcement. The present police system in Nigeria has reportedly abused its powers of prosecution, arrest, search, seizure, and investigation by using those powers in an abusively discretionary way (Ekpenyong, 1987). Generally, police personnel are not accorded any respect due to bribery and corruption inherent in the system. In fact, the police in Nigeria stand in stark contrast to the ideal picture conceived by police experts. Generally, a police system can be conceptualized as the internal arrangement or component parts forming the whole authorized agency of individuals entrusted with the responsibilities of law enforcement and other assigned duties, such as the prevention and detection of crime, the apprehension of offenders, and the protection of life and property (Haward, 1931).

Nigerian society is ethnically and religiously polarized (Ijetta, 1988). These societal characteristics, according to Ijetta, affect the functions and operations of the Nigerian police. The postcolonial structure and functions of the Nigerian police reflected those of the British police system (Ekpenyong, 1987). It was the transformative processes that helped to redirect or reshape the relationship of the police with the people. This was possible after the formation of police community relations in Nigeria through Inspector General Edit Enyang's scheme in 1962 (Ijetta, 1988). The aim and objectives of police public relations are to create a forum where members of the police force can interact with the public to discuss and explain to the public the nature of their duties as well as the constraints and problems confronting the police force. Members of the public are also expected to discuss their complaints advanced against the police with a view to solving them in order to make police work easier. In the pre-colonial and colonial eras, there were no police-community relations, so it was very difficult for the police in these eras to interact freely with the people. As an agency of the state, and in view of the limited resources available and the competition for political power, those who dominated state institutions or those who had access to state power, used the police in pursuit of their own personal, ethnic, community, or class interests. These practices of the people in power not only eroded the legitimacy of the police, but contributed to its inefficiency and ineffectiveness.

The following historical milestones are worthy of note in that each has changed the police system from one era to the other in terms of structure, functions and functioning, and relationship to the state and the people (Nwali, 2003):

1. The colonization of Nigeria by Great Britain in 1861 marked the end of the pre-colonial police system.
2. The introduction of English law into the colony of Lagos in 1863 clearly identified the type of laws to be enforced by the police of the colonial era.
3. The Northern and Southern Protectorates of Nigeria were amalgamated in 1914 to form what constitutes Nigeria as a nation. This was done by Lord Lugard as the first Governor-General of the Protectorate of Nigeria. The amalgamation helped to unite the Southern and Northern police forces into the same structure and function.
4. On October 1, 1960, Nigeria became an independent nation, which marked the end of the colonial era and the beginning of the postcolonial era (Elias, 1963).

Political independence had a tremendous impact on the Nigerian police system, because it dramatically changed the personnel, operations and functioning of the postcolonial police in Nigeria. The type of laws enforced by the police also changed as a result of political independence. The creation of more states from the two regions (the 12 states out of the four regions in 1967, the creation of 19 states out of 12 states in 1976, the creation of an additional 2 states out of the existing 19 states in 1987, and also the creation of an additional 9 states out of the existing 21 states in 1991) to the number of 30 changed and affected the structure and the command system of the Nigerian police force, in terms of personnel, salary range, police population. The increase in states inevitably led to the recruiting of more police, most of whom had poor or no education and/or lacked professional qualifications. Also, the recruitment of low-skilled demobilized soldiers and the low salary scale, which has lagged behind the national minimum, are allegedly at the root of the current police corruption in Nigeria (Ekpenyong, 1987,:8).

THE PRE-COLONIAL POLICE SYSTEM

Introduction

The pre-colonial police system of Nigeria is more difficult to describe because of the unavailability of written records. However, the researcher relied on the only written resources available and in-depth interviews. In the pre-colonial era of Nigeria, that is, before 1861, a native police system existed in every community. Members of the police were known by various tribal names, such as Ogbo Ogu or Ndi Oje Ozi as in Oshiri, a town in an Ibo tribal community. Members of the police were armed with a knife and a short stick

about 20 inches long for defense and combat against intruders and violators of community norms and rules of conduct (Iwarimie-Jaja, 1987).

During the pre-colonial era, the police, had no branches, nor were they unionized, but served mainly as messengers and guards for traditional rulers, such as Obas, Ezes, Igwes, and Emirs in their homes, families and council of chiefs' courts. As a private police system, they performed a variety of duties ranging from guard duty, to combat, espionage and surveillance for the traditional rulers (chiefs), who paid them weekly wages.

Origin of the Police System

The pre-colonial police system of the tribes of the Upper and Lower Niger had no known origin, unlike the postcolonial counterpart that originated from the British police system (Nwogo, Nwukpa, & Nwali, 2004). However, the pre-colonial police were selected by the council of chiefs and emirs from age-grades who fought the inter-tribal wars and had distinguished themselves as warriors. They were not found among those who had violated community norms and rules of conduct (Iwarimie-Jaja, 1987). Those who qualified had to be at least 5 feet, 6 inches tall, and must have been natives of the tribe they were to serve (Njoku, 2004).

Training

The enforcement officers had no formal training in the use of guns; rather, each was armed with a knife and a short stick about 20 inches long for defense and combat against violators of community norms and rules of conduct (Nwowuru & Njoku, 2004). The precolonial police had no education, because there were no schools at that time. Nor did they have any professional qualifications other than the skills acquired in the course of tribal wars.

Duties

The pre-colonial police had the powers to prosecute violators of any community's norms and rules of conduct, and to arrest, search, seize and investigate norm violators in the chief's and family courts (Odi, Onu, & Ngwuta, 2003). Police served mainly as messengers and guards for traditional rulers (the Obas, Ezes, Igwes, and Emirs) in their homes, family courts, and council of chiefs' courts. As private norm violation enforcement officers, they performed a variety of duties, as already mentioned: guard duty, combat in intertribal wars, espionage, and surveillance for the traditional rulers and chiefs, who paid them weekly wages (Nwelom & Ngwnta, 1993). At this time, there

was no systematic study of police corruption and there was no evidence of corrupt activities due to the juju, or black magic that guided and prevented such corrupt activities. The pre-colonial police investigated, searched, and arrested witches, who were the worst criminals during this era (Odi & Nwelom, 2003). The offenders were punished by death if proved guilty. Other crimes, including murder, were investigated; those proved guilty were sentenced to exile by the chief's court. Changes in the law during the colonial period made treason and treachery the worst crimes punishable by death, so the colonial police came in as persecutors of crimes of treason and treachery.

THE COLONIAL POLICE SYSTEM

Origin of the Colonial Police

In 1861, following the annexation of Lagos-Nigeria by the British government, a consular guard was established in the Bights (Gulfs) of Biafra and Benin to enable the British consulate to maintain order, and to carry out its consular assignments (Iwarimie-Jaja, 1988). The force (consular guard) was needed by the consul to pacify the new colony of Lagos, which had numerous problems in its early stages of development. In 1863, the consular guard became known as the Hausa guard. The consular guard was made up of 30 men who were trained and equipped for duties, which were more military than civil. In 1879, the Hausa guard was regularized by an ordinance creating a constabulary for the colony of Lagos. This force was known as the Constable, and was commanded by an inspector-general of police. The name Hausa Constabulary arose from the fact that the personnel who made up the constabulary were mostly drawn from the Hausa tribe of Nigeria (Aigbe, 1989; Iwarimie-Jaja, 1988).

The Hausa Constabulary performed both civil and criminal duties (i.e., for cases between individuals, criminal prosecution, arrest, search, seizure, and investigation). The typical Hausa constable was tall, fierce-looking, and generally loathed by the indigenous people of Nigeria. The Hausa Constabulary was seen as an instrument for punitive measures in the hands of the colonialists; hence an increase in the severity of punishment geared to the maintenance needs of the colonialists. These characteristics are the origin of the antipathy which built up and has persisted between the modern police and the people of Nigeria. The modern police force has been striving to correct this public antipathy by projecting itself as the people's friend through the creation of "police community relations," which were lacking in the colonial police system. There has been considerable success in correcting this public

hostility between the police and the people, but the old habits and beliefs die hard (Aigbe, 1989:3).

In 1896, the Lagos police force was created and armed like the Hausa Constabulary. It was headed by a commissioner of police. In 1898, a criminal investigation department was also established (Iwarimie-Jaja, 1988). This force, according to Aigbe (1989:4), was the same in character as the Hausa Constabulary. The commissioner of police who headed the Lagos police force was also in charge of the fire brigade and the prisons. The areas now constituting Edo State, Delta State, Rivers State, Cross River State, and Akwa-Ibom State were declared as the Oil Rivers Protectorates by the colonialists (Burns, 1977:6). They were noted for trading activities in palm oil at the rivers that flowed into these states. The Oil Rivers Protectorates formed their own constabulary in order to protect the trading activities (Burns, 1977:5). The Oil Rivers Constabulary became the Royal Niger Coast Constabulary (a private police force), under the control of the Royal Niger Company (a British-chartered firm in the colonial era) (Crowder, 1978). The Niger Coast constabulary, according to Iwarimie-Jaja, was used to protect establishments, personnel, and other activities of the company. The Royal Niger Company also formed a counterpart of the force along the River Niger Coast in Northern Nigeria with the headquarters at Lokoja (a town in the middle belt of Nigeria where the Benue and Niger rivers joined). The force here was also called the "Royal Niger Constabulary" (Iwarimie-Jaja, 1987). The charter of the Royal Niger Company was revoked in 1900 (Burns, 1977:4). As a result of the revocation, the Royal Niger Constabulary was reorganized with the parts forming what was known as "The Northern Nigeria Regiment" and "The Northern Nigeria Police Force," respectively. In Southern Nigeria, the Royal Niger Coast Constabulary and the Lagos police were also reorganized to form the "Southern Nigeria Police Force," and "The Southern Nigeria Regiments," respectively (Iwarimie-Jaja, 1987:2). The reorganization saw the regiments as performing the more military types of assignments, while the police became more committed to civil duties (Iwarimie-Jaja, 1987).

The northern police and the southern police forces were merged under the command of an inspector-general of police. This was the origin of the police force in Nigeria as a national outfit with its headquarters in Tinubu Square, Lagos (Iwarimie-Jaja, 1987:4). When the country was transformed from the provincial administration to regions, the Northern, Western, and Eastern regions were created. These regions came under the command of commissioners of police under the overall command of the inspector-general of police. During this era, local or native authority police existed, along with the modern police, in the Northern, Western, and Eastern regions, as well as in the Midwestern region created in 1963 (now Edo and Delta states). Iwarimie-Jaja

(1987:5) found that the native authority police forces were not changed; rather, they were used as tools in the hands of the native authorities, such as chiefs, emirs, obongs, and ezes, to exert retribution from those opposed to them in political orientation. This was because the colonial powers recognized chiefs and emirs for the purpose of taxation. What remained of the native authority police in the Northern states was merged with the Nigerian Police, and those of the Eastern and Midwestern states were disbanded (Iwarimie-Jaja, 1978:6). This was because the northern state police command was more loyal to the colonial powers than the southern police command.

In 1955, the Western regional government merged all the native authority police forces into a provincial police force that later became known as “local government police.” In the North, the same reformation exercise took place. By the end of this era, attempts were made at indigenizing or Nigerianizing the police force. During the transitional period of 1958, the constitutional conference rejected the idea of maintaining a separate or regional police system; rather, the people advocated merging the local police forces and the Nigerian police force. By the provisions of the Nigerian constitutional order-in-council of 1960, independent Nigeria established a unified federal police force known as “The Nigerian Police Force”—NPF (Ekpenyong, 1987:6).

In general terms, colonialism and the institution of a police system by the colonialists were meant for exploitation, alienation of a people, and for their maintenance needs. In Nigeria, the police very much enhanced this exploitative goal of the colonialist by subjecting the natives to severe punishments and other kinds of humiliations leading to exploitation. The hierarchical arrangement of people into allegedly superior and inferior classes was in operation in the colonial police command system of Nigeria. This was evidenced by the fact that Britons were the superior officers at the top of the colonial police ladder, with a surplus of power, privileges, and resources, while the natives of Nigeria in the police system experienced a marked deficit of power and privileges (Fanon, 1961; Zahar, 1974:13). Fanon noted that exploitation, torture, raids, racism, collective liquidation, and rational oppression took turns at different levels, even in the police system, in order literally to make of the native an object in the hands of the occupying nation.

POSTCOLONIAL NIGERIAN POLICE FORCE

As noted earlier, the postcolonial Nigerian government upon the attainment of independence in 1960 abandoned the regional and local set-up of police systems that existed in the colonial era and replaced it with a unified federal police system known as “The Nigerian Police Force” (NPF) (Aigbe, 1989,:2;

Ekpenyong, 1987:6; Iwarimie-Jaja, 1988:4). The creation of the first 12 states of Nigeria (East, Central, Midwestern, Southern, Rivers, Western, Northwestern, Benue, Northwestern, North Central, Kano, Kwara, and Lagos) affected the command system of the police force, as mentioned earlier, but restored the unification system, (i.e., merged the regional and local police) which became more stabilized and more sophisticated (Ekpenyong, 1987:6). The Nigerian police force in each state was under the command of a commissioner of police, each responsible to the inspector-general of police. The police commands were increased to 20 in 1976, when six additional states and the federal capital of Abuja were created. In 1987, the police commands rose to 22 in number, when Katsina and Akwa-Ibom states were created and added to the already-existing 19 states. The already existing states were: Anambra, Bauchi, Bendel, Benue, Borno, Cross River, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers, and Sokoto.

The growth, structure, and function of the force have depended largely on the political history of Nigeria. Since independence, there have been several political conflicts in Nigeria, particularly in the struggle between the center and locality for the control of the state system and the national cake (Aigbe, 1989:4). The attempt by the Easterners to secede, the various episodes of political instability marked by struggles and rivalry among political parties, and the abuses of power which have often led to military coups give credence to this fact (Aigbe, 1989:4). In 1963 the force was reconstituted under the 1963 constitution; a police council was created and vested with powers in respect to policy, organization, finance, establishment, and condition of service to members. By this same constitution, a police service commission vested with powers concerning promotions, appointments, and discipline of officers (Membere, 1983:4) was also established. No significant change was made within the force between 1963 and 1965, but with the military coups in 1966, political, institutional, and administrative disruptions caused the suspension of some sections of the constitution. This created the opportunity for the establishment of a 12-state administrative structure for Nigeria and caused the police force to establish the 12 police area commands which later expanded to 19, following the creation of additional states.

Before the military takeover from the First and Second Republics, various political and traditional groups were in conflict over who was to wield the most power in relationship to the national economy. These groups, particularly national groups, used the police against their opponents to gain power and resources during the 1979 and 1983 elections (Iwarimie-Jaja, 1988). In effect, the contemporary police system in Nigeria assumed the primary role of carrying out its functions in accordance with the *Police Act* and the whims

and caprices of those in government. The force is charged with responsibility for the prevention and detection of crime, the apprehension and prosecution of offenders, the preservation of law and order, and the enforcement of all laws and regulations with which it is charged (Ijetta, 1988).

Police work at the higher levels (beginning with the assistant superintendent) centers on administrative duties in offices. Officers at this rank and above carry pistols, while lower ranks do not carry pistols, except on special assignments. Their work centers mainly on the police post. Generally, recruitment into the Nigerian Police Force is highly competitive, whether at the rank and file or the officer entry level. Today, members of the force receive some of the best training offered anywhere in the world, but they receive less salary than do some of their counterparts in developing and developed countries. These fiscal discrepancies account for the public belief that some members of the force are corrupt (Ijetta, 1988; Iwarimie-Jaja, 1988).

Nigeria, rich in minerals and agricultural exports, has encountered serious problems with its economy ranging from inflation, a high rate of imports to gross disparities in income distribution. The contracting economy and government austerity programs have necessitated retrenchment, pay cuts, and freezes on employment. This, in turn, has resulted in an increase in the crime rate, and in public disturbances, particularly crimes of violence and students' riots and demonstrations which, in many instances, have compelled the police to use weapons, leading to the subsequent deaths of robbers, students, and police officers (Ijetta, 1988). Currently the command of the police system in Nigeria is in the hands of the inspector general, who is assisted by five deputy inspectors-general who are individually in charge of each of the following directorates: operations, finance and administration, crime investigation, logistics, and police training and command. The force continued to exist as a separate body, not under the Ministry of Defense. However, it is now a part of military administration and decision-making machinery. The Inspector-General of Police is a member of the Supreme Military Council, the Federal Executive Council, and the Council of States. The Federation of Nigeria is divided into seven zonal structures, each headed by an assistant inspector-general, each of whom is assisted by a commissioner of police in each respective state. The fundamental reason for the present structure is to promote effectiveness, efficiency, stability, discipline, and control.

The police system in Nigeria does not receive all the support or cooperation it needs from the public to execute properly its multifarious duties. Sometimes the police face accusations from individuals, groups, and even the mass media that somewhat damage their image. Despite the good work of the police public relations department (to be discussed later), the police still find it difficult to build a good image in and with the community. The public feels

that the police have failed woefully to fulfill their normal duties. In the exercise of their powers, the police have been accused of various misdeeds that have obstructed the course of justice (Ekpenyong, 1987:8). In addition to some of the abuses we have already discussed, the present Nigerian police allegedly solicit bribes and other emoluments, extorting sums of money or other favors from crime suspects (Ekpenyong, 1987:8). So far, there has been no systematic study of police corruption practices, but it has even been reported that some crimes are committed with the cooperation of the police. It is also alleged, and sometimes there exists practical evidence, that criminal evidence and reports are destroyed by the police, arrested persons released without trial, criminal charges and prosecutions dropped, all in exchange of favors or other benefits. Ekpenyong (1987:8) also noted that false charges are reportedly made against innocent and ignorant citizens, criminal investigations suspended, and driver's licenses issued or renewed without the legally mandated driver's license tests. Some of the police lack adequate literacy as well as proper professional qualification and etiquette. This is because most of the police officers in the NPF have only an elementary school diploma, but they have "forged" high school diplomas in their names. In addition, the low salary scale is thought to be a contributory cause of the misdeeds of the police and the high attrition rates (Aibge, 1989,:2; Ekpenyong, 1987:8; Membere, 1983:3).

NIGERIAN POLICE AND COMMUNITY RELATIONS

Introduction

It is difficult to trace a clear and precise path in the development of police community relations. Obviously, Robert Peel had some feeling for it when he caused the establishment of the police of the Metropolis in London in 1829. While setting forth some basic principles of police operations, Peel advised the English constables that "a perfect command of temper is superior in violent action" (Haward, 1931:6). This advice was a beginning response to an anticipated negative reaction on the part of the public to the establishment of a police force in a free country.

Public Relations

Definition: Public relations can be defined as a planned and sustained effort to establish and maintain mutual understanding between an organization and the various people with whom it has dealings (Ijetta, 1988:1).

Formation of Police Community Relations in Nigeria: Edet's Scheme

The Edet's Police Public Relations Scheme, formed in 1962, tried to tackle the problem of public relations bureaucratically, emphasizing the role of the human element. Under this scheme, not every police station or police post was a public relations office. Consequently, there were millions of villagers who, in because of difficult transportation or through ignorance, could not make their complaints known to the provincial or regional police public relations offices. An ideal solution, which could have required every police officer to behave as a practicing mobile police public relations officer, was merely recording public complaints against the police. Until 1965 or earlier, the Nigerian Police Force did not see any likelihood of injustice in requiring the police to investigate and resolve complaints against the police force. The later premier of Western Region, Chief S. O. Akintola, commented in the Parliament on March 23, 1955, backed by an eminent judicial opinion expressed outside this country by Lord Campbell, the Chief Justice of Britain, that,

It is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest (Ijetta, 1988:10).

It is in this vein that Edet's Scheme failed to resolve the longstanding conflicts which arose from adopting the professional and nonprofessional approaches to the delicate matter of establishing mutually satisfactory machinery for handling public complaints against the police. The public understandably feared that in the complaints made against the police, the latter would emphasize only their own professional angle. The public therefore stressed independence and wanted to see justice on their part done. The police justifiably feared that an independent tribunal, set up to handle such complaints, would take away from the superior officers their important disciplinary role over the junior ranks. They therefore resented the idea of a potential source of achieving this objective.

POLICE COMMUNITY RELATIONS IN NIGERIA

Aims and Objectives

The aims and objectives of police public relations are to create a forum where members of the police force can interact with the public to discuss and explain to the public the nature of their duties to the communities, and the

constraints and problems confronting the force. It is in the same forum that members of the public are expected to discuss their complaints levied against the police with a view to solving them once and for all in order to make the police work lighter. Experience has shown that there is a lack of knowledge among some members of the police force and the public about the respective powers, rights, and obligations either side is expected to fulfill in order to achieve the objectives for which the police were established. The ultimate objectives of the Police Community Relations Committee include the need to bring about closer ties and foster better understanding between members of the Nigerian Police Force and members of the public. This is to promote better understanding and thereby to improve the performance and effectiveness of the police (Ijetta, 1988:10).

THE ROLE OF CITIZENS IN ASSISTING THE POLICE IN CRIME CONTROL

The introduction of Police Public Relations has helped a lot to enlighten members of the public about the roles they are expected to play in assisting the police to prevent and detect crimes committed in their areas of work and in the community in which they live with members of the public. Without the help of the community, the prevention and detection of crimes would have been an impossible task for the police. Consequently, the police need assistance from the community to succeed in this major task of crime-prevention. The role of the police becomes complex and places the officers in the middle of society, making it increasingly difficult to function among the existing laws, rules, and the rapidly changing values of the society. The police officers are called upon to play a wide variety of roles, so each needs the experience of an arbitrator, social worker, lawyer, and doctor, without being trained for any of these professions. He or she must not only comprehend complex social issues, but must deal with a variety of cultures, which are often in conflict with each other. The police tackle all these forms of problems in addition to the statutory duties of law enforcement, so each police person needs the help of the general public to execute his or her statutory and other duties even reasonably effectively, let alone reaching the ideal level of excellence both the police and the public desire.

ACHIEVEMENTS OF POLICE COMMUNITY RELATIONS

The police public relations officers in Nigeria have been able to link members of the public with the police in some areas of crime control by issuing press

releases and displaying suggestions regarding crime links at strategic places. They also advise the public to

1. Help the police to help the community.
2. Employ reliable domestic servants.
3. Provide security lights (street lights).
4. Advise the police if you intend to leave your premises for any length of time.
5. Do not permit your domestic staff to harbor strangers in their quarters.
6. Always properly lock your vehicle and the fittings of special security devices, and avoid parking the vehicles the wrong way.
7. Do not give rides to strangers.
8. Seek police protection when collecting payments (salaries) from banks.

The Police Personnel Relations Officer as an Instrument for the Control of Crime

The police personnel relations officer (PPRO), as an instrument for the control of crime, has also succeeded in the areas of (a) prevention of crime; (b) detection of crime; (c) arrest of offenders; and (d) helping to stimulate the desired cooperation between the police and the public, and between the police and other arms of the government.

Police Community Relations—Inyang's Scheme

In 1984, Etim Inyang, Inspector-General, introduced the formation of Police Community Relations Committees at state and divisional levels (Ijetta, 1988:4). Each committee was comprised of the police, the traditional rulers, and eminent persons in the community. At the meetings of the committee, matters affecting the police with regard to prevention and control of crimes were discussed. At this forum, the public gained insight into some of the problems militating against the ability of the police to perform the numerous tasks of crime control and prevention effectively and efficiently. Among these problems are a lack of transportation and inadequate equipment available to the police for the performance of their duties. Through this scheme, some communities and other groups of people in many states have donated transport vehicles, equipment, and other materials to the police to enable them to carry out their duties (Aigbe, 1989:4).

On August 27, 1991, the then Supreme Military Council, headed by President Abraham Babangida, announced the creation of 9 new states from the existing 21 states, making the number of states in Nigeria a total of 30. They are

Abia, Abuja, Adamawa, Akwa-Ibom, Anambra, Bauchi, Benue, Borno, Cross River, Delta, Enugu, Edo, Imo, Sigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Oshun, Plateau, Rivers, Sokoto, and Taraba (Clements, 1992). This state creation affected the command system and the organization of the police. As stated earlier, each of the Nigerian states has a police force under the command of a commissioner of police, each responsible to the inspector-general of police.

The Nigerian police force derives its legitimacy from the constitutional provisions of the 1979 Federal Constitution, which in section 194(1) states as follows:

There shall be a police force for Nigeria, which shall be styled the Nigeria Police Force and subject to the provisions of this section. Other police forces shall be established for the Federation or any part thereof.

194(2) Subject to the provisions of this constitution: be referred to the president or such other minister of the government of the federation as may be authorized in that behalf by the president for the directions (Nigerian Police Regulations, 1968; Police Act, §154).

The salient points of the foregoing constitutional provisions are:

1. There shall be only one police force—the Nigerian Police Force—for the country.
2. The command of the Nigerian Police is vested on the Inspector-General of Police, who shall be appointed by the president.
3. Each state command shall be subject to the authority of the Inspector-General of Police under the command of a Commissioner of Police, who is appointed by the Police Service Commission, the Police Council, which itself has its members appointed by the president.
4. The president or a minister so designated can give the Inspector-General of Police such directions as may be necessary for the maintenance and securing of public safety and public order.

There is a similar provision that operates between the governors and the commissioners of police in the states. However, where a commissioner of police has any misgiving about any direction, he may request that the matter be referred to the president or a minister so delegated by the president for his direction. The import of this constitutional provision is that the police force as an organization is designed to serve as the executive organ charged with the maintenance and securing of public order and public safety.

The police act as a follow-up, according to the functions of the police force as set forth in Section 4 of the Police Act of 1968:

- (a) The prevention and detection of crime;
- (b) The apprehension of offenders;
- (c) The preservation of law and order;
- (d) The protection of life and property;
- (e) The due enforcement of all laws and regulations with which they are directly charged;
- (f) To perform such military duties within or outside of Nigeria as may be ordered by the president.

The task of the police enables the government at both the Federal and State levels to maintain peace, law, and order, and thus allow healthy development in the political life of the country.

With a healthy political life, stability is guaranteed and hence economic activities and developments have a good atmosphere to go on unencumbered (Nigeria Police Regulation, 1968, Ch. 154 of Police Act).

THE NIGERIAN POLICE TRAINING CENTERS

In response to the increasing clamor for the professionalization of the police, many police commands have not only attempted to recruit college graduates, but have also sent more of their recruits and officers to training programs offered by different institutions at various locations around the country. The training centers are:

1. Police Staff College, Jos. In addition to the training of officers, the Staff College helps in the development of the much-needed high-level manpower by offering advanced courses to serving or in-service senior officers in all aspects of police work and thus reducing the dependence on overseas courses.
2. Police College, Ikeja-Lagos. This institution used to be the country's premier police training college and it provides training courses for cadet inspectors, promotional training courses for serving members at various levels up to the inspectorate rank, conversion courses for direct-entry specialist personnel, and basic training for recruit constables.
3. Police College, Kaduna. This institution provides basic training for recruit constables and promotional courses for serving members of the force.

4. Police College, Enugu. This institution provides basic training for recruit constables and promotional courses for serving members of the force.
5. Police College, Maiduguri. Provides basic training for recruit constables.
6. Refresher Course Schools. These provide in-service training for serving rank-and-file members of the force in each state of the Federation (Mem-bere, 1983).

ROLE OF THE TRAINING CENTERS

The role of the training centers is to offer training courses for cadet inspectors and other officers, including recruits, depending on the type of instruction. The institutions also provide promotional training for various officers and recruits. The institutions also provide in-service training for serving rank-and-file members of the force.

POWERS OF THE TRAINING CENTERS

The Training School has the power to promote its members as soon as the training is completely and successfully done. The Training Schools or Centers have the power to rank the members of the force as follows, from the lowest to the highest rank:

- (a) Constable (recruit)
- (b) Corporal
- (c) Sergeant
- (d) Sergeant Major
- (e) Inspector unconfirmed
- (f) Inspector
- (g) Chief Inspector
- (h) Assistant Superintendent unconfirmed
- (i) Assistant Superintendent
- (j) Deputy Superintendent
- (k) Superintendent
- (l) Chief Superintendent
- (m) Assistant Commissioner
- (n) Deputy Commissioner
- (o) Commissioner
- (p) Assistant Inspector-General
- (q) Deputy Inspector-General

(r) Inspector-General (Ijetta, 1988)

POLITICS WITHIN THE POLICE FORCE

There were no obvious political problems within the precolonial police system (Njoku, 2004; Nwelom, 2004:2). This was because the selection of the precolonial police was not based on serious political consideration; neither did they use academic qualifications for recruitment. The selection was basically dependent on individual performance in the intertribal wars (Nwali, 2003). However, the council of chiefs' court sometimes had to demand more police officers than the family courts due to complications in deducing evidence, and at times like these, problems were always solved by the oath-swearing courts. There was no bribery or corruption; juju societies took care of all political problems, including contempt of court.

In the case of the colonial police system, there were but few political problems. This was because there were no political parties in the protectorates and moreover, the population of natives in the colonial police system was small. Those natives within the system occupied only the lower cadre and had no power to recruit or fire any officer. The colonial police officials recruited more natives from the north due to their loyalty to the colonial system. Moreover, the northerners had the physical characteristics, such as height (5 feet, 6 inches or more), required by the system.

POLITICS WITHIN THE POSTCOLONIAL POLICE SYSTEM

Nigerian independence in 1960 brought about a major political landmark in the country, and this had its direct impact on the Nigerian police. Prior to independence, the Nigerian police force was administered under inspectors-general, who were Britons. Independence meant a political change, which was bound to affect the leadership of the police force. Even though J. E. Hodge, the incumbent Inspector-General of Police during independence, stayed until 1964, the officer cadre of the force witnessed a steady expansion with more Nigerians coming into the police force. The first Nigerian Inspector-General of Police, L. O. Edet (now deceased), took office in 1964. The period that followed saw the quick phasing out of the expatriate officers. The Cadet Inspector and the Cadet Assistant Superintendent of Police schemes introduced in 1956 and 1971 respectively accelerated the preparation of suitable, qualified Nigerian personnel to fill up the positions in the rapidly expanding post independence Nigerian police force.

The compositions of the Nigerian Police Force in the pre-independence and early-independence periods were not based on serious geo-political considerations, such as region of origin, tribe, or religious inclination. There was a call to national service which Nigerians from all corners of the country were expected to answer. However, due to greater awareness and more favorable cultural and local situations, the response to recruitment into the police force was greater in the southern states of the Federation, although the response was low in the river areas. Response in the north was active, probably because of better options open to potential recruits. The result was that after 30 years as an independent nation, some sections of the country had a preponderance of men and higher officers in the police force, while some sections had only nominal representation. Although no deliberate obstacles were placed in the way of any Nigerian, the unenthusiastic response from those sections poorly represented has seriously distorted the federal character of the force. Section 14(3) of the 1979 Federal Constitution states as follows:

The composition of the government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal Character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or a few ethnic or other sectional groups in that government or in any of its agencies.

The importance of this provision is the political exigency of having all sections represented in the police force, as well as in other bodies. The Constitution has the genuine intention of seeking to correct the imbalance in the force. The Constitution would not, for the sake of political exigency, deliberately want to undermine discipline, merit, and productivity, not would it seek to embrace mediocrity in the effort to correct the imbalance in the police force. The imbalance in the Nigerian police force has taken over 60 years (since 1930) to build up, so it is only prudent to go about correcting it gradually and systematically. Rush promotions in which seniority and experience are jettisoned tend to paint a picture of injustice within the police force. The imbalance has to be corrected to justify political exigencies and to enhance national stability, but the modus of seeing to it requires a reexamination for justification.

It is necessary at this point to mention some more of those problems which the game of politics in Nigeria has injected into the police force. These are ethnicity, state consciousness, religious intolerance, and corruption. These vices, unfortunately, have had negative influences on the problem of correcting the imbalance of representation in the federal police force. It is wise to deemphasize the above-mentioned problems in the interest of a virile, dynamic, and efficient Nigerian police force.

POLITICAL INFLUENCE ON LAW ENFORCEMENT

Law enforcement is not only a governmental agency function, but also a part of the political system. It is important to understand the various external and internal political influences that affect law enforcement. The police department, in its attempt to execute its duties is subject to influences from the outside as well as to the department's own influence upon its environment. Internal political influences move both down through the hierarchy and, to a lesser extent, up the chain of command. Certain influences are also horizontal; that is, they function on only one level and are peer-group oriented. Finally, politics are at work when decisions must be made as to who should be hired, retained, and even promoted.

CONSTITUTIONAL POWERS OF THE POLICE

1. Section 19 of the Police Act. This section gives authority to the police to prosecute all criminal cases before any court of law, whether or not the information or charges are laid in their name. This authority is as amended by Decree No. 35 of the 1969 Section 213 (2) (3) of the Criminal Procedures Act (CPA), which is also relevant.
2. Powers to Arrest without Warrant. Section 20 of the Nigerian Police Act empowers the police to arrest without warrant in the following circumstances:
 - (a) Any person whom police find committing any offense, etc.
 - (b) Any person accused by others of having committed a felony or misdemeanor.
 - (c) Any person whom some other person suspects of having committed a simple offense, provided the person accusing the suspect is willing to make a statement to that effect and give evidence in the courts against that suspect. Section 10 of the Criminal Procedure Act (CPA) and Section 26 of the Criminal Procedure Code (CPC) also confer powers of arrest without warrant on the police officers.

Preventive power of arrest without warrant is also provided under Section 55 of the CPA. More powers of arrest without warrant during "State of Emergency" were derived under the provisions of the Armed Forces and Police (Special Powers) Decree No. 24 of 1967. Section 3(1) of this provision also empowers the Inspector General (IG) to order the arrest and detention of any person if the IG is satisfied that such person is, or recently has been, concerned or involved in any act or acts prejudicial to public order or in the preparation or instigation of such acts and that as a result it has become necessary to exercise

control over such person. The Decree was, however, repealed by Decree No. 5 of 1979.

3. The power to stop and search is derived from Section 25 of the Nigerian Police Act. The police have the power to stop and search any person whom they reasonably suspect of having in his or her possession, or conveying, anything in any manner which the police have reason to believe has been stolen or unlawfully obtained.
4. The power to arrest without warrant is contained under Section 21 of Nigerian Police Act 29 of the CPA and 61 of the CPC.
5. The police also have the power to serve summonses under Section 22 of the Police Act. This power can be exercised by any police officer at any time during the hours of daylight.
6. After exercising his or her powers of arrest and detention, a police officer also has the power to release on bail the person or persons arrested. This power is guaranteed under Section 23 of the Police Act. But the police cannot release arrested persons on bail if such persons are involved in non-bailable offenses, such as murder, treason, felony, robbery, etc. Section 24 of the Police Act authorizes police to enter without warrant any house, shop, building, or other premises to search for stolen property and to seize and secure such property, provided that the property found is the property being searched for. The Superintendent of Police (SP) can sign for this type of authority.
7. The power to break into any building or room while in pursuit of a criminal who entered such building or room is provided for under Sections 7 and 8 of the CPA and Section 34 of the CPC. Section 79 of the penal code, however, except such building or room if it is inhabited by a woman who is not a wanted person or who, by custom, does not appear in public.
8. The power to stop/disperse any unlawful assembly/procession is provided for under Section 72 of the Criminal Code, and Section 73 of the Criminal Code as a preventive power.
9. Section 27 of the Police Act grants the power to hold regular assemblies and processions. This power is now being exercised by the military.
10. The authority to issue a warrant under the Official Secrets Act is vested in the hands of the Assistant Commissioner of Police under Section 5 of Police Act No. 29 of 1962, and is relevant when a search warrant is to be issued under the same act.
11. Any person who refuses to aid the police is to be arrested, if such officer is assaulted or in danger of being assaulted. This power is contained under Section 41 of the Police Act.

Table 7.3. Pre-colonial, Colonial, and Postcolonial Police Systems: Differences and Similarities

Differences	Pre-colonial	Colonial	Postcolonial
Birth	Before 1861	1861	1960
Origin	Age-grade who fought intertribal wars Ogbo, Ogu, or Ndi, Ojeozi	London Metropolitan police Southern and Northern Regional Police Force	Southern and Northern Regional Police Force Nigerian Police Force
Popular Names			
Type of laws enforced	Investigated witchcraft crimes; enforced community norms and rules of conduct	Investigated treason, treachery crimes; enforced trade laws, etc.	Investigated armed robbery, murder, traffic crimes, etc.
Arms used for crime Prevention & control	Knife and a short stick about 20 inches long	A short stick; a double barrel, long gun for officers only	A short stick; a short gun for officers on duty only
Trial courts	Family and council of chiefs' courts	Courts of civil and criminal jurisdiction	Magistrate's court and state high court
Corruption activity	No corruption	Partially corrupt	Fully corrupt
Police Public Relations Office	Was not in existence	Was not in existence	Exists
Traffic officers or Traffic warden	Did not exist	Did not exist	Exists
Salary	No salary, but Weekly wages	Salary	Salary
Uniform	No uniform	Uniform	Uniform
Patrol	Foot patrol	Foot patrol	Foot & car patrol
Politics within	No politics	Partially political (internal politics only)	Fully political (external and internal politics)
Members of the force	Limited to members of the community where chief was born	British and Nigerian born citizens	Only Nigerian born citizens
In charge of police command	Age-group leader	Inspector-general	Inspector-general

(continued)

Table 7.3. (continued)

Differences	Pre-colonial	Colonial	Postcolonial
Academic qualifications for recruitment	None, only height (about five feet, six inches tall)	None; elementary six certificate for officers only	Both. Elementary six and high school certificate for recruits; bachelor's degree for assistant inspector or level position
Training	No formal police training other than Skills acquired	Formal police training in an institution in Nigeria and in London	Formal police training in an institution in Nigeria.
Investigate, search seize, and arrest criminals	Wars Yes	Yes	Yes
Ranked	Yes	Yes	Yes
Unionized	No	No	No
Crime control and prevention	Yes	Yes	Yes

The institution of the pre-colonial police system was intended for the protection of the indigenous people of Nigeria, as was the police system in the postcolonial era. However, in the colonial era, the institution of police was geared to the maintenance needs of the colonialists. This was because the police aided in changes in the law and the severe punishments that followed.

REVIEW QUESTIONS

1. Explain the differences and similarities between pre-colonial and the colonial era police systems.
2. Outline and describe the differences and similarities between the Nigerian colonial and the post colonial era police systems.
3. Who formed and instituted the police community relations and why?
4. Name the police ranks from the lowest to the highest; ranking must be in order.
5. Explain the functions of the police training centers.
6. What section of the Nigerian Police Act gave the powers to arrest without warrant? Give the circumstances where these powers apply.

Chapter Eight

Court Systems

KEY TERMS

- | | |
|----------------|----------------|
| 1. Primary | 11. Breach |
| 2. Community | 12. Swear |
| 3. Holistic | 13. Instrument |
| 4. Elders | 14. Kola Nut |
| 5. Preserve | 15. Warrant |
| 6. John Austin | 16. Litigation |
| 7. Equilibrium | 17. Ozos |
| 8. Network | 18. Ogbuinyas |
| 9. Binding | 19. Onyibas |
| 10. Obligatory | |

INTRODUCTION

The primary objective of the judicial system and its administration in the various communities of Nigeria before the advent of the British colonialists in 1800 was peace-keeping and maintenance of the social equilibrium (Adewoye, 1977). A community in traditional Nigeria, as in most underdeveloped societies, was a corporate entity, a network of kinship patterns sometimes interrelated. The chief in a chiefly society, or the council of elders in a chief-less one, and his council of advisers took a holistic view of their society and often conceived of their role in terms of its welfare. In administering the law, their specific objective was to promote the welfare of the communities. Chiefs, the council of elders, and elders in the family saw

themselves essentially as peacemakers, called upon to reconcile divergent interests in both civil disputes and criminal cases, and also as preservers of the physical existence or spiritual well-being of the whole society when this was threatened.

Questions have arisen concerning law and customs in the Nigerian traditional Society: Was it law that the indigenous communities of Nigeria administered, or was it customs, merely rules set by opinions of the governed and sanctioned or enforced morally? To John Austin and the later legal positivists, what is often referred to as customary law as it existed in Nigeria, amounted to little more than positive morality (Adewoye, 1977:2). In Austin's view, law is a command issuing from a sovereign. Not until a custom is pronounced as law by a sovereign or becomes a ground for judicial decision, it lacks the binding character of law. Writers of African indigenous law, for instance T. O. Elias, have made attempts and others, to refute the Austinian view of customary law. These writers of African indigenous law have shown the inadequacies of Austin's definition of law by emphasizing the functional role of law as a body of rules governing human conduct and recognized as obligatory by members of a society (Adewoye, 1977; Elias et al., 1975). In traditional Nigeria, before the advent of the British, a distinction was made between law and custom. Social pressure might make custom more or less obligatory, but perhaps not a matter for judicial hearing. Rules of law, on the other hand, were obligatory and were divisible into what might be broadly categorized as private law and public law. In the pre-colonial era, private law dealt with disputes among members of a community, disputes that in the modern sense might cause a breach of the peace. Public law in the same era was concerned with various forms of antisocial behavior, that is, offenses such as treason, witchcraft, and religious offenses in general which were concerned with the whole of society.

Law in the pre-colonial era of Nigeria was unwritten, but its principles were sometimes expressed in proverbs; it was latent in the minds of the people and in the minds of the ruling elites in particular. Law in traditional Nigeria, though not written, was more real than the written codes of the colonial and the postcolonial eras of Nigeria as a vital instrument for regulating the society. This was because oath swearing, an integral part of the customary law, was revered and respected. Since the concern of the rules was the welfare of the community as a whole, therefore, no distinction was drawn between executive and judicial functions. In most cases, noted Elias and Adewoye, the town or the village council was the same for both judicial and administrative purposes. Administration of justice was merely for peace-keeping, an important aspect of the exercise of political power (Adewoye, 1977). As a result, in most communities, no person was made a chief at any level unless he was

considered to be of sound mind, generous, and knowledgeable in the laws and customs of his people. The mental qualities were highly emphasized, because once he was crowned, a considerable portion of a chief's time would be taken up in settling disputes and dealing with offenders against the public law in consultation with his council of advisers.

The aim of the law in the pre-colonial era, on the civil side, as has been indicated earlier, was interpersonal reconciliations. This was perhaps what distinguished the Nigerian indigenous jurisprudence from the English-style courts introduced into Nigeria by the British in the colonial era. Resolution of indigenous Nigerian disputes illustrates the spirit of reconciliation. The interaction symbolically was to bury the dispute. The disputants were asked to share a piece of kolanut (a nut symbolizing forgiveness). A piece shared together ordinarily signified happiness. However, if a piece of kolanut was shared among disputants, it also signified reconciliation. Those present at the family or chief's courts vicariously took part in the reconciliation by the eating of the kolanut, too. The successful party in the dispute, if he was rich, and if the seriousness of the dispute warranted his doing so, might furnish food and drink for the whole court as a token of his appreciation for their patience and wisdom. Adewoye (1977) noted that the guilty one of two women in an Ibo village affairs litigation was asked to take palm wine and oil beans to the other woman, so that they might eat together and thus make peace.

PRE-COLONIAL NIGERIAN HIERARCHY OF COURTS

Before 1900, the year in which English law was introduced into Nigeria, there was no organization of courts in the modern sense, but chiefs, such as obas, ezes, obongs, and emirs, of the various native tribes of Nigeria presided over all types of cases. The chiefs, including other high title holders, such as ozos, ogbuinyas, onyibas, igwes, were assisted by some selected elders in the family to preside over cases (Elias, 1963; Elias, Nwabara, & Akpamgbo, 1975; Iwarimie-Jaja, 1988). At this period, these institutions used the services of witch-doctors, juju men, or oracles to reach final judgments in extraordinary cases (cases in which proof was difficult). In effect, there was a hierarchy ranging from the Family to the Juju Priests Courts.

The Family Court

The family court dealt and still deals with minor disputes between family members. It is presided over by the head of the family, assisted by other elders of the family. This court has authority to hear minor civil cases or dis-

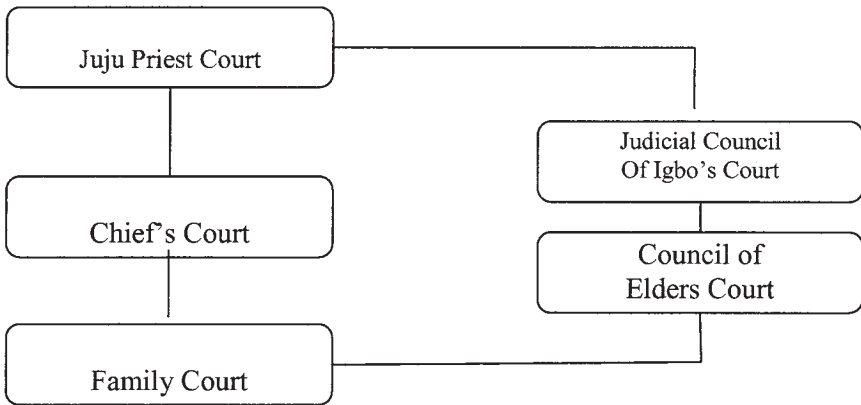


Figure 8.1. Pre-Colonial Nigerian Hierarchy of Courts.

putes. Under normal circumstances, it is rare in minor civil disputes of these kinds for a party to be wholly right or wholly wrong (Adewoye, 1977). Members of this court would not be slow to point out the errors of commission or omission even of the party who was judged to be right. The aim of this court was and still is to bury the dispute, that is, to end it forever. The disputants might be asked to share a piece of kolanut. Those present at the court always took and still take part in the reconciliation ceremony by partaking of the kolanut presented by the two disputants. This court may refer serious civil cases to the chief's court or council of elders' court. In serious land disputes, the case might be appealed to the juju priest's court or oath-swearing court.

The Chief's Court

Next in hierarchy was the Chief's Court which had the same jurisdiction as the council of elders' court. The only difference was that the latter operated only in the chief-less communities. The chiefs or council of elders' courts had jurisdiction over criminal offenses. Some public offenses were also tried in this court, then known as the "open court" (Adewoye, 1977; Elias, 1986; Elias, Nwabara, & Akpangbo, 1975). It was called an "open court" because it could be held in a marketplace or at a popular "shrine." It was held in such holy places, because it controlled perjury and some other malpractices of the court.

The accused person was arraigned before the ruling authorities, presided over by the chief of the community, and was given every opportunity to defend him/herself. If he or she was found guilty in a serious case like witchcraft, he/she could be publicly hanged (Adewoye, 1977). Some public offenses, usually of a religious or political nature, were tried by the secret

societies (Adewoye, 1977). The Ogboni society in most Yoruba communities in western Nigeria, the Ekpo (Leopard) in Ibibio Akwa-Ibom state, the Ekpe society in Calabar, Cross River state, and the Ndi Dibia (a professional organization of certain spiritual leaders among the Ibo tribe of Nigeria) were a few well-known secret societies in Nigeria, particularly in southern Nigeria. These societies handled the most serious criminal offenses and were usually responsible for the execution of their judgments.

Judicial Council of Ibos

The judicial council (Ndi Eze Ikpe) of the Igbos was elected by the titleholders (onyibas) and a few others who were righteous men of the clan. The selected council often consisted of the best “legal” men of the community. The election was often held in the great general meeting (Oha), whether the candidate was there or not. The number of years a person would serve was determined by his performance and, as in other spheres of Ibo politics, he was immediately removed from office if he was derelict in his duties. Matters affecting the clan or village were brought directly to the Ndi Eze Ikpe, but the council also considered appeals from the lower courts. A violation of constitutional law was considered as a matter against land (ala), while other violations were considered to be against individuals. The council often followed rigorous procedures in both criminal and civil cases and passed judgments, some of which were strictly based on precedents, while some were based on the result of juju or oath taken of the two litigants. If a judgment was not carried out in cases which were extremely personal, it might be some time before sanctions took effect, as they involved negotiations, and as a last resort, appeal to the mmanwu, the spirits of ancestors, to enforce the judgment. This was only operational where and when the convicted persons fail to cooperate (Njaka, 1974).

In extreme cases the culprit could be detained at the central building (obi) of the unit where the case was being tried until the penalty had been carried out. However, the characteristic of collective responsibility of the umunna, or family member polity, made such a detention unlikely, because the convicted person’s family member often rescued him as soon as possible in order to avoid embarrassment or shame. In fact, a person detained publicly brought indelible shame to his family members (umunna). Njaka (1974) noted that the idea of imprisonment was never conceived, mainly because it was never necessary. Fines were imposed which an umunna could easily raise and pay without delay to avoid embarrassment and shame. Minor incidents and trivial cases which did not require any formal complaint were solved through reciprocity and were usually disposed of by personal courts which reverted to the

most senior person at the scene of the incident, a process institutionalized in Igbo political culture. Any person in Igbo land who was found derelict in carrying out his simple civic duty was often severely punished by his *umunna* court (family court) and sometimes by a higher court (Ndi Eze Ikpe). This procedure helped to keep peace and maintain laws and order within the Igbo traditional political system (Burns, 1969; Njaka, 1974).

Njaka (1974) and Burns (1969) noted that judges on the Igbo judicial council were and still are not paid for their services. However, they might accept food, drink (palm wine, beers, or hot drinks) and other services. Their most valuable compensation was the recognition of their importance in the community and the joy they derive from serving the people and the community. The smooth functioning of the state brought pride to the *umunna*. It was believed that the ancestors shared in this pride, which also constituted a guide to the unborn (Njaka, 1974).

Juju Priest Court

The Juju Priest Court served as the Supreme Court. All appeals went to the juju priest court. It handled the most difficult civil and criminal cases. Its decision was final in any particular case. This court could rain down misfortune on the guilty party. The Ibibio and the Efik tribes of Akwa-Ibom and Cross River states of southern Nigeria had an Mbiam oath believed capable of destroying those who swore the oath falsely. The long juju at Arochuku in Abia State of Nigeria, called Chuku Ibinokpabi, was the resort of many Ibo and non-Ibo litigants east of the river Niger (Adewoye, 1977).

THE COLONIAL JUDICIAL SYSTEM IN NIGERIA: AN OVERVIEW

When the British colonized Nigeria in 1861 (Elias, 1963), their merchants traded with the river Creek people on the coast of West Africa (Burns, 1977). When the British merchants could not enforce the payment of debts by their local customers in Nigeria, the British government instituted a judicial system with an appointed resident agent (British consulate) to regulate lawful trade between British merchants and their local customers in the ports of Benin, Bimbia, Bonny, Brass, New and Old Calabar, the Cameroons, and the land areas of Dahomey (Elias, 1963). Elias (1963) noted that Consul Campbell presided over a dispute arising over the throne of Lagos between King Decemo and King Kosoko. This marked the inception of a court system in the colony of Lagos. Iwarimie-Jaja (1988) noted that Supreme Court Ordinance

No. 11 of 1863 set up the original foundation of the first Supreme Court in the colony of Lagos in 1863. This was primarily a police court. It kept its own records and had jurisdiction over civil and criminal cases, which was presided over by a chief magistrate or his duly appointed deputy on behalf of Her Majesty, the Queen of England. This court had competence of Her Majesty's Court of Queen's Bench, Common Pleas and Exchequer in England (Elias, 1963; Obilade, 1979). But in cases of appeals from the petty debt court to the supreme court, when the latter's decisions were to be final, all appeals from the supreme court lay to the governor in council.

By Ordinance No. 13 (1863), the Supreme Court became transformed to the chief magistrate court and presided over by a chief magistrate who was regularly assisted by two assessors appointed by the governor. Elias (1963) also noted that the court had the jurisdiction of Her Majesty's Court of Queen's Bench, Common Pleas and Exchequer. In addition, the court acted as a court of probate (Iwarimie-Jaja, 1988). In 1864, by Ordinance No. 1 of 1864, the chief magistrate court was renamed Supreme Court of Her Majesty's Settlement of Lagos and was then presided over by a Chief Justice instead of a Chief Magistrate as provided in Ordinance No. 13 of 8 September 1863. Elias noted that further changes were made in the Supreme Court of Her Majesty, when Ordinance Nos. 1 of 1864 repealed Ordinance No. 1 of 1863 and No. 13 of 1863.

By this ordinance, the general structure and authority of the court were retained. However, Ordinance No. 9 of 1864, renamed the court Chief Magistrate Court of Her Majesty's Settlement of Lagos, and by Ordinance No. 5 of 1865, the court was empowered to try capital offenders whose cases were being tried by the chief magistrate himself and seven assessors. Due to these changes in the structure and authority of this court, legal punishments became more severe, as we will see later.

At this time, other courts were established: By Ordinance No. 11 of 1863, section 5, the commercial court became the Petty Debt Court (Elias, 1963) and was concerned with debts and claims of compensation and damages. The court consisted of six British residents; three were required to form a quorum. The governor appointed the residents presiding in the court. Subsequently, Ordinance No. 5 of 1866 was passed to allow a creditor or his authorized agent or attorney to press for prosecution by presenting an affidavit to the chief magistrate court for a writ to sue one who owed his or her client not less than 40 British shillings or five British pounds sterling or more. Iwarimie-Jaja (1988) noted that the Absconding Debtors Ordinance No. 6 of 1866 repealed this ordinance. Elias (1963) noted that after the abolition of the trade in human beings, a slave commission court was established in the settlement of Lagos to prohibit slavery and to pay compensation to unfortunate victims. This

court settled disputes between people, handled all forms of complaints for misconduct, ill-treatment of people by others, or injury and could pass sentences of imprisonment for not more than 6 months or impose a fine of 10 (British) pounds or less on persons found guilty. This court was presided over by a chief magistrate (Elias, 1963; Iwarimie-Jaja, 1988). Ordinance No. 7 of December, 1866, established the court of civil and criminal justice of the colony of Lagos as a court of record to be presided over by a Chief Magistrate appointed by Her Majesty, the Queen of England. The court was in session on the first Monday of every month. The court never used a jury system of 12 persons in civil cases, but only in criminal cases. The court served as a probate court that had power to appoint administrators of a deceased person's estate when that person died intestate. The court, as it stood then, was composed of the chief magistrate, clerk, two court bailiffs, the sheriff, and an interpreter.

The Court of Divorce and Matrimonial cases were established by the divorce and matrimonial cases Ordinance No. 2 of 28 June 1872. This court, according to Elias, operated as a court of record. The court made a decree of judicial separation, dissolution of marriage, and nullity of marriage in cases where solemnized marriages within West Africa settlements governed by Her Majesty were between two persons, one of whom had resided in the settlements before the current marriage. Elias noted that the court issued a decree of judicial separation only if one party of the marriage established against the other a claim of adultery, cruelty, or desertion for at least two years without any reasonable cause. However, a petition for judicial separation was dismissed if filed on the following grounds: omission of alleged adultery, petitioner's own adultery, or accession to the other party's adultery by condonation or collusion.

The court of equity was established in 1870 at Old Calabar in the present Cross River State and New Calabar, presently Degema, in Rivers State (Iwarimie-Jaja, 1988). It was also established in other areas to include Bonny, Brass, Opobo, Akass, and other places in the riverine areas. This court helped commercial firms by regulating the payment of debts owed to the company by the natives. The same ordinance that established the court of equity also established the consular court. Consuls were appointed to Old Calabar, Bonny, New Calabar, Brass, Opobo, and Benin to preside over these courts. They were empowered to execute and enforce by fine, imprisonment, or banishment the observance of the stipulations of any agreement, treaty, or convention contracted between Great Britain and the local chiefs in the areas mentioned above.

Ordinance No. 4 of 1876 established a Supreme Court in the colony of Lagos as the Supreme Court of Judicature for the colony and territory of Her

Majesty. The court was originally comprised of a chief justice and such judges as were appointed from time to time by the governor of Nigeria. The Supreme Court had the powers of the Lord Chancellor of England to appoint guardians of infants and their estates. The ordinance also empowered the court to appoint the committees of special wards, lunatics, idiots, vagrants, etc. At this time, the West African Court of Appeal and the judicial sector of the Privy Council were established as Nigeria's highest courts (Elias, 1963; Iwarimie-Jaja, 1988).

As a colony, Nigeria had a supreme court which was the highest court for the colony. As applied to colonial law, the doctrine of judicial precedents meant that decisions of the judicial committee of the Privy Council in England bound all colonial courts of any status or jurisdiction. According to the definition of hierarchy, decisions of the Supreme Court or police magistrates' court bound all other courts below it, but at this point only those courts that dealt with criminal cases will be discussed in detail.

The Supreme Court or Police Magistrate

Elias (1963) noted that in all criminal cases, the governor and his executive council had power and authority to review and determine all questions of alleged error of law in the Chief Magistrate Court, and could direct a new trial in any case on any grounds which would be sufficient to justify a new trial in England. Ordinance No. 5 of 5 June 1865 provided that capital offenses could be tried by the chief magistrate alone, assisted by a jury of seven men, the concurrence of only five of whom should be necessary and sufficient.

The Court of Civil and Criminal Justice

All criminal cases to be tried in the chief magistrate court had to be sent from the police court or other magistrates' court together with written sworn deposition. Indictments were found by a grand jury, while the trials were conducted by a petty jury of not less than six persons, in accordance with Ordinance No. 7 of 1 December 1866. Mr. Benjamin Way, the chief magistrate signed these rules and regulations which were approved by John H. Glover, the administrator (Elias, 1963). Elias however was attracted to two very salient points by the courts: (a) the trial of criminal cases was still by grand and petty juries, the latter not being less than six on any one occasion; (b) criminal cases must come up to the chief magistrate court from the police court or other magistrates' court. These courts were composed of sheriffs and court registrar and interpreter, Mr. Otonba Payne, a Lagosian (See Lagos Almanack, 1875). Under Ordinance No. 6 of 2 June 1870, entitled "The Jury

Ordinance 1870,” the grand jury in criminal prosecutions was abolished and an ordinance of indemnity (No. 5 of 1870) was passed. This ordinance had effect from 11 April 1870 legalizing all previous trials with grand juries and indemnifying the chief magistrate, the sheriff in respect thereto (Elias, 1963). A new jury system was set up and all resident British subjects between 21 and 60 years of age, who could speak and sufficiently understand the English language, were selected to serve in the new jury system on a criminal trials. In capital cases, the verdict of the jury had to be unanimous, but in all other cases, civil or criminal, a majority verdict was sufficient (Elias, 1963).

The West African Court of Appeal

The West African Court of Appeal was to receive, hear, and determine appeals from the courts of civil and criminal justice of the settlements of Gambia, the Gold Coast (now Ghana) and Lagos-Nigeria (Elias, 1963). This was a joint appeal court for all the West African British settlements, but it was short-lived, as the grand alliance was soon broken up in 1874, when Lagos and the Gold Coast were joined as one separate colony under an independent political and judicial administration (Burns, 1977; Elias, 1963). It served as a precedent for the reintroduction of the same idea in 1928 when the West African Court of Appeal was initiated. This appeal court provided a better medium of intermediate authority in judicial appeals from the superior court of the Lagos settlement than did the previous arrangement whereby the governor, a political officer, had the last word on a purely judicial issue (Elias, 1963).

To conclude, it is evident that there was no separation of powers, or checks and balances, during the colonial regime in Nigeria.

The Consular Court

The jurisdiction of the consul was guaranteed by the major provision of the 1872 order in council (Elias, 1963). Article 1 of the order in council empowered the consul or consuls appointed to Old Calabar, Bonny, New Calabar (Degema), Brass, Opobo, and to Nun and Benin rivers, all in southern Nigeria, to execute and enforce by fine, imprisonment, or banishment the observance of the stipulations of any treaty, convention, or agreement made or to be made between Great Britain and the local chiefs in the above territories (Burns, 1969; Elias, 1963). The consuls were further authorized to make rules and regulations, printed copies of which were to be properly exhibited in the public offices of the consuls and in all courts of equity, each copy to be sold

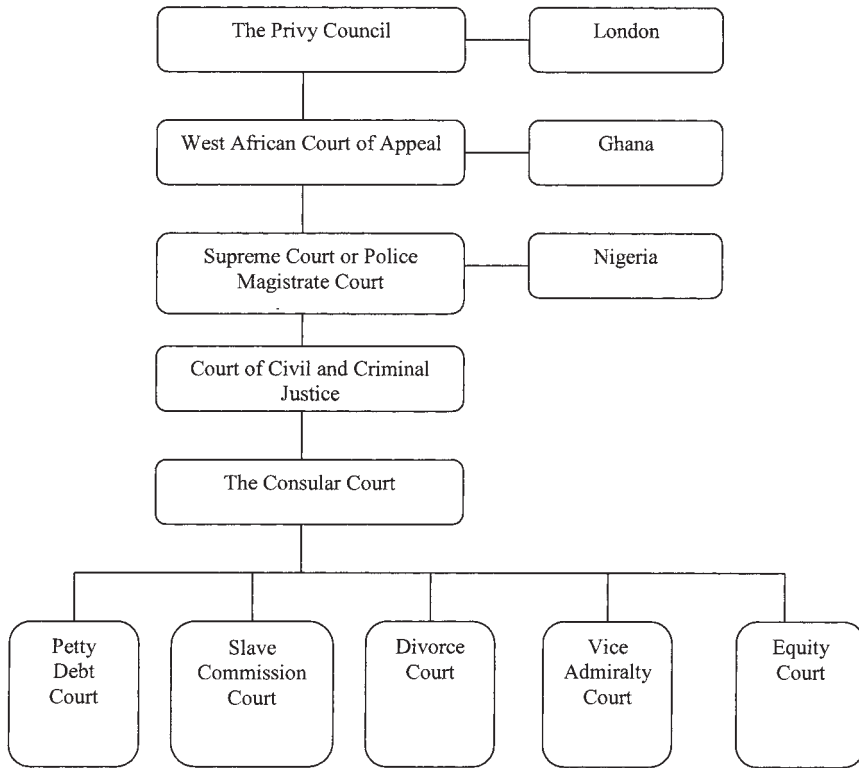


Figure 8.2. Colonial Nigerian Hierarchy of Courts. Adapted from Obliade, 1979.

at not more than four British shillings. The authorization given to the consuls further stated that

No offender could be punished unless “(a) duly certified copies of such rules and regulations has been exhibited for at least one calendar month previously, and (b) the rules and regulations had been transmitted, before the first day of their exhibition, to the secretary for foreign affairs in Great Britain for his allowance.” If disallowed, the rules and regulations ceased to take effect from the receipt by the consul of the notice of disallowance, and the consul would not be liable for all intervening valid acts (Elias, 1963:61).

Breaches of Regulations

Upon information or complaint by any person against breaches of consular regulations by British subjects,

(the term British subject meant throughout the order in council all subjects of Her Majesty, whether by birth or by naturalization and all persons, native of Nigeria or others, properly enjoying Her Majesty's protection within the specified territories), the consul had the power to summon the accused person before him, nor trial by due process of law, without the aid of any assessors and either to discharge him or sentence him to a fine of not more than one hundred British pounds sterling or banishment for three months (Elias, 1963).

Elias (1963) noted that by article 4, breaches of rules and regulations other than those relating to treaties were made similarly punishable by the consul. In all cases where the penalty was a fine of fewer than 40 British pounds sterling or banishment for only one calendar month or imprisonment for less than 14 days, summary trial by the consul without assessors was sufficient. Elias also noted that whenever the penalties were higher, the consul was to summon to sit with him two assessors (disinterested British subjects of good repute), being members of a court of equity. However, the latter had no authority to pronounce on the innocence or guilt of the accused or on the amount of the fine or imprisonment to be imposed on the defendant. So,

The consul alone decided all such questions so long as (a) he did not impose a penalty of more than one hundred pounds fine or three calendar months' banishment for 21 days' imprisonment, and (b) he postponed execution of his judgment (on sufficient security being forthcoming from the accused) until his decision together with any dissent by an assessor and the ground thereof should have been confirmed, varied or reversed by the secretary for foreign affairs in Great Britain (Elias, 1963:62).

This shows arbitrariness of legal decisions in general and severity of punishment in particular during the colonial era in Nigeria.

Introduction

Courts in postcolonial Nigeria may be classified in several ways, but the most important forms of classification are the superior courts and inferior courts. The courts are also classified into courts of record and courts other than courts of record (Obilade, 1979). Superior courts are usually designated as courts of unlimited jurisdiction. In the strict sense of the term "unlimited jurisdiction," no court in Nigeria has such unlimited jurisdiction (Obilade, 1979).

POSTCOLONIAL COURTS 1960–2006 JURISDICTION IN CRIMINAL MATTERS

However, superior courts are so described because the limits to their jurisdiction are minimal. They have minimal jurisdictional limits with respect to the types of subject matter, but they are not limited in jurisdiction with respect to the mere value of subject matter (Elias, 1963; Obilade, 1979). For instance, the high court of a state such as the Abia State High Court is a superior court, for it has unlimited jurisdiction throughout the state with respect to the value of the subject matter. On the other hand, inferior courts are courts that have jurisdictional limits with respect to the type and value of subject matter (Obilade, 1979). Magistrates' courts are good examples of inferior courts, which are normally subject to the supervisory jurisdiction of high courts, as one can see below.

In the discussion of courts of record and courts other than courts of record, formerly, a court of record was a court, which kept a record of its acts and judicial proceedings and also had power to punish a person for contempt, that is to say, its essential feature was its power to punish contempt. Any court that has power to punish contempt is described as a court of record and any court which does not have such power is not designated as a court of record. Obilade (1979) noted that a court of record may be a superior court or an inferior court. For example, the high court of a state is a superior court of record. [See Constitution of Western Nigeria (W. N. No. 26 of 1963), S. 48 (3), (Obilade, 1979:169)]. A magistrates' court is an inferior court of record (see *Nunku v. Police*).

In common law, a superior court of record has power to punish a person summarily for contempt whether the offense is committed in the face of the court or out of court (Obilade, 1979:170). However, Elias (1963) noted, the inferior court of record has power at common law to punish contempt summarily only where the offense is committed in the face of the court. If the offense of contempt is committed in the face of a court of record, whether superior or inferior, the court can punish the offender by imposing a sentence of fine or imprisonment immediately; however, if the offense is committed out of court, only a superior court of record can impose punishment summarily. Punishing contempt summarily should be distinguished from imposing punishment on a person formally charged with the offense of contempt (Elias, 1963; Obilade, 1979; Park, 1963). An inferior court of record, for instance a magistrates' court, may have jurisdiction to try a person on a charge of contempt under the appropriate criminal code (see Criminal Code, Lagos Laws, 1973, ch. 31, sec. 133; Obilade, 1979) or the penal code (see N. N. Laws 1963, Ch. 89; Obilade, 1979:170). Where the offense was committed out of

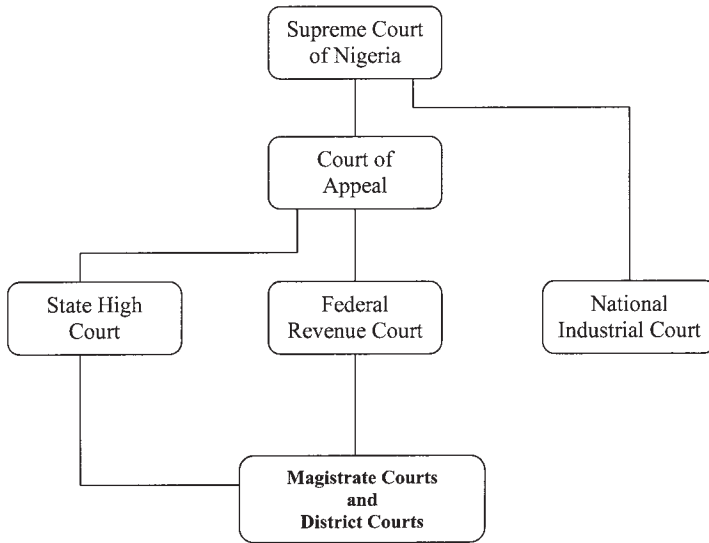


Figure 8.3. Post-Colonial Nigerian Hierarchy of Courts. Adapted from Obliade, 1979.

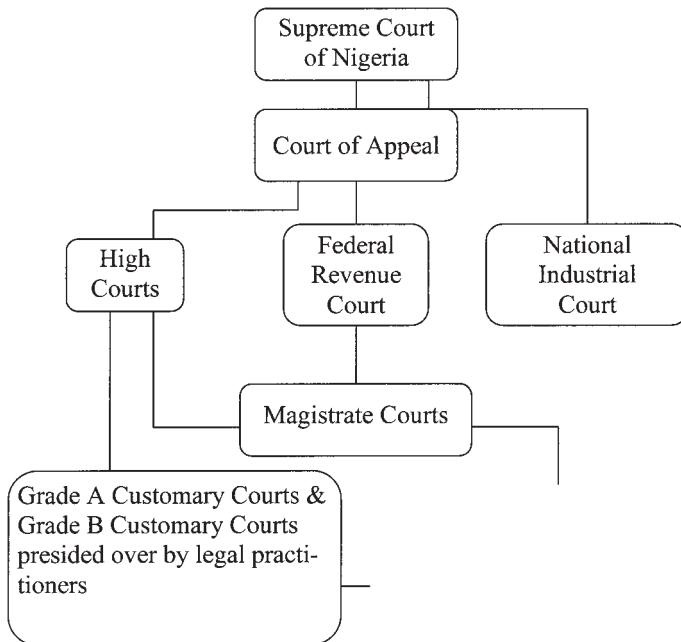


Figure 8.4. The Court Systems of Ogun, Ondo, and Oyo States. Adapted from Obliade, 1979.

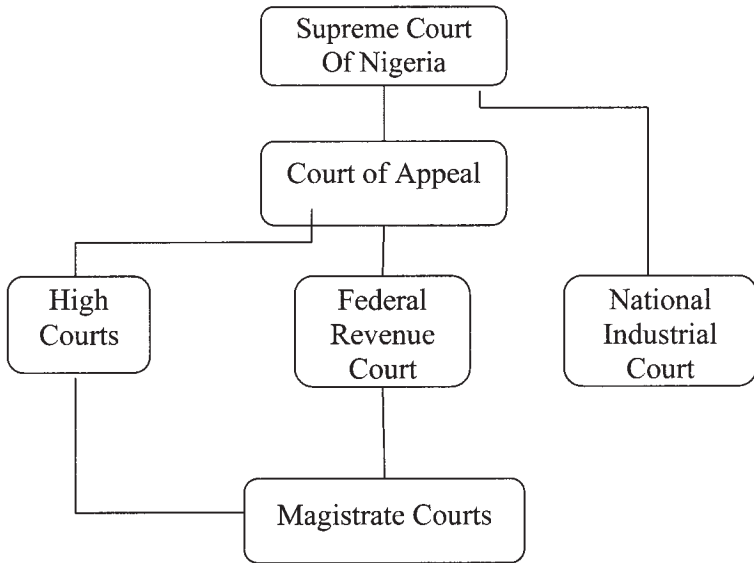


Figure 8.5. The Court Systems of Lagos, Anambra, and Enugu States. Adapted from Obiade, 1979.

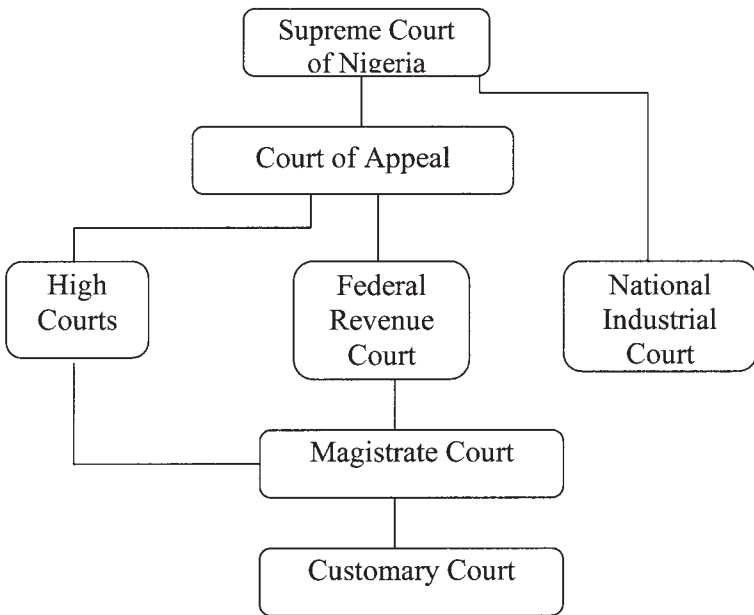


Figure 8.6. Systems of Courts in Delta State. Adapted from Obiade, 1979.

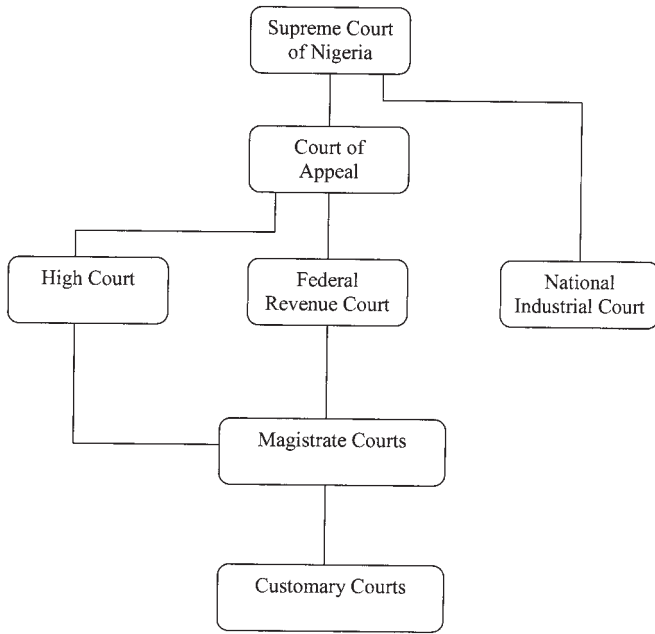


Figure 8.7. Systems of Courts in Imo, Abia, and Ebonyi States. Adapted from Obliade, 1979.

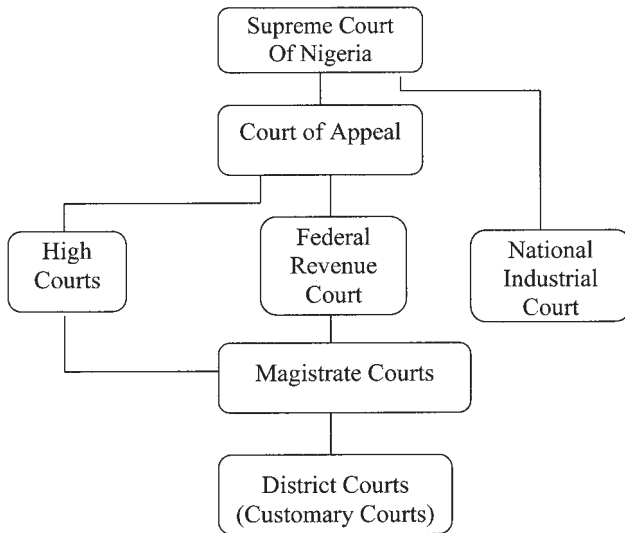


Figure 8.8. Systems of Courts in Cross River and Akwaibom States. Adapted from Obliade, 1979.

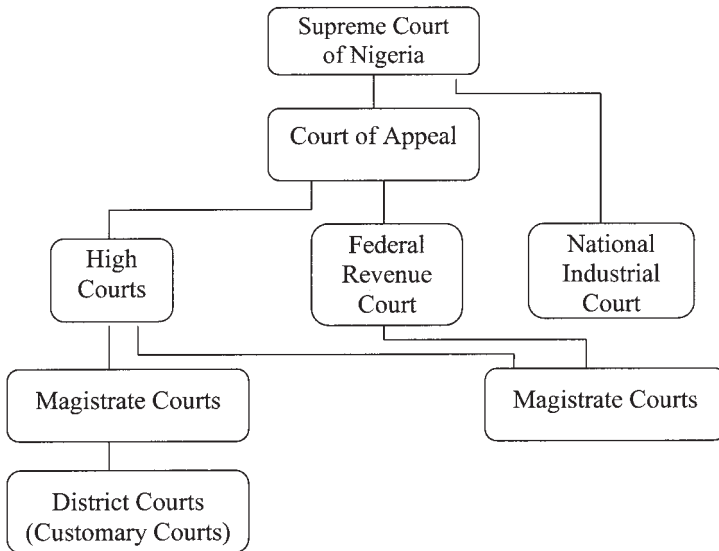


Figure 8.9. Systems of Courts in River States, and Bayelsa States. Adapted from Nwankwo, 1995.

court, it has power to impose punishment in accordance with the code, but the court cannot punish the offender in the absence of such a charge, that is to say that the court cannot punish the offender summarily. A court of record's power from the common law to punish a person summarily for contempt committed before the court was warranted by the provision cited in section 22(10) of the constitution of the Federation of Nigeria (Act No. 20 of 1963; Obilade, 1979:170).

Postcolonial Nigerian Legislation

Nigerian legislation consists of statutes and subsidiary legislation (Elias, 1963; Obilade, 1979; Park, 1963). Statutes are laws enacted by the legislature—the legislative arm of government. Subsidiary legislation is law enacted in the exercise of powers given by statute. It is known as subsidiary instruments or delegated legislation. The delegated legislation, consisting of rules, orders, regulations, bylaws, and other instruments was placed under the authority of statute. Instances of subsidiary legislation are rules, orders, and regulations made by ministers (secretaries), commissioners under the military government, and chief justices (Obilade, 1979:64). According to Obilade, a statute is usually referred to as the principal law in a later statute amending it. Nigerian statutes consist of the following: (a) ordinances, (b) acts, (c) laws, (d) decrees, and (e) edicts.

Ordinances are laws passed by the Nigerian central legislature before October 1954. The Nigerian (constitution) order in council 1954 (s. 1, 1954, No. 1146), introduced a federal constitution into Nigeria. Obilade (1979) noted that section 57 of the constitution of the Federation scheduled to the order. This means that any ordinance in force on October 1, 1954, was to be deemed a law made by the federal legislature or a law made by a regional legislature or a law made separately by the federal and regional legislatures, in accordance with the distribution of legislative powers under the constitution. Under the Nigerian (constitution) order in council 1960 (s. 1, 1960, No. 1652) all ordinances dealing with matters within the exclusive legislative competence of the federal legislature (parliament) were deemed to be enactments of the federal legislature. In general, all ordinances within the legislative competence of the regional legislature were deemed regional laws (section 3, 1960, No. 1652) (Obilade, 1979:64). However, each of the legislatures of western, northern, and eastern Nigeria had to determine whether any particular ordinance made before 1954 was within its legislative competence before publishing it as a regional law in the revised edition of the laws in force in the region. For instance, the courts may hold that an ordinance so published was not within the competence of the regional legislature. Some ordinances within the legislative competence of the legislatures were not included in the revised editions; rather, they were enforced as regional laws and they are now in force as state laws insofar as they have not been repealed.

An act is an enactment made, or deemed to be made, by the federal legislature of Nigeria before January 16, 1966 [see Federal Military Government (Supremacy and Enforcement of Powers) Decree 1970, No. 28 of 1970]. Obilade (1979) noted that a law is simply any enactment made by the legislature or a region or having effect as if made by that legislature, or any subordinate legislation made under such an enactment. According to Obilade, the term law is always defined in Nigerian terms by Nigerians in the interpretation law of Lagos state to include any edict and any subordinate legislation made under the edict [see Interpretation Law (Lagos Laws 1973, ch. 57), s. 18(1)].

A decree previously defined by postcolonial Nigeria as an enactment made by military governor or by the administrator of the former East-Central state (Obilade, 1979:65), presently constitutes the supreme law of the land. Decrees can be defined also as parts of the constitution of the federation and the constitutions of the former regions that are in operation [Constitution (Basic Provisions) Decree 1975, No. 32 of 1975, section 14(2); Constitution (Suspension and Modification) Decree 1966 (No. 1 of 1966) section 1] (Obilade, 1979:65). It is noted that no court is entitled to inquire into the validity of a decree or of any subsidiary legislation made under a

decree (Decree 1975, s. 4) (Obilade, 1979). However, the court may determine whether a decree is inconsistent with a later decree with a view to deciding whether the earlier decree has been repealed implicitly. No court, according to Obilade, is entitled to inquire into the validity of an edict or any subsidiary legislation made under it except on the ground that the edict is inconsistent with the provision of a decree [see Constitution (Basic Provisions) Decree 1975, s. 41; *Adejumo v. Military Governor, Lagos State, 1972* (Obilade, 1979)].

Obilade (1979) noted that where a law made before January 16, 1966, by a regional legislature (or having effect as if so enacted) or made after that date by a military governor (or the administrator of the former East-Central state) is inconsistent with any law validly made by parliament before that date (or having effect as if so enacted) or with any law made by the Federal Military Government after that date, the law made by parliament or the law made by the Federal Military Government prevails and the regional enactment or the edict made by the military governor or administrator is void to the extent of its inconsistency [see Constitution [(Basic Provisions) Decree 1975, s. 1(4) (Obilade, 1979:66) 22].

A statute consists of several parts. The part known as the long title usually states the general purposes of the statute (Obilade, 1979). An example is “An Act to provide for the establishment of a Teaching Hospital for Enugu and of a Management Board for the Hospital; and for purposes connected therewith (University of Nigeria Teaching Hospital, Enugu, Act 1960). The preamble of a statute usually indicates, in some detail, the purpose of the statute and the reason for passing it. Obilade (1979) noted that law-making under the military government was a comparatively easy exercise. He contended that such laws by the military do not involve the publication of bills or heated debates (involving amendment to bills) in the legislative houses. A decree by the military government is made when it is signed by the head of the federal military government, and an edict is made when it is signed by the military governor of the state (Obilade, 1979) [see Constitution (Basic Provisions) Decree 1975, s. 3).

Decrees are amended so often that one sometimes wonders whether the drafting was done without examining in detail what the legislature intended to achieve by the legislation. See states (Creation and Transitional Provisions) Decree, 1967 (No. 14 of 1967) made on May 27, 1967, and amended by the following enactments: (a) the states creation and transition provisions) (Amendment) Decree 1967 (No. 19 of 1967) made on May 31, 1967; (b) the constitution (Miscellaneous Provisions) Decree 1967 (No. 20 of 1967) made on June 8, 1967; (c) the states (Creation and Transitional Provisions (Amendment) (No. 2) Decree 196) (No. 25 of 1967) made on June 29, 1967;

and (d) the states (Creation and Transitional Provisions) Amendment) Decree 1974 (No. 16 of 1974) (Obilade, 1979:67).

Legislation is the most important instrument of legal development. It has a tremendous effect on all the other sources of law. It can readily alter their content. It is also a useful tool for the social, economic, and technological development of the country, for instance National Science and Technological Development Agency Decree 1977 (No. 5 of 1977); Nigerian Enterprises Promotion Decree 1977 (No. 3 of 1977); Nigeria Atomic Energy Commission Decree 1976 (No. 46 of 1976). It is noted that the Law Commission Edict of 1975 (No. 8 of 1975) was made by the military governor of the Western state in April 1975. By virtue of state Creation and Transitional Provisions, Decree 1976 (No. 12 of 1976), the edict now applies in Oyo, Ogun, and Ondo States. A law commission established under the edict is required to keep the law under review with a view to its systematic development and reform (Obilade, 1979).

SUPREME COURT OF NIGERIA

The Supreme Court of Nigeria was established in 1963 by the constitution of the federation (Act No. 20 of 1963) which provides that the judges of the court are the chief justices of Nigeria (Obilade, 1979:170). The number of the judges on the court may not be fewer than five. In present-day Nigeria, the number of justices of the Supreme Court as prescribed by law is 10 [Supreme Court Act 1960 (No. 12 of 1960), s. 3(1), as amended by the Supreme Court (amendment decree 1977 No. 72 of 1977; Obilade, 1979:170). For the purpose of the final determination of a case, the Supreme Court is constituted by a minimum of three judges [Supreme Court Act 1960 (No. 12 of 1960), s. 9). However, a five-member panel sometimes sits to hear and determine very important cases (Elias, 1963; Obilade, 1979). Still, a single judge of the Supreme Court is empowered to exercise any power vested in the court other than the final determination of a cause or matter (Supreme Court Act 1960, s. 2(1)). It is noted by Obilade that "'cause' includes any action, suit or other original proceeding between a plaintiff and defendant" (Obilade, 1979:171). "Matter," on the other hand, "includes every proceeding in court, not in a case" (Supreme Court Act 1960, 2(1); Obilade, 1979:171). In criminal cases, if a judge of the court refuses an application for the exercise of any such power, the applicant is entitled to have his application determined by the Supreme Court. Now, the court sits in Abuja, the capital of Nigeria, and in a number of state capitals. The Supreme Court is a superior court of record. It has appellate jurisdiction in civil and criminal

cases. It has no original jurisdiction except in the cases referred to it under section 115 of the constitution of the federation (Obilade, 1979:171). The Supreme Court hears appeals from the federal court of appeal. However, Decree 1976, No. 42 of 1976, prescribes a limitation with respect to such appeals. The limitation is that no appeal lies with the Supreme Court from a decision of the court of appeal on an appeal from a decision of a high court (a state high court or the federal revenue court), sitting as a court of appeal. Obilade (1979) noted that the said limitation does not apply to a criminal case, where the attorney-general of the federation has certified that the decision of the court of appeal involves a point of exceptional importance and that it is desirable in the public interest that a further appeal should lie with the Supreme Court.

COURT OF APPEAL

The Federal Court of Appeal (now Court of Appeal), established on October 1, 1976, is a superior court of record (Elias, 1963; Obilade, 1979; Park, 1963). The constitution provides that the judges of the court shall consist of the president of the court and at least 21 other judges, styled "Justices of Appeal" (Obilade, 1979:176). The supreme military council, in consultation with the advisory judicial committee, appointed judges and the president of the court. The court is merely a court of appeal. It has exclusive jurisdiction to hear appeals from state high courts. It can also hear appeals from the Federal Revenue Court and such other courts or tribunals as may be specified by law. Formerly, tribunals such as those established under the Robbery and Firearms special provisions decree (No. 47 of 1970), tribunals established under the Offenses against the Person decree (No. 20 of 1974), and Currency Offenses decree[see counterfeit currency No. 22 of 1974)], were tribunals from which appeals lay to the court of appeal.

The Court of Appeal has jurisdiction throughout the country. Obilade (1979) noted that Nigeria was divided into three districts, excluding the city of Lagos, for the purpose of the exercise of the court's jurisdiction. The court jurisdiction provided that no two of the following towns should fall within the same district for this purpose: Enugu, Ibadan, and Kaduna. That is to say that there are four judicial districts, each of the four towns falling within a district. In addition to these four towns, the court sits in Lagos and Abuja, the present capital of Nigeria. The court has original jurisdiction in addition to its appellate jurisdiction (Elias, 1963; Obilade, 1979). Its original jurisdiction is provided for by Section 121F of the constitution. This section gives the court exclusive original jurisdiction in any dispute between the federation and a state

or between states to the extent that the dispute may involve any question of law or fact in which the existence or extent of a legal right depends on that question.

THE FEDERAL REVENUE COURT

The Federal Revenue Court was established by the federal revenue court decree in 1973 as a Federal High Court of Justice. The court consists of a president and such number of other judges (four being the minimum) as the head of the federal military government prescribed by order No. 13 of 1973, s. 1(2). The court has jurisdiction in civil and criminal matters, and operates in at least four judicial divisions as determined by the president of the court [Order No. 13 of 1973, s. 19(1)]. A single judge duly appointed constitutes the court (Order No. 13 of 1973, s. 19). However, the Supreme Military Council always consulted with the advisory judicial committee to appoint these judges.

The objective of the Federal Revenue Court is the dispatch of revenue cases, particularly those relating to personal income tax, company tax, custom and excise duties, illegal currency deals, exchange control measures, etc. The court is normally a court of original jurisdiction, but section 27 of the federal revenue court decree of 1973 empowers the court to hear from:

- (a) The decision of appeal commissioners established under the Companies Income Tax Act and the Personal Income Tax Act of 1961 insofar as they are applicable as federal law;
- (b) The decisions of the board of customs and excise established under the Customs and excise Management Act of 1958;
- (c) The decisions of magistrates' courts in respect to civil or criminal causes or matters transferred to such courts pursuant to this decree; and
- (d) The decisions of any other body established by or under any other federal enactment or law in respect to matters concerning which jurisdiction is conferred by this decree (Obilade, 1979:188).

Obilade noted that section 32 of the federal revenue court decree of 1973 expressly provides that in general, the criminal procedure act (Lagos Law, 1973, Ch. 32) is to apply substantially in criminal proceedings. Nevertheless, all criminal cases before the court are to be tried summarily (Federal Revenue Court Decree 1973, s. 32(2)). The court is required, as far as is practicable, to try revenue causes or matters in priority to any other business (Federal Revenue Court Decree 1973, ss. 33(1), 33(2)).

STATE HIGH COURTS

The creation of States in 1967 inevitably led to the establishment of High Courts in all the states of the federation. This creation was an execution of the stipulations of creation and transitional provisions decree of 1967 (Elias, 1963; Obilade, 1979). The structure, organization, and jurisdiction of each state high court are uniform in all the states of the federation.

The High Court of Lagos state consists of the chief judge of the state and at least five other judges [constitution of the Federation (Act No. 20 of 1963), s. 122(2); Obilade, 1979:189. The High Courts of other southern states (Anambra, Enugu, Delta, Cross River, Imo, Abia, Ogun, Ondo, Oyo, Rivers, Akwaibom, and Edo) consist of the chief judge of the state and at least six other judges. However, where area courts exist, the high courts have no original jurisdiction in the specified customary law cases outside the purview of high court law (W. R. N. Laws, 1959, Ch. 49, s. 9 provision; Obilade, 1979:190). Such jurisdiction is reserved for customary or area courts, which presumably are considered to be versed in the applicable law. In each state, a single judge [see high court law (Lagos Laws 1973, ch. 52, s. 6(2)] constitutes the high court in the exercise of its original jurisdiction. The high courts are generally courts of unlimited jurisdiction with respect to the monetary aspect and value of the subject matter of a case. Their jurisdiction and powers include such jurisdiction and powers as “are vested in or capable of being exercised by the high court of justice in England” [see, for example, High Court (Lagos Laws, 1973, Ch. 52), s. 10; Obilade, 1979:191]. The High Court hears appeals from the lower courts, such as magistrates’ courts and customary or area courts. They also exercise supervisory jurisdiction over inferior courts, such as magistrates’ courts and customary or area courts, by orders of mandamus, prohibition, and certiorari [see section 24(4)(9) of the high court law 1964, No. o of 1964; M. W. N. ; Obilade, 1979:191].

MAGISTRATES’ COURTS

There are Magistrates’ Courts in every state in Nigeria run by a single magistrate. In each state, magistrates are divided into a number of classes, such as chief magistrate, senior magistrate grade I, senior magistrate grade II, magistrate grade I, magistrate grade II, and magistrate grade III. This classification is the basis for defining the jurisdiction and powers of each magistrate.

Criminal Jurisdiction of Magistrate

The term “jurisdiction” in relation to criminal cases may be used to denote authority to deal with criminal cases, excluding authority to impose a sentence (Obilade, 1979:198). Magistrates’ courts are essentially courts of summary jurisdiction; they deal with criminal matters or cases summarily. In southern Nigeria, for the purpose of jurisdiction of magistrates in criminal cases, offenses are divided into two classes: indictable offenses, which on conviction may be punished by a term of imprisonment exceeding 2 years; or indictable offenses, which on conviction may be punished by imposition of a fine exceeding 400 naira (Nigerian currency equivalent to \$20 U.S.). There are also offenses known as nonindictable offenses over which these courts have jurisdiction. In the northern states of Nigeria, there is no such classification of offenses into indictable and nonindictable categories (Obilade, 1979).

Southern States’ Magistrates’ Courts

Obilade (1979) noted that in the southern states, magistrates’ courts have jurisdiction to try summarily offenses other than indictable offenses, and they have the power to impose the punishment prescribed for any such offense to the extent of their power of punishment. The maximum fines and terms of imprisonment, which magistrates’ courts can impose and inflict on convicted offenders differ from state to state. In the Imo and Abia States, the chief magistrate may impose a fine of up to 2,000 naira or 14 years imprisonment; senior magistrate grade I, a 1,500 naira fine or 12 years imprisonment; senior magistrate grade II, up to 1,000 naira fine or 10 years imprisonment; and magistrates grades I and II, up to 400 naira or 5 years imprisonment.

Akwa-Ibom and Cross River States

A chief magistrate can impose up to 1,000 naira fine or 5 years imprisonment; a senior magistrate grade I or II can impose up to 600 naira fine or 3 years imprisonment; a magistrate grade I or II, 400 naira or 2 years imprisonment; and a magistrate grade III, 200 naira fine or 1 year imprisonment on the convicted offenders.

Lagos State

A chief magistrate can impose up to 1,000 naira fine or 5 years imprisonment; a senior magistrate can impose up to 600 naira fine or 3 years imprisonment; a magistrate grade I, 400 naira or 2 years imprisonment; a magistrate grade

II, 200 naira fine or 1 year imprisonment; and a magistrate grade III, 50 naira fine, 3 months.

In Lagos state, all magistrates, other than magistrates grade III, as noted by Obilade and Elias, have jurisdiction to try summarily any indictable offenses other than capital offenses, subject to the provisions of section 304 of the criminal procedure law.

Ogun and Ondo States

A chief magistrate may impose up to 1,000 naira fine or 5 years imprisonment; a senior magistrate grade I can impose up to 600 naira fine or 3 years imprisonment; a senior magistrate grade II, 400 naira or 2 years imprisonment; and a magistrate, 200 naira fine or 1 year imprisonment.

Rivers State

A chief magistrate can impose up to 1,000 naira fine or 5 years imprisonment; a senior magistrate may impose up to 600 naira fine or 3 years imprisonment; and a magistrate, 400 naira or 2 years imprisonment.

Delta and Edo States

A chief magistrate may impose up to 5,000 naira fine or 6 years imprisonment; a senior magistrate grade I can impose a fine of up to 3,000 naira or 4 years imprisonment. A senior magistrate grade II could impose a fine of 2,000 naira or 3 years imprisonment; a magistrate grade I, 1,000 naira fine or 2 years imprisonment; a magistrate grade II, 5,000 naira fine, 18 months; and a magistrate grade III, 200 naira fine, 6 months imprisonment (Obilade, 1979:198–199). In each of these states, there is a provision for authorizing any magistrate to impose punishment greater than the maximum prescribed in relation to his grade [see Magistrates' Courts Law (Lagos Laws 1973, Ch. 82, s. 20(2); Obilade, 1979:199)].

THE DOCTRINE OF JUDICIAL PRECEDENT AND THE HIERARCHY OF POSTCOLONIAL COURTS

The doctrine of judicial precedents is a common-law doctrine, which applies only to those courts that are empowered to administer adjective common law. Obilade (1979) noted that customary courts are not empowered to apply adjective common law. In effect, the common-law doctrine does not apply to

them (Obilade, 1979), nor does any legislation provide for a precedent system in customary courts. The argument against the existence of a rule of precedent under customary law is strengthened by the fact that there is no organized system of law reporting covering decisions of such courts, unlike with the superior courts. Generally, under the doctrine of *stare decisis* (following previous discussions), or binding precedent, a court is bound to follow decisions of a higher court in the hierarchy (Elias, 1963; Obilade, 1979; Park, 1963). However, a lower court in the hierarchy is not bound to follow a decision of a higher court that has been overruled. Moreover, a lower court is not bound by a decision of another court that is above such court in the hierarchy. In principle, a lower court is entitled to choose which of the two conflicting decisions of a higher court or a higher court of equal standing it will follow (see *Chime v. Elikwu*, 1965). It should also be noted that a binding precedent may be abolished by legislation [see, for example, *Lakanmi v. Attorney-General* (Obilade, 1979:115; West, 1975)].

The highest court in postcolonial Nigeria is the Supreme Court of Nigeria, a court which forms part of the hierarchy of courts for each state with respect to state matters [see Constitution of the Federation of Nigeria (Act No. 20 of 1963), ss. 117 and 127; Obilade, 1979:115]. There is no completely separate set of federal courts; the only ordinary court, which exercises jurisdiction in federal matters to the exclusion of other matters, is the Federal High Court, that is, the Federal Revenue Court (Obilade, 1979). The High Court of each state of Nigeria, the Magistrates' Courts of each state, and the district courts of each of the northern states exercise jurisdiction in federal matters in addition to jurisdiction in state matters, subject to the jurisdiction of the federal revenue court (see s. 8(1) of the federal revenue court decree of 1973)]. Throughout Nigeria, federal jurisdiction is exercised side by side with state jurisdiction (Elias, 1963; Obilade, 1979; Park, 1963). The federal courts comprise not only courts established by federal law, but also courts established by state law and given jurisdiction in federal matters by federal law.

POSTCOLONIAL NIGERIA: THE HIERARCHY OF COURTS IN THE FEDERAL AND SOUTHERN STATES

Figure 8.2 omits several courts and "tribunals" exercising special jurisdictions. Obilade (1979:116) noted that the district courts mentioned in the above chart are district courts of the northern states. The Federal Revenue Court Decree of 1973 states that appeals lie to the federal revenue court from magistrates' courts in civil and criminal cases transferred to those courts by the federal revenue court. However, district courts were not mentioned in the

decree. It appears that the words “magistrates’ courts” in the relevant provision of the decree (s. 27) should be construed to include district courts of the northern states. In effect, magistrates’ courts of those states exercise criminal jurisdiction only, and district courts of the states are courts of civil jurisdiction (see ss. 26 and 27(c) of the decree; Obilade, 1979:116)

POSTCOLONIAL ERA: CUSTOMARY AND AREA COURTS

Introduction

Customary law consists of customs accepted by members of a community as binding among them (Obilade, 1979). In Nigeria, customary law may be divided in terms of nature into two classes, namely ethnic or non-Moslem customary law, and Moslem law. Ethnic customary law in Nigeria is indigenous; it is unwritten (Obilade, 1979). Each system of such customary law, noted Obilade, applies to members of a particular ethnic group. Moslem law is a religious law based on the Moslem faith as found in the Koran and the teachings of the Prophet Mohammad. In Nigeria, Moslem law is not indigenous law; it is received customary law introduced into the country as part of Islam.

There are several such customary law systems in Nigeria, each ethnic group having its own separate system. For instance, the customary law system of a town in Cross River State may be different from the customary law system of a neighboring town in the same state, even though the indigenous people of both towns are Effik-speaking people, for Effik-speaking people consist of several ethnic groups, such as Ugep, Ogoja, etc. Similarly, the customary law of an Ibo town in Abia State, say Arochukwu, may be different from that of a neighboring Ibo town, say Umuahia, in the same state. This diversity of customary law systems is a major obstacle to uniformity of customary law systems in each state. Obilade noted that in many respects, the ethnic customary law of an area is similar to that of another area where the indigenous people in both areas belong to the same tribe. Thus, there are certain rules of customary law common to all Ibo areas in the country.

Unlike the unwritten ethnic customary law, Moslem law exists principally in written. It is alternatively called “Islamic law” or “the Sharia” (the sacred law of Islam) and the version of Moslem law in force in Nigeria is Moslem law of the Maliki school (Elias, 1963; Gloster, 1987; Obilade, 1979).

Characteristics of Customary Law

It is clear from the description just given that one of the features of this type of law is its acceptance as an obligation by the community. The members of

each ethnic group recognize it as law. It is “a mirror of accepted usage” (Obilade, 1979:84). Another feature of ethnic customary law is its flexibility. Its rules change from time to time and they reflect changing social and economic conditions. As Obilade noted in the *Lewis v. Bankole* case:

One of the most striking features of West African native custom . . . is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character (Obilade, 1979, 84).

Under the customary law system of the city of Enugu, in Enugu State, absolute alienability of land was not permitted (Obilade, 1979). Land belonged to the family and no individual could own any piece of land absolutely. But later, the custom began to change in response to the social needs of the community. Consequently, today the customary law recognizes absolute transfer of title to land to individuals. Formerly, any transaction involving the use of writing was considered to be outside the province of ethnic-group customary law. However, that position has changed (Obilade, 1979). Thus, such customary law may now govern a written agreement. Moslem law, as noted earlier, exists principally in written form and is comparatively rigid and not subjected to social changes (Obilade, 1979, Adewoye, 1977; Elias, 1963).

Proof of Customary Law

Customary law must be validated before courts other than customary and area courts. Identically worded provisions of the evidence enactments tend therefore to be the most viable and reliable method of doing so (Obilade, 1979). Section 14(1) of each of the enactments provides that, “A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence.” The burden of proving a custom rests upon the person alleging its existence (Obilade, 1979:85). Section 14(2) of the enactment states the circumstances in which judicial notice of a custom may be taken by the court, and section 14(3) provides that where a custom cannot be established by judicial notice, it may be established by proof. Therefore, unless a custom is judicially noticed, the party contending that it exists has to prove it as a fact. In other words, he or she has to prove its existence by evidence. By virtue of the Evidence Enactment, “native chiefs or other elders in the community, having special knowledge” of customary law, may be called to express their opinion as evidence on a point of customary law, for each opinion is declared to be relevant by the enactments (Obilade, 1979).

During the colonial era, customary law not only had to be proven beyond reasonable doubt, but it also had to be tested for validity. As a result, the customary law had to go through three tests: The Repugnancy Test, the test of incompatibility, and the test of public policy.

The Repugnancy Test: Lord Wright, in *Iaoye v. Oyetunde*, expressed the view that the “repugnancy test was intended to invalidate barbarous” customs, and Lord Atkin (a Briton), in *Eshughayi Eleko v. Officer Administering the Government of Nigeria*, said that “a barbarous custom must be rejected on the ground of repugnancy to natural justice, equity and good conscience.” Both Lord Wright and Lord Atkin, therefore, appeared to hold the view that a custom is repugnant to national justice, equity, and good conscience only if it is uncivilized (Obilade, 1979). These two judges wanted the customary law to conform to the standard of behavior acceptable in communities, like the English community, which had reached an advanced stage in social development.

The Test of Incompatibility: Obilade (1979) noted that various enactments direct the courts to enforce applicable customary law that is incompatible with some “law.” Many of the enactments, noted Obilade, provide that the customary law to be enforced must not be incompatible with “any law for the time being in force.” Others provide that it must not be incompatible with “any written law.” For example, Section 26(1) of the High Court law of Lagos State provides as follows:

26(1) The High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any law for the time being in force (Obilade, 1979:104).

Section 13(1) of the High Court Law, 1964, a Midwestern Nigerian statute, provides as follows:

13(1) The High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any written law for the time being in force (Obilade, 1979:104).

and “any law for the time being in force” includes English law in force.

The Test of Public Policy The test of public policy is stated in section 14(3) of each of the Evidence Enactments in these words:

In case of any custom relied upon in any judicial proceedings, it shall not be enforced if it is contrary to public policy, and is not in accordance with natural justice, equity, and good conscience (Obilade, 1979:109).

There are only a few reported cases in which reference has been made to public policy in relation to customary law. In discussing the possible existence of a Yoruba custom of legitimation by acknowledgement of paternity, Verity, C. J. , said *obiter* in *In Re Adadevoh* that if such a custom encouraged promiscuity, it would be contrary to public policy (Obilade, 1979).

Composition of Courts

Customary and area courts established for the administration of customary law exist in all the 36 states of Nigeria. Obilade (1979) noted that the customary courts law (District Courts Law, s. 13) governs customary courts in Lagos State. Under the law, the attorney-general for the state is empowered to establish by warrant customary courts of a single grade outside the city of Lagos (District Courts Law, ss. 13 & 14; Obilade, 1979:206). There was no provision for the establishment of customary courts in the city of Lagos. The composition of the customary court under section 2 of the law provides that a “customary court shall consist of a president and at least two or other four members as the case may be” (Obilade, 1979:206). The words “at least two or other four members as the case may be” suggest that a customary court may consist of the president and three other members (a total of four members) (Obilade, 1979:207). However, section 6(1) of the customary court law, the only provision on quorum, provides as follows: “For the purpose of hearing any case in a customary court, two or three members shall form a quorum where the court consists of three or five members respectively” (Obilade, 1979:207). However, a quorum is prescribed only where the court consists of three members (the president and two other members) or five members (the president and four other members). Obilade contended that the words “at least” in section 2 of the law were inserted there by mistake and that a customary court consists of a president and two other members or a president and four other members.

The interim customary court judicial service committee for the state appoints customary court members, including the court president. Member qualification for appointment requires that:

- (a) He is literate in English language.
- (b) He possesses at least the primary or standard VI certificate or its equivalent and suitable experience, and
- (c) He is a native of the area of jurisdiction of the customary court [Customary Courts Law (Lagos Laws 1973, ch. 33) s. 4(1); Obilade, 1979:207].

A customary court in a state has both civil and criminal jurisdiction [Customary Courts Law (Lagos Laws 1973) s. 15 and sched. 2 (pt. 1); Obilade, 1979:207]. It has unlimited civil jurisdiction in two classes of cases, namely:

- (a) Matrimonial cases and other matters between persons married under customary law, that is, matrimonial cases and related matters under customary law; and
- (b) Suits relating to the guardianship and custody of children under customary Law

Obilade (1979) further noted that the customary courts have jurisdiction in the following two classes of cases, if the money claimed or the subject matter of the case does not exceed 100 naira:

- (a) Cases and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law; and
- (b) Other cases under customary law

In general, a customary court in a state has criminal jurisdiction in the following cases:

- (a) Any offense against the provisions of an enactment that expressly confers jurisdiction on the court;
- (b) Offenses against rules and by-laws made by a local government council or having effect as if so made, under the provisions of any enactment and in force in the area of jurisdiction of the court;
- (c) Contempt of court committed in the face of the court (Obilade, 1979:208).

But, it has no jurisdiction in the following cases: homicide, treason, and other capital offenses, such as sedition, rape, procuration, defilement of girls, and offenses against the enactments relating to official secrets [Customary Courts Law (Lagos Laws 1973, ch. 33) s. 16 and sched. 2, pt. 11; Obilade, 1979:208]. The maximum punishment which a customary court in a state is empowered to impose a term of 1 month imprisonment or/and a 20 naira fine (Obilade, 1979:208).

With respect to jurisdiction over persons, a customary court in a state has jurisdiction over all Nigerians [Customary Courts Law (Lagos Laws 1973, Ch. 33). Customary courts in a state are under the general supervision and control of the Ministry of Justice of the state. An official of the ministry, noted Obilade and Elias, in his capacity as inspector of customary courts, acts as the supervising authority. Such a person is empowered to supervise any specified customary court. He has access to these courts and to their records and proceedings. Appeals lie from the decisions of a customary court to a magistrates' court, as noted in the Doctrine of Judicial Precedent and hierarchy of courts discussed earlier. Section 42 of the customary courts law provides that appeals from a magistrates' court,

sitting as a court of appeal, lie to the high court, provided that in a criminal case the term of imprisonment or the fine imposed by the magistrates' court exceeds 10 naira. For civil cases, the sentence is limited: "the subject matter is of the value of at least one hundred Nairas." However, Obilade contended that the words "at least one hundred Nairas" rather than just "one hundred Naira" were intended to give the courts some laxity of jurisdiction as stipulated in the customary court rules (Obilade, 1979:208).

JUVENILE COURTS

Juvenile courts have been established for the trial of young offenders and also for their welfare. Such courts exist in Anambra, Enugu, Delta, Edo, Cross River, Akwaibom, Abia, Imo, Lagos, Ondo, Ogun, and Rivers States (Iwarimie-Jaja, 1988; Obilade, 1979:216). The juvenile courts were established in these states by the Children and Young Persons Law (see Lagos Laws 1973, ch. 26; W. R. N. Lagos 1959, ch. 20); in force in Bendel State (now Delta and Edo States); Ogun State, Ondo State, and Oyo State; E. N. Laws 1963, ch. 19 in force in Anambra (now Anambra and Enugu and Ebony States), Cross River (now Cross River and Akwaibom States), Imo state (now Imo and Abia States); and also Rivers State (see also state creation and transitional provisions; Decree 1976, No. 12 of 1976; Obilade 1979:216).

A juvenile court is constituted by a magistrate sitting with other members who are appointed by an appropriate authority (Iwarimie-Jaja, 1988; Obilade, 1979). Children or young persons legally deserve the right to be treated mildly because of their tender age, so courts that hear charges against them, including juvenile courts, make it a general rule to sit outside the room ordinarily used for adult courts. Juvenile courts are required to sit on different days or at different times from those at which an adult court sits to hear charges. A magistrate, when sitting with other persons to constitute a juvenile court, sits in a place different from that in which he sits as a magistrate's court or on different days or at different times. This particular provision is aimed at preventing children and young persons from associating with adults charged with serious offenses. The law emphasizes the welfare and protection of the juvenile by providing that in general, nobody is to punish children in a manner that could lead to labeling them as criminals. Hearings in the juvenile justice courts are closed to the public. The law provides that nobody other than the members and officers of a juvenile court, the parties to the cause, their solicitors and counsel, and other persons directly concerned, such as parents of the juvenile be allowed to attend the court (Iwarimie-Jaja, 1988; Obilade, 1979). The law provides for preferential treatment of the young with respect

to punishment or other harsh labeling treatments. For instance, no order may be made for a sentence of imprisonment of a child. Obilade and Iwarimie noted that a person under the age of 17 years at the time she or he committed an offense must not be sentenced to death [see also Children and Young Persons Law (Lagos Laws 1973, ch. 26, s 12)]. If the punishment for the offense is so grave, and must result in capital punishment, the court must order that the young offender be detained at the pleasure of the governor of the state concerned.

When a juvenile is found guilty of any offense, the juvenile court must consider the appropriate method of dealing with such a juvenile. The following are methods provided by the Children and Young Persons Law of Lagos State (Lagos Laws, 1973).

- (a) Dismissing the charge;
- (b) Discharging the offender upon his entering into recognizance;
- (c) Discharging the offender and placing him under the supervision of a probation officer;
- (d) Committing the offender by means of a corrective order to the care of a relative or other fit person;
- (e) Sending the offender by means of a corrective order to an approved institution;
- (f) Ordering the offender to be caned;
- (g) Ordering the offender to pay a fine, damages, or costs;
- (h) Ordering the parents or guardian of the offender to give security for his good behavior;
- (i) Ordering the parents or guardian of the offender to pay a fine, damages, or costs;
- (j) Committing the offender to custody in a place of detention provided under the Children and Young Persons Law;
- (k) Ordering the offender, if he is a young person, to be imprisoned; and
- (l) Any other method under the law [Children and Young Persons Law (Lagos Laws 1973, Ch. 26), s. 14; Obilade, 1979:318–319]

There are also juveniles in need of care other than those who are delinquent. A child or young person may be brought before a juvenile court by a police officer or other authorized person having a reasonable ground for believing that the child or a young person falls within any of certain specified categories, to include orphans, persons deserted by their relations, destitutes, homeless children, and beggars. If any of these are found, a corrective order may be made under the Children and Young Persons enactment to take care

of them [see Coroners Law (N. N. Laws 1963, Ch. 27); Coroners Law (E. N. Laws 1963, Ch. 29); Obilade, 1979:219].

CORONERS

In all the states in southern Nigeria and beyond, there is provision in the law of each state for coroners' inquests. A coroner is a person empowered to hold inquests on the body of a deceased person who appears to have died a violent or an unnatural death or on the body of a deceased person belonging to any other class specified by the appropriate Nigerian coroners law (Obilade, 1979). Every magistrate is a coroner [see Coroners Law (Lagos Laws 1973, Ch. 30), s. 3(1)]. In addition to magistrates, other fit persons may be appointed coroners (Elias, 1963; Obilade, 1979). A coroner's inquest may normally be held where it appears that a deceased person has died under suspicious and unnatural circumstances such as violence, suddenly and the cause is unknown. Also, the coroner hold an inquest where the deceased has died while confined in a lunatic asylum or in any place or circumstances which in the coroner's opinion makes the holding of an inquest necessary, and where a prisoner or any person in police custody has died [Coroners Law :Lagos Laws 1973, Ch. 30), s. 6].

Furthermore, whenever a coroner feels that the death in question is due to natural causes and that there is nothing to suggest that the death is a result of violence or of any culpable or negligent conduct of the deceased or of any other person, the coroner in such a situation is not bound to hold an inquest. However, this changes when the death in question is that of a prisoner or of a person in police custody [see Coroners Law (Lagos Laws 1973, ch. 30), s. 4]. If a person is already in custody when a coroner holding an inquest is informed that criminal proceedings have been, or about to be, instituted against the said prisoner, or he is arrested in respect of the death, the coroner must stop the inquest and must not resume it until the completion of the criminal proceeding. Moreover, where a coroner who has not started an inquest is so informed, he must not start an inquest until the conclusion of the criminal proceedings (Elias, 1963; Obilade, 1979; Park, 1963).

Before a coroner starts an inquest, he must take on oath evidence available with respect to the identity of the deceased, and the time, place, and manner of his death. The rules of evidence applicable in civil and criminal proceedings are not binding on a coroner (Obilade, 1979). A coroner holding an inquest has the same powers as those of a magistrate with respect to summoning witnesses [see Coroners Law (Lagos Laws 1973, ch. 30), s. 16(1);

Obilade, 1979:220]. When a coroner has concluded an inquest, he must send a report of his findings to the judicial division of the high court in which the inquest has been held [see Coroners Law (Lagos Laws 1973, Ch. 30), ss. 25, 28; Obilade, 1979:220].

MILITARY COURTS

Nigeria also has established Military Courts [see Nigerian Army Act 1960 (No. 26 of 1960); Air Force Act 1964 (No. 11 of 1964); Navy Act 1964 (No. 21 of 1964); Military Courts (Special Powers) Decree 1977, No. 4 of 1977; Forces Acts (Amendment) Decree 1974 (No. 3 of 1974)]. These courts serve only members of the armed forces—the Nigerian Army, the Nigerian Navy, and the Nigerian Air Force—who are subject to the jurisdiction of military courts.

TRIBUNALS

Not all judicial bodies are designated as “courts,” but by law may perform judicial or quasi-judicial functions, and are called tribunals. They are designated tribunals by the law establishing them. However, a tribunal performing judicial or quasi-judicial functions may be regarded as a court having special jurisdiction. A body performing such functions may be called a “tribunal” rather than a “court” (Obilade, 1979:223). It is called tribunal by the legislature merely because the legislature requires the body to consist of experts in a particular area of the law (Elias, 1963). Tribunals are called such because they also deal with a particular area of the law, or speedily with certain aspects of the law or adopt a procedure different from the usual court procedure, or for any two or more of those reasons (Obilade, 1979:223).

For instance, tribunals in Nigeria include Robbery and Firearms Tribunals established under the Robbery and Firearms Decree of 1970 (No. 47 of 1970). There are also special tribunals for the trial of kidnapping and lynching cases established under the Offenses Against the Person (Special Provisions) Decree 1974 (No. 20 of 1974); Currency Offenses Tribunals established under the Counterfeit Currency (Special Provisions) Decree 1974 (No. 22 of 1974). There is also the Exchange Control (Anti-Sabotage) Decree 1977 (No. 5 of 1977), under which special tribunals are constituted, and Rent Tribunals [see, for example, Rent Control and Recovery of Residential Premises Edict 1976 (No. 9 of 1976) Lagos sSate; Obilade, 1979:223]. There are other bodies, which lie outside the scope of this research, exercising judicial or quasijudicial functions.

Table 8.1. The Supreme Court of Nigeria

<i>Differences</i>	<i>Pre-colonial</i>	<i>Colonial</i>	<i>Postcolonial</i>
1. Year of Inception	Before 1863, in the tribes: i.e., Hausa, Yoruba, Effik, etc.	1863 in Nigeria	1960 in Nigeria
2. Highest Court	Juju Priest Court	The Privy Council in London	The Supreme Court of Nigeria
3. Appeals Court	Juju Priest Courts, Chief Courts	West African Court of Appeal in Ghana	Nigerian Court of Appeal
4. Lowest Court	Family Court	Petty Debt Court, Slave Commission Court, Divorce Court, Vice Admiralty Court, Equity Court	Customary or Native Court
5. Judges	Juju Priest, Chiefs Family Heads, Council of Elders	Trained law officers and assessors (foreigners)	Trained law officers and chiefs (natives)
6. Proof of Guilt	Trial by Ordeal	Trial by Jury	Cross examination of evidence; no jury trial
7. Qualification for jury membership	Not applicable	Only those who can write and read English language	Witness for both the accused and the accuser
8. Serious Cases Tried	Witchcraft, Murder and Arson	Treason, Treachery and Murder	Murder, Theft, Armed Robbery and Burglary
9. Prosecutors	Seers of Fortune Tellers	Judges acted as prosecutors	Police prosecution

Differences and Similarities between Precolonial, Colonial, and Postcolonial Court Systems

Pre-colonial, colonial, and postcolonial court systems are not comparable in terms of their similarities, but differences do exist among them:

REVIEW QUESTIONS

1. Discuss the differences and similarities between pre-colonial, colonial, and post-colonial court systems.
2. What do you understand by the term Family Court?
3. Discuss the “Common Law System” adopted in Nigeria in the post-colonial era. Include in your discussion, the characteristics of common law as opposed to the civil law.
4. Discuss the doctrine of judicial precedent.
5. Explain and illustrate the hierarchy of the post colonial Nigerian court system.

Chapter Nine

Punishment Procedures and Sentencing Patterns

KEY TERMS

- | | |
|--------------------------|--------------------|
| 1. Intensity | 11. Solidarity |
| 2. Christianity | 12. Corporal |
| 3. Criminal Procedure | 13. Prevail |
| 4. Natural | 14. Morality |
| 5. Emotions | 15. Transcendental |
| 6. Murder | 16. Infractions |
| 7. Significance | 17. Mutual |
| 8. Punitive | 18. Equilibrium |
| 9. Collective Conscience | 19. Sanctions |
| 10. Inheritance | 20. Revenge |

INTRODUCTION

The purposes of this chapter are twofold: to describe the “Why” of the severity, intensity, and certainty of legal punishment in the pre-colonial, colonial, and postcolonial eras of Nigeria; and to describe the punishment procedures and sentencing patterns in the three eras under investigation. It was noted by Nwali, Njoku, Onu, and Nwogo (2004), in oral interviews, that precolonial Nigeria was very primitive and was guided by its own traditional religions, instead of the Christian religion or other religious values (Parrinder, 1965:2). The colonial era of Nigeria was semi-primitive and was influenced by both traditional religious bodies and Christian missions (Elias, 1956:3). The present postcolonial era is religiously diverse and highly westernized. There is a

multiplicity of different religious bodies—traditional religion, Christianity, Islam, Judaism, etc.—that have affected the infliction of punishment on criminal offenders. Although, rationality plays an important part in present-day punishment, differences among the religious bodies and the developmental patterns that existed in each era have affected the severity, the intensity, and the certainty of legal punishments. They have also affected criminal procedures and sentencing patterns in the three eras under investigation.

PRE-COLONIAL ERA

In pre-colonial Nigeria, there existed strong bonds of moral solidarity engendered by religion (Interviews: Nwali, Njoku, Onu, & Nwogo, 2004). Violation of these moral bonds, was grounds for inflicting punishment. Nwali, Njoku, Onu, and Nwogo (2004) argued that the intensity, severity, and certainty of such punishments of violators reaffirmed and also strengthened the social bonds that existed in that era.

Odi and Nwelom (2003), in an oral interview, contended that the moral aspect of the indigenous people of Nigeria was not a penal code or written laws, nor was it well emphasized like that of the colonial and the postcolonial eras. Rather, it was the positive moral code of the people that induced an offender to confess his or her offense. In fact, crimes were not “given” or “natural” categories to which the indigenous people of Nigeria simply responded (Nwali, Odi, & Nwelom, 2003). Pre-colonial Nigeria was simple, or primitive, with witchcraft as the most serious crime, punishable by death (Onu, Nwali, Odi, & Nwogo, 2003). In other words, crimes were not merely violations of prohibitions or preventions made for rational social defense; rather, they were violations of the moral bonds that tied people together.

Crimes in pre-colonial Nigeria were those acts, which seriously violated indigenous people’s “collective conscience” (Nwali & Njoku, 2004). They were essentially violations of the fundamental moral code which was held sacred, and they provoked punishment for this reason. In fact, the fundamental nature of social rules was not simple, as in other mechanical societies. As a result, the perpetrators of the crime of witchcraft were punished by death rather than restitutive laws, and other regulatory sanctions were levied against the crimes of murder, burglary, theft, etc. The crime of witchcraft evoked moral emotions and was a “shock” to all good consciences; consequently, punishment by death was demanded more than any other type of sanction. Durkheim (1933:4) has argued that it is the connection with sacred things and fundamental values which gives crime a grave moral significance and which necessitates a punitive response. This situation caused pre-colonial Nigerians

to be perceived as a kind of priesthood charged with protecting sacred values in order to keep the faith inherited from their great-grandparents. Since faith was a symbol and living expression of that era's collective beliefs, offenses against the gods became offenses against the "collective conscience" (Nwogo & Onu, 2004).

During this era, punishment was viewed as an important process that enhanced social cohesion, religious rituals, and family life. Durkheim (1933:10) argued that the common conscience is not threatened with total disappearance, but it can come to consist of a general and indeterminate way of thinking and feeling, which leaves an open place for a growing multitude of individual differences. In this sense, he contended that the mechanical solidarity persists even in the most elevated society; and along with this solidarity persists the fact of penal law, of punitive response to crime. As mentioned earlier, "collective conscience" changes over time, and such changes considerably alter the kind of sentiments and passions provoked by criminal violations. Because of these changes, Durkheim identified the forms and the functions of punishment. He redefined his statement that the mechanisms and functions of punishment stay constant while its institutional forms undergo historical change. In accordance with this thesis, intensity of punishment in pre-colonial and colonial Nigeria was severe, but when the country became more advanced, punishment became less severe, replacing the various execution methods and corporal methods of punishment with more humane execution methods, the deprivation of liberty by imprisonment, and payment of fines (Nwali, Odii, & Onu, 2003).

Most theorists have accepted the historical opinions that "intense," or "severe" punishments were generally characteristic of simple societies and that the present advanced societies have become more lenient in their penal methods. That was exactly the case in the colonial era of Nigeria (Onu, 2004). This general opinion brings to mind Lord Lugard, the first Governor-General of Nigeria during the colonial era of Nigeria, who specifically approved beheading and drowning of criminals as humane punishments (Political Memoranda, 1913-1918, Memo VIII, para. 34). Various forms of corporal punishment were not questioned during the period of his rule until 1933 (Milner, 1969:265). The restrictions introduced in 1933 only limited the weapons for corporal punishment to rattan canes and single-tailed whips of prescribed dimensions (Milner, 1969:264). The severity of punishments in colonial Nigeria was due to the intensity of the "collective conscience" resulting from the exploitative ideal that prevailed in that era (Fanon, 1967:13). In the pre-colonial era punishment was also characteristically severe, rigid, and demanding, the "laws" being wholly religious in form and representing all rules as transcendental laws handed down by the gods (Odii

& Nwali, 2003). It expressed the interest of the entire people of the community where the punishment was inflicted. The sameness of the morality of the people in pre-colonial Nigeria made punishments greater in number, and at the same time the greatness of the “collective conscience” made the punishments more severe. However, punishment was severer in the colonial era than in the pre-colonial period, because it was geared to exploitation and it was through legal punishment that the colonialists met their exploitative goals (Fanon, 1967:1; Zahar, 1974:15).

PUNISHMENTS AND TRIAL PROCEDURES: PRE-COLONIAL NIGERIA

It has been noted by Adewoye (1977:4) that the trial of criminal offenses was not devoid of consideration for peacekeeping and harmonious interpersonal relations. According to Adewoye, theft in the pre-colonial era of Nigeria was often considered a very serious offense; the thief was punished not so much for his or her theft, but for the mistrust which he or she was believed to have introduced into the community by his or her act. Penalties under Nigerian indigenous law were directed not against specific infractions of the law, but towards restoration of the social equilibrium. A crime was viewed as a disturbance of individual or communal “equilibrium” (Adewoye, 1977:4). The objective of imposing sanctions in this era was to restore the persisting balance. Durkheim is certain that all legal reactions like group responsibility or revenge are founded in the psychology of the group and not in that of an individual, who is a mere unit of the whole group (Elias, 1956:88). For instance, when member X of group A is killed by member Y of group B, the whole of group A troop out to avenge member X’s death by killing in reprisal any member Z of group B, if Y cannot be got hold of. Sometimes group A may accept compensation in the nature of cattle or other forms of tribal currency; at other times, member Y or another member Z is merely seized into group A as a substitute for the unfortunate victim X. The social equilibrium is restored by such mechanical adjustment as the loss of one economic unit by its replacement by another or in the case where the murderer or his group member is killed in revenge, by the mutual diminution of both groups. There is nothing more to be done. If it is so expressed, it is all a question of Group A – X = Group B – (Y or Z), or Group A + (Y or Z) = Group B – (Y or Z) (Elias, 1956:88). According to Elias, either equation would be false as an explanation of the process of restoring the social equilibrium of the given community, not only because Group A is not necessarily always equivalent in quantity to Group B, but also because even if cattle are substituted for X, Y,

or Z, the punishment does not fit the crime, and this is bound to disturb the social equilibrium of a given society or community (Elias, 1956).

In most communities in pre-colonial Nigeria, virtually all other offenses (except for witchcraft, the penalty for which was death) that would rank as crimes in the English-style courts could be neutralized by payment of adequate compensation to the injured party (Adewoye, 1977; Elias, 1956; Elias et al., 1975). Adewoye noted that in a number of villages in the Onitsha area of present-day Anambra State, manslaughter and accidental death carried less severe sentences. Such offenses could be compensated for by the presentation of a woman or a cow and a piece of loincloth (two fathoms) to the family of the deceased. Similarly, justifiable and accidental homicide were settled in the area of Ogwashi-Uku, in present-day Delta State, by the payment of compensation to the male next of kin of the deceased, sometimes in the form of a marriageable maiden (Adewoye, 1977). It was also noted that in the Ijo area of the Niger Delta, the same practice obtained. Among the Ibos of Kwale, in the Warri area of present-day Delta State, as in many communities in the Owerri area of Imo State, a man who killed a slave had to replace him with one of equal value (Adewoye, 1977:5).

However, in certain areas of pre-colonial Nigeria, intentional murder could be settled by heavy compensation and the making of necessary sacrifices. Among some communities in Calabar (capital of present-day Cross River State), it was reported that a man convicted of a crime punishable by death could avoid capital punishment by paying a very large indemnity, in addition to compensation to the injured party (Adewoye, 1977; Elias, 1956). According to Adewoye, a similar observation was made in respect to certain communities in the Ogoja area of present-day Cross River State. At Abboh, in present-day Delta state, a murderer was made to leave the town for 7 years, after which period he could return, provided that the necessary sacrifices were made. A similar observation was made by Chinua Achebe in his book entitled, *Things Fall Apart* (1959); Okonkwo unintentionally killed his kinsman and was exiled for 7 years, but came back at the expiration date and performed some sacrifices to Ani the land of his great-grandfathers, which he had defiled with the blood of a kinsman. In each circumstance, the welfare of the community was the primary concern of criminal sanctions in the traditional era of Nigeria. It has been further noted that a criminal offender or a deviant could be accepted back into the community or into the society once the necessary compensations or ritual sacrifices were made. This was an indication that he had purged himself of his antisocial pattern of behavior.

Another significant feature of the traditional people of Nigeria was a strong belief in the spirits of departed ancestors (Parrinder, 1965:6). There was also the belief that the community was a continuous entity made up of the dead,

the living, and unborn generations (Idowu, 1973; Parrinder, 1965). The ancestors were believed to be particularly interested in the solidarity of the community, and therefore in the whole procedure of keeping the peace and of administering justice. The law itself was believed to have the moral support of the ancestors—a potent factor “in securing due regard for the law” (Adewoye, 1977:7). The chief, title holders, and elders in the community who administered the customary law were in popular estimation the representatives of the ancestors. These leaders believed that they were under the constant watch of the ancestors. When a dispute occurred or an offense was committed, it served no useful purpose for the parties or accused persons to fabricate lies at the chief’s court or council of elders’ court because of the belief in being watched by the gods and by departed ancestors. There was a strong belief that these gods and the ancestors watched individual consciences. Besides, there were beliefs in other unseen supernatural forces capable of exacting retributive justice (Parrinder, 1965). The strong belief in these gods and the ancestors helped to regulate behavior and also limited perjury in the indigenous Nigerian courts. In serious cases, whenever there were doubts about whether or not the accused had committed the crime, ordeals were used (Adewoye, 1977; Elias, 1956; Elias et al., 1975). The use of ordeals, again, resulted from the belief in the supernatural unseen gods. This was prefixed on the belief that if human attempts at getting at the truth failed, at least the unseen forces would not err (Adewoye, 1977:8). The accuser, the accused, or the suspect was subjected to an ordeal, and was believed to be innocent if he survived it.

Ordeals were of many kinds, varying from one community to another (Adewoye, 1977; Elias, 1956). There was, for an example, the Lele Egbele ordeal among the Urhobos of present-day Delta State and the Itsekin on the Niger Delta. In this ordeal, a fowl’s feather was besmeared with some juju. If the feather’s quill easily passed through the tongue of a defendant or an accused individual, it was believed to be an indication that a false charge had been laid against the person (Adewoye, 1977:8). Among the Calabari in present-day Rivers state, as among the Urhobos, in the determination of cases of witchcraft, an accused person could be asked to swim across a creek full of crocodiles (Adewoye, 1977). The wizard or witch was judged innocent if he came out alive from the creek without crocodile attack. A common ordeal in a group of Ibo people in present-day Abia State was the use of boiling palm oil, usually in criminal offenses involving an allegation of witchcraft. In this ordeal, one hand of the accused was rubbed with juju and boiling palm oil was poured on it. The suspect was judged innocent if his hand remained unscathed (Adewoye, 1977; Elias, 1956). A regular form of ordeal throughout Southern Nigeria was poisoning. Sasswood and esere beans were poisonous plants in common use. When they were mixed with water, or a burnt powder

was made from sasswood and dissolved in water, a guilty person who drank the water would become sick (Elias, 1956:229). Or a piece of iron might be heated in a fire. Of course, only a guilty person who handled the red-hot iron would get burnt (Elias, 1956:229).

Adewoye (1977:8) noted that a variant of the ordeal was juju swearing (i. e., taking of an oath), which acted also as a supreme court. The result was always the final judgment of the case in doubt. The long juju at Arochuku in present-day Abia State (Chuku Ibinokpabi) was the last resort in the difficult cases of witchcraft, land disputes, and many other civil and criminal cases in the precolonial era of Nigeria among Ibos and non-Ibo litigants (Adewoye, 1977:8).

TRIAL PROCEDURE AND PUNISHMENT FOR KNOWN OFFENDERS AND UNKNOWN OFFENDERS

Known Offenders

Elias (1956:9) noted that the procedure adopted was stricter in a chief's court than in a family court and, again, it was stricter in a chiefly society system than in one that was chiefless. According to Elias, the essentials were, however, seldom dissimilar. The Ibos had a unique way of handling the trial of a murderer, an incorrigible robber, or other habitual criminal in a chiefless society. When a person had become such a notorious criminal that his guilt was not in doubt, the local elders invited the elders from remoter areas to witness the trial and punishment. The case against the criminal was then fully explained to the public by the leader of the council of elders. Also, the consent of a father or brother or other living close relative of the accused had to be obtained for the intended trial and the punishment that was to follow. If this relative decided to withhold his consent, the killing could not be carried out; only compensation was payable (Elias, 1956:4). If compensation was agreed upon, the dissenting relative had to swear by any sacred symbol, such as putting sands on his head or chewing kola nut and promise that, should the culprit repeat his crime or be again guilty of another serious crime, he would not then withhold his consent. But if he agree[d] to the execution of the criminal relative, he must commence the hunting down of the offender by throwing earth at him—a sign that he abjure[d] the wrongdoer forever" (Elias, 1956:224).

All these activities took place in a secluded spot in the bush. The relative was normally expected to kill the culprit by strangulation, but if he wilted to the ground from sentiment, certain armed youth (especially summoned for the purpose) would be ordered by the head of the council of elders to spear

the culprit to death. This method of inviting the parents or other living relative to the trial and to the scene of the punishment was to ensure that when a father freely consented to his son's death or a man to his brother's, the punishment must have been fully deserved by the culprit. The presence of the invited elders from within and without similarly served to guarantee the fairness of the proceeding and to ensure the guilt of the accused according to the accepted standards of intertribal law and comity (Elias, 1956:224). In the case of witchcraft, there was peremptory dispatch of the accused without prior adduction of evidence to ascertain his innocence or guilt (Elias, 1956:225). His evil ways must have been noted over the years so that when he was brought to the public for execution, no prior adduction of evidence was needed. As the witch, he was already known for making bad medicine. He must have applied dangerous poisons to some rival neighbors' farms. He must have made many women barren. In fact, a witch's activities were noted, and still are noted, as serious crimes involving multiple offenses, so his execution was publicly performed by burning him alive, burying him alive, or drowning, beheading, or beating him to death by the crowd.

Certain types of robbery or adultery in some communities of indigenous Nigeria were formerly punished by the extreme penalty. Elias (1956:225) noted that the killing of an adulterer was not permitted under any circumstances. In the Ibo tribe of Nigeria, an adulterer never was and still is never punished. It was and still is the *ani* (land) that punishes the adulterer by causing his unexpected death. That is to say, that the adulterer feels guilty and sometimes confesses his immorality before he is struck down by juju; no living person punishes him or her.

Offenders Unknown

It is a known fact that no trial or legal punishment would take place where the wrongdoer was yet to be identified and brought before the chief's or council of elders' court. To help in the identification of the unknown culprit, different African communities in general and communities in Nigeria resorted to various expedients in particular. Ordeals, as discussed earlier, oath swearing, and divination were and still are the three principal modes of appeal to the supernatural, employed in the detection of crime (Adewoye, 1977; Elias, 1956). The preliminary step taken in the investigation of a crime whose perpetrator was unknown was for the victim or his relative to consult one of the recognized classes of diviners found in all African communities (Parrinder, 1962). This class of diviners, collectively known by the Ibos of Nigeria as *Ndi Dibia*, was believed to have a magical or supernatural origin of intelligence, able to prove hidden events. They used all sorts of things in the process of their div-

ination—cowrie shells, bowls of water, sand in a sack, etc. These articles or objects were manipulated to yield an answer to coincide with the diviner's personal predilections, largely if not entirely induced by his balancing of probabilities for or against certain suspected individuals (Elias, 1956). Elias (1956:226) noted that divination, as employed in the detection of crime by African societies in general and Nigerians in particular, had no judicial character, but was a prelude either to the ordeal or to the oath-swearing, which were both "legal," in that they were collectively agreed upon during that period. The ordeal was not the exclusive invention of African societies, nor was it universal among them. Those societies that had used it had ceased doing so before the advent of the British; a good many others, however, including Nigeria, had retained it until it was abolished by British legislation. "Even among primitive tribes where trial by ordeal is still practiced, the decisions arrived at are not necessarily unfair" (Elias, 1956:235).

In criminal cases, such as sorcery or witchcraft, the penalty was death by shooting, spearing, hanging, drowning, or impalement of the convicted person (Elias, 1956:261). For lesser crimes, as well as for cases of compoundable murder, fines and other compensatory payments were normally decreed. These tended to be rigidly enforced, and there was little disposition either on the part of the elders or of the parties to compromise on the fixed rate of penalty payable. It depended on the mood of the chief or council of elders peremptorily decreeing what must be paid to assuage injured feelings in cases of physical impairment or loss of a blood relation. Young offenders were often flogged or whipped publicly (Adewoye, 1977:9; Elias, 1956:262). There was no widespread use of imprisonment as an indigenous institution for punishing a criminal. The practice of imprisonment, as noted by Elias, was in East Africa—the Ugandan system of confining a convicted person in the stocks. This consisted of boring a hole through a heavy log of wood, thrusting the culprit's foot into it, and tying a rope to the leg to limit the criminal's movements (Elias, 1956:262). The presence of human guards and the inconvenience log constantly rubbed prevented the escape of the criminals. In the case of dangerous criminals, both arms as well as one leg were put into stocks (Elias, 1956:262).

There was, however, an established practice among the Yoruba tribe concerning debtors. The imprisonment of debtors in Yoruba rarely cancelled the debt, and was a way of exacting interest (Elias, 1956). Every Yoruba rich man kept his own criminals in prison for offenses such as disobedience, drunkenness, etc. Elias stated that criminals were usually detained in the prison of the Ogboni society of the Yoruba tribe of Nigeria. Amputation or disfigurement of a vicious recidivist may have been practiced in some societies of Africa, but no records exist so far to justify this claim.

COLONIAL ERA

Introduction

Colonial Nigerian society had a well-defined structure and organization as well as a central dynamic, which shaped social life in a specific way, and had a link with politics and economics (Odi & Njoku, 2003). As a result of the politics and economics during this era, the institutions of law, politics, morality, philosophy, and religion were forcibly adapted to fit the conditions of economic life and were able to take on forms and values which were in keeping with the dominant mode of production (Nwali, Njoku, & Odi, 2003; Marx & Engel, 1974).

Legal punishment in the colonial era of Nigeria was geared to exploitation, which the British used for their survival and well-being (Zahar, 1974). The criminal code of law during this era, which emphasized treason and treachery (political crimes) as the most serious crimes, gave expression to a specific form of fear and economic relationships which were necessary to maintain for survival and well-being. Historically, the British form of law introduced into Nigeria on March 4, 1863 designed to safeguard the well-being and survival of the British socially, politically, and economically. In the courtroom, Nigerian defendants were seen as legal subjects, bearing all the attributes of free will, responsibility, and hedonistic psychology, which the British deemed applicable no matter how far the actualities of the case departed from this ideal. The personalities and actions of Nigerian defendants were viewed by the British through the prism of this ideological form of the British overlords which was automatically effective so that the destitute and desperate victims were not in control of their own destinies once they appeared in a court of law (Adewoye, 1977:69).

Sentencing and punishment philosophy in this era seems to have been structured in accordance with the general form of law shaped by the British colonialists. Punishment was seen as necessarily "equivalent" to the offense, so that justice consisted of a kind of equity or fair trading which exchanged one harmful action for another that equaled it (Fanon, 1967:13). This idea of an equivalence, which Garland (1990) traced back to the commodity form, transformed punishment into an exchange transaction in which an offender paid his debts. In this case, the crime became an involuntarily concluded contract. In this way, the British courts in Nigeria constituted cultural forms of capitalist society exhibiting inequity, unfreedom, and destitution, which could not have been the case in the face of equal justice in a free society. British criminal law in Nigeria, like all law, was an instrument for the domination and oppression of a people. As a product of law, punishment protected the property and the government

of the British ruling classes in Nigeria, as well as the social and moral structures which supported them and were directed against Nigerians, who lost their position through social structure—"colonialization." Garland maintains that "the criminal court is not only an embodiment of the abstract legal form; it is also a weapon in the immediate class struggle." The tendency to develop sentencing tariffs, which calibrate punishments in arithmetical terms, is, in effect, the exchange principle in the penal sphere, and the modern use of monetary fines fits perfectly within this bourgeois structure. Consequently, punishment during colonial rule in Nigeria was seen as social action, deeply affected by legal forms and procedures; it never served as crime control, social defense, or rehabilitation. Determinate sentences practiced by the British colonialists widened the nets into which the offenders were put, merely for the British economic interest. Exploitation, instead of the much-needed development and rehabilitation of offenders was the order of the day.

Supreme clemency, such as pardon, commutation, and reprieve was applicable only to British residents in Nigeria. This is a good example of the power of determinism of the British ruling classes in Nigeria. During the British rule in Nigeria (1861–1960), two types of criminal law were enforced—the indigenous and the English law. The basis for legal punishments emanated from these laws. However, the duality of legal systems generated by colonial rule was bound to introduce some measures of limitation in criminal sanctions. The British recognized the existence of local criminal laws in Nigeria and implemented a policy of allowing them to be applied through the medium of the traditional courts. At the same time, they introduced successively the common law of crimes and then a criminal code into northern Nigeria and finally into southern Nigeria, together with a colonial magistracy and judiciary to apply them (Milner, 1969:263). The British administrators in Nigeria made it clear to the local rulers that their customary penal structures would be brought under close scrutiny. As a result, some customary penalties such as mutilation and torture were specifically abolished by statute. Soon, the colonialists made trials by ordeal and their built-in penalties illegal, and slavery as a penalty was abolished by 1830s through treaties and ordinances (Milner, 1969).

Punishments in Colonial Nigeria

During the colonial era, death sentences passed by native or customary courts had to be carried out in a certain way. In this period, legal punishment by hanging, beheading, stoning, drowning, or burying alive inflicted by the native or customary courts were not allowed (Milner, 1969). Before 1900, beheading with a sword, approved by the Maliki law of the Moslems and practiced in the northern emirates, was the only one of the punishments that

persisted as an alternative to hanging. Beheading with a sword was popularly administered by the northern emirates until its abolition in 1936 (Milner, 1969). Lord Lugard, the first governor-general of Nigeria (1900–1914), specifically approved beheading and drowning as humane punishments (Political Memoranda, 1913–1918, Memo VIII, para. 34). Various forms of corporal punishment were apparently not questioned until 1933, but restrictions introduced in that year limited the weapons to rattan canes and single-tailed whips of prescribed dimensions (Milner, 1969:264). It was only in northern Nigeria that complete criminal jurisdiction was even conferred on the native courts. However, the greater majority of serious offenses in southern Nigeria fell within the exclusive jurisdiction of the British courts. The colonial criminal code was amended in 1933 with the intention of restricting the native courts' powers to order punishments (Milner, 1969:265). The preparation for independence in 1960 brought general agreement between the governments that customary criminal laws and penalties would be abolished. Northern Nigeria specifically invalidated them [Penal code law, 1959, s. 2(3)], and western Nigeria withdrew customary criminal jurisdiction from the customary courts [Customary courts (Amendments), Ordinances, 1951, s. 10A]. Punishment procedures and sentencing patterns in colonial Nigeria were subtly geared to the maintenance needs of the colonialists.

POST-COLONIAL ERA

Introduction

Rationality is the goal of present-day punishment, basically due to modernization and economics. In present-day Nigeria, technical relationships have tended to replace moral relationships, therapies have replaced judgments, and so sciences have occupied spaces that were moral and religious during the pre-colonial and colonial eras (Njoku & Odii, 2003).

Punishment nowadays is calculated and calculable based upon self-reflective knowledge of the courtroom workgroup. They achieve these ends by the most instrumentally appropriate means. These practices are directly opposite to the customary or traditional forms of social action that existed in the pre-colonial era of Nigeria. Weber (1954:13) noted that this rationalization of forms of action is a product of modernization. Today, science, including social science, has replaced the traditional belief system, calculation has replaced commitments, and technical knowledge has replaced traditions and sentiments as the leading determinants of action, which was not the case in the pre-colonial era. Presently, punishment is very much professionalized and administrative; it commands significant tax-funded budgets, an extensive net-

work of institutions and agencies, and a range of technical knowledge from social scientists as creators of knowledge in the field of penology. These developments in the penal institutions have implications for present-day punishment, not only for the way in which sanctions are delivered, but also for the social meanings which attach to them and for the ways in which they are experienced by the public and by the offenders themselves.

Today in Nigeria, the administrative network involved in institutional punishment is staffed by paid, trained officials, so that the penal system is comprised of groups of professionals, such as prison wardens, superintendents, medical officers, social workers, probation officers, and criminologists, psychiatrists, and psychologists, to name but a few, each with its own jurisdiction, career structure, interests and ideologies. This was not the case in pre-colonial Nigeria. Economics as well as social activities in Nigeria are highly specialized, with a complex pattern of mutual dependence. These characteristics have something to do with the severity and intensity of punishments. Deprivation of liberty by imprisonment has emerged as the preferred form of punishment, replacing the various capital and corporal methods which preceded it. Changes in political power (for instance, the amendment of the criminal code in 1933) and the several militartakeovers have influenced punishment and brought about counterrevolutionary changes. These changes have had an impact on the severity of punishment under the law. The collective beliefs in present-day Nigeria do not have the character of intensive religious prohibitions, nor do they regulate many spheres of life. Morality and faith are very much rational in ethical matters; they are no longer the will of gods unquestioningly obeyed as in the pre-colonial era. This has something to do with the severity of punishment. Present-day Nigeria has a diverse morality, resulting in less punishment on offenders.

FORMS OF CRIMES/CAPITAL PUNISHMENT AND SENTENCING PATTERNS IN NIGERIA 1958–1963, 1960–PRESENT

Forms of Capital Punishment

In the postcolonial era of Nigeria (from 1960 to the present), the forms of capital punishment inflicted on offenders changed from beheading with a sword and drowning, specifically approved by Lord Lugard (colonial governor-general of Nigeria), to death by firing squad only (Elias et al., 1975; Milner, 1969). Elias et al. noted that today Nigerians live in fear of violent crime, fear of armed robbery, and fear of breaking and entering with intent to kill or cause grievous bodily harm. 1970 to 1973 were hectic years for violent

crimes. In May 1973, Dr. George Obinwa was shot dead right inside his house at Enugu, Enugu State, Nigeria. On June 4, 1972, Victor Ogini was shot dead in the street of Enugu Township. At that time, the now-defunct East Central state of Nigeria was forced because of violent crime to resort to public executions as a deterrent to armed robbery. On May 2, 1970, four armed robbers were publicly executed in Awka, Anambra state, Nigeria. Within 4 months from May to August 1970, a total of 11 armed robbers were publicly executed in Awka (Elias et al., 1975). In December 1970, other seven armed robbers were executed in Uyo, Akwa-Ibom State. These executions, led to a noticeable decline in the incidence of armed robbery in the now-defunct East Central State, now Enugu, Anambra, Imo and Abia States (Elias et al., 1975).

Armed robbery and intentional murder are the most serious crimes to which capital punishment applies in present-day Nigeria. On April 11, 1970, a post office mail van was attacked on the Benin road in Edo state. In Lagos alone, at least four people were robbed and killed during the month of April, 1970. On March 8, 1970, one Mr. Awulabah was shot dead in Lagos. On March 22, 1971, another victim, Mr. Osisanya Popoola, was shot dead and his car was stolen by his killers. On the following day, March 9, 1971, an armed police officer was shot dead at Apapa, Lagos. On March 29, 1971, a cattle dealer was shot dead and his money stolen. These murderous criminals struck by night as well as by day. They robbed and killed on the roads as well as in private dwellings (Elias et al., 1975:3). Life in Nigeria had become very risky and unsafe, and the public cried out for more severe punishment for armed robbers. The federal government of Nigeria responded and promulgated Decree No. 47 of 1970 declaring an open war against violent crimes, especially armed robbery. Every state of Nigeria has been battling relentlessly against the social menace of armed robbery and the murder that usually follows. There have been numerous public executions of armed robbers in Nigeria by means of firing squad, but still, armed robberies continue. Subjecting armed robbers to firing squads might not be the solution to the crime of robbery in Nigeria. To cure a disease, one needs first to know something about it, diagnose it, isolate the particular virus, and finally prescribe an adequate and appropriate remedy or cure, so more research is needed in Nigeria to find the solution to armed robbery.

SENTENCING PRINCIPLES IN NIGERIA 1958–1963

It is regrettable that in Nigeria, statistical data in general, and sentencing data in particular, have not yet reached a high enough degree of detail and comprehensiveness to be of much use for criminological research. The statistics

published by the federal office of statistics follow the pattern established over half a century ago, and were designed only for administrative purposes, so a limited range of information was always available. In Table 9.1, regional numbers of offenses are listed and the percentages of sentences imposed are specified under the three headings: imprisonment, fine, and binding over (Milner, 1969:270). Binding over is apparently meant to include probation and discharges (Milner, 1969). It was only in the north that the native courts exercised a criminal jurisdiction almost fully co-extensive with the high courts and magistrates' courts. Customary tribunals had limited criminal powers. According to Milner, any comparison of principles of sentencing in the high courts and the native courts must therefore be restricted to data from Northern Nigeria. The Northern Ministry of Justice had made available returns of sentences collected from more than 750 native courts in the region in 1962 and 1963. Milner (1969) noted that the region supplied deficiencies and checked doubtful returns, with the result that an estimated 95% of the cases tried in over 90% of the courts were covered by the statistics. The returns were full in some respects: They detailed the lengths of sentences of imprisonment passed, and included information on fines, imprisonment for being in default of payment of fine, corporal punishment, and offenses compounded. They did not, however, give any breakdown of offenses according to type, cover probation, discharges, compensation, and restitution, or sex and age differences among the offenders. A crucial question about the accuracy of these statistics remains, because they were prepared by local court officials who had limited administrative skills and virtually no direct supervision. There are doubts about whether they understood the significance of the forms on which they made the returns, and whether the forms were accurately completed must always remain open to doubt. However, all that can be claimed is that the obvious errors have been investigated and corrected (Milner, 1969:271).

Table 9.1. Disposal of Cases by High Courts and Magistrates' Courts, 1958-63: Adult Offenders

<i>Jurisdiction</i>	<i>Period</i>	<i>Number of Sentences</i>	<i>Imprisonment</i>	<i>Bound Fine</i>	<i>Percentage sentenced</i>	
					<i>Over</i>	<i>Totals</i>
Eastern Nigeria	1958-63	136,401	42	50	7	100%
Western Nigeria	1958-63	37,533	33	59	8	100%
Midwestern Nigeria	1963	4,034	44	47	9	100%
Total:		204,754	36	58	8	100%

Source: Milner, 1969:272

A crucial question about the accuracy of these statistics remains, because they were prepared by local court officials who had limited administrative skills and virtually no direct supervision. There are doubts about whether they understood the significance of the forms on which they made the returns, and whether the forms were accurately. However, all that can be claimed is that the obvious errors have been investigated and corrected (Milner, 1969:271). However, certain rough estimations about judicial attitudes might be drawn from and on the basis of the information below collected recently.

THE HIGH COURTS AND MAGISTRATES' COURTS: STATISTICAL DATA

Adult Offenders

Milner (1969:27) noted that each Nigerian court exercises among a full range of sentencing powers. A comparison of the available data (see Table 9.2) shows that substantial similarities did exist. The table shows the various methods of court disposal of cases in the different parts of the country. The similarities existed despite two qualifying factors. First, the range of cases dealt with in the northern high court and magistrates' courts was probably different from that in other regions. The native courts in that region might be expected to have dealt with a large number of petty offenses and breaches of local regulations which would be dealt with by magistrates' courts in the other regions. Milner (1969:271) noted that the reduction in fining in the northern high court and magistrates' courts which would be expected to follow division of jurisdiction, however, was not clearly indicated. Secondly, the data cover the period in which the basic law administered by the high court and magistrates' courts in Northern Nigeria changed from the old criminal code to the new penal code. From the study of data for the individual years from 1958 to 1963, no change in the sentencing principles of the courts appears to have accomplished this innovation. The most distinctive features of the principles indicated in Table 9.1 are the relatively lower rate of imprisonment in the defunct Western Nigerian courts and their slightly more frequent use of fines. This is because the westerners were richer than the people in other regions during that period. This is maintained consistently throughout the analysis of specific types of offenses given in the three tables. In Table 9.2, which shows the relatively even balance in the free use of imprisonment and fines as appropriate sentences for offenses against persons, the western region shows a preponderance of fines even though its proportion of assaults—offenses for which fines are most commonly used—is no higher than that in the other regions. It is in fact 20% lower than the east's proportion of assaults:

Table 9.2. Disposal of Cases by High Courts and Magistrates' Courts, 1958-63: Adult Offenders, Offenses against Persons (Excluding Murder)

<i>Jurisdiction</i>	<i>Period</i>	<i>Number of Sentences</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>Bound Over</i>	<i>Corporal Punishment</i>	<i>Percentage Sentenced Totals</i>
Eastern Nigeria	1958-63	32,204	42	50	8	0	100%
Western Nigeria	1958-63	2,459	53	35	9	3	100%
Western Nigeria	1958-60	7,101	30	55	11	4	100%
Midwestern Nigeria	1963	1,091	37	46	13	4	100%
Total Country		112,855	36	46	9	8	100%

Source: Milner, 1969:272

97% of its total offenses against persons. The similarity in the figures, as one can see, is the binding-over criterion, which suggests that there was a general agreement that a simple binding over or conditional discharge could be fruitfully used in the cases of less-serious assault.

In Table 9.3, the Western Nigerian figure for fines is still somewhat higher than that in the other regions, even though a substantial shift existed in the overall distribution of penalties. Imprisonment was overwhelmingly used for stealing and associated offenses, presumably on the basis that these were the offenses which had caused the most concern in recent years. These were also severely dealt with by the courts for deterrence purposes. Fines of any substantial amount of money could not be imposed because of the low economic status of the offenders.

This is in direct contrast to the situation in Table 9.2, where fines for assault were not substantial. In Table 9.4, it seems likely that the courts fined more regularly because the accused had obtained some direct financial advantage from their offenses. Milner (1969) noted that during these periods the courts were always clearly reluctant to allow offenders to hold onto any such benefits, and heavy fines, either alone or together with other penalties, were a means both of removing any accrued benefit from a fraudulent course of action and of demonstrating the unprofitable character of the behavior.

It is evident from this presentation that the distinctive pattern of sentencing in Western Nigeria is hard to explain. The patterns in the western region might have reflected an economic difference. The western region of Nigeria was and still is a prosperous region, and the greater availability of money may have led to the courts' greater willingness to impose monetary penalties, bearing in mind that it is a cardinal principle of sentencing that fines should be imposed only on offenders who have the means to pay them. This is in contrast to the less prosperous northern Nigeria and it is probably less supportable, but still valid, with reference to the eastern and midwestern regions. Again, the sentencing pattern in the western region might have reflected the greater sensitivity of the western bench to penal problems within their cultural domain (Milner, 1969:274).

As for fining criteria, there was no distinctive Western Nigerian pattern (Milner, 1969:274). The patterns of imprisonment—in terms of length of sentence—are presented in Table 9.5. Despite controversies over short-term sentences, many regions still relied on sentences of less than 6 months. The Eastern Nigerian sentencing pattern is such a prime example (see Table 9.5).

It was interesting to compare the sentencing patterns of English and English-trained judges in Nigeria with those of the judges in England. This comparison may reveal how far the assumptions lying behind sentencing have survived the transplanting of the law. Comparison was difficult, due to the

Table 9.3. Disposal of Cases by High Courts and Magistrates' Courts, 1958-63: Adult Offenders (Stealing and Allied Offenses)

<i>Jurisdiction</i>	<i>Period</i>	<i>Number of Sentences</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>Bound Over</i>	<i>Corporal Punishment</i>	<i>Percentage Sentenced Totals</i>
Eastern Nigeria	1958-63	28,203	83	14	3	0	100%
Western Nigeria	1958-63	6,692	78	16	2	4	100%
Western Nigeria	1958-60	5,036	67	23	2	8	100%
Midwestern Nigeria	1963	674	78	17	3	2	100%
Total Country		40,605	80	15	3	2	100%

Source: Milner, 1969:273

Table 9.4. Disposal of Cases by High Courts and Magistrates' Courts, 1958-63: Adult Offenders (Offenses Involving Fraud)

Jurisdiction	Period	Number of				Corporal		Percentage Totals
		Sentences	Imprisonment	Fine	Bound Over	Punishment		
Eastern Nigeria	1958-63	6,534	77	20	3	0	100%	
Western Nigeria	1958-63	2,649	64	31	2	3	100%	
Western Nigeria	1958-60	3,419	49	47	2	2	100%	
Midwestern Nigeria	1963	221	63	31	4	2	100%	
Total Country		12,823	68	29	2	1	100%	

Source: Milner, 1969:274

vast number of traffic offenses—nearly 90% of the total volume of cases—handled by the English magistrates' courts. It was complicated further by the division of English statistics into those for indictable and those for nonindictable offenses and also by the existence of a large number of nonprofessional individuals in the English legal system in Nigeria. In 1963, magistrates' courts sentenced to imprisonment 23% of the male offenders over 17 years of age whom they convicted of indictable crimes, and the higher courts (high courts) sentenced 73%. Magistrates' courts imprisoned 1% of nonindictable cases. All courts fined 46% of those convicted of indictable offenses and magistrates fined 95% of those not convicted on indictment (Milner, 1969). The data available on the length of imprisonment passed by the English courts closely resemble those given for Nigerian courts in Table 9.5.

Milner (1969), however, noted that the data regarding sentences of imprisonment on female offenders in Nigeria were statistically insignificant. The length of imprisonment for women in the eastern and western regions of Nigeria during the period under discussion followed the same patterns as those shown in Table 9.5, even though the numbers involved were, of course, much smaller than those for men. A substantial difference appeared in the northern region, where between 1958 and 1963 only 43 women were imprisoned on the order of magistrates' courts (Milner, 1963:275). The reason for this difference in numbers of women imprisoned in the north might be partly due to the northern social structure, which has assigned domestic roles to women and so has reduced opportunities for delinquency available to them. It may also partly due to the relationships between the court administrators and federal and native authority police forces, or wholly due to the religious policy of the Muslims' that does not allow women to socialize. Native authority police in the north were limited to investigating complex cases and those that arose in the cities. Stealing, minor assaults, offenses involving prostitution, etc., were allowed to be dealt with by the native authority police and were brought before native courts.

Juveniles were and still are assumed to commit more statute offenses than other offenses that would lead to severe punishments. Considerable use of corporal punishment existed in respect to juvenile cases in Nigeria, past and present. In Eastern Nigeria it overshadowed all other methods of disposing of cases, perhaps reflecting the attitudes which in 1955 led the Eastern Nigerian Legislature to prohibit the whipping of adults and to limit corporal punishment to juveniles (see Table 9.6). In Nigeria in general and in Eastern Nigeria in particular, the highly aggressive punishment of children was and still is culturally approved of. As a result, judicial belief in the value of beating children therefore had and still has popular support.

Table 9.5. Sentences of Imprisonment by High Courts, 1958–63 (Length of Imprisonment)

Jurisdiction	Period	Number of Sentences	Length of Imprisonment						Over 3 years	Percentage Imprisoned Totals
			0–3 months	3–6 months	6–12 months	1–3 years	Over 3 years			
E. Nigeria	1958–63	57,043	29	18	32	17	4	100%		
W. Nigeria	1958–63	12,813	42	21	24	9	4	100%		
W. Nigeria	1958–60	19,700	44	17	28	9	4	100%		
MW. Nigeria	1963	2,787	44	17	21	12	5	100%		
Total Country		92,343	34	23	26	14	3	100%		

Source: Milner, 1969

Table 9.6. Disposal of Cases by High Courts and Magistrates' Courts, 1958-63: Juvenile Offenders

<i>Jurisdiction</i>	<i>Period</i>	<i>Number of Sentences</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>Bound Over</i>	<i>Corporal Punishment</i>	<i>Percentage Sentenced Totals</i>
Eastern Nigeria	1958-63	7,054	4	11	8	79	100%
Western Nigeria	1958-63	1,602	11	9	23	57	100%
Western Nigeria	1958-60	1,292	3	31	14	52	100%
Midwestern Nigeria	1963	659	23	14	7	18	100%
Total Country		10,607	3	17	9	69	100%

Source: Milner, 1969:275

It is hard to explain the disparities among the remaining figures about juvenile cases in the north, west, and midwestern regions. In the north in particular, no magistrates' court sat as a juvenile court (Milner, 1969:276). The western and midwestern regions had lay members in the juvenile courts; that must have resulted in the inclination of the professional chairman to use detention instead of corporal punishment. In the north, the magistrate was left unchecked by lay members of the magistrates' court. Moreover, in the northern magistracy, members of the courts were expatriates who never cared about what the children did, but who cared about their own survival and well-being—a factor, which had an inevitable impact on sentencing, practices.

That the percentage of detention was not outstandingly high in any region could be accounted for by the small number of approved corrective schools and the resulting limitations on their possible intake (Milner, 1969:277).

The differences in the numbers “bound over”—this category includes the issuance of probation orders—probably reflects the extent of the development of the probation services in the various regions. The northern service began to develop following the Probation of Offenders Law of 1957 (Milner, 1969). In the west, a start was made earlier, but until 1960 the shortage of trained officers almost brought it to a halt. Probation in Eastern Nigeria was minimal until the 1960s; the social welfare which replaced the probation service was confined to Calabar alone (the present capital of Cross River State). There are no similarities among the punishment procedures and sentencing patterns used in pre-colonial, colonial, and postcolonial Nigeria. However, differences do exist, as one can see. The colonialists in Nigeria geared their punishment procedures and sentencing patterns to exploitation. And for the exploitation to take place, they had to divide the Nigerian populace into two distinct groups, hierarchically arranged into allegedly superior and inferior classes. The courts of civil and criminal justice were partial in their decisions in favor of the British citizens residing in Nigeria.

REVIEW QUESTIONS

- 1 Explain the following: Islam, Judaism, and Christianity.
2. What is rationality? Why did it play a big role in punishment during the post-colonial era of Nigeria?
3. Why was the pre-colonial era of Nigeria simple, primitive, and irrational in the infliction of punishment?
4. What does Emile Durkeim (1933:4) mean by “sacred things” and “fundamental values”?
5. What is “ordeal”? Explain with examples.

Chapter Ten

Law: Theory and Practice

KEY TERMS

- | | |
|-----------------------|-----------------------------|
| 1. Legal theory | 11. Common law and equity |
| 2. Compensation | 12. Natural law |
| 3. Criminal law | 13. Sovereignty |
| 4. Constitutional law | 14. Administrative law |
| 5. Jurisdictions | 15. Sociology of law |
| 6. Judicial review | 16. European Union law |
| 7. Property law | 17. Civil law system |
| 8. Contract law | 18. Common law system |
| 9. Environmental law | 19. Rule of law |
| 10. International law | 20. Independent of judicial |

INTRODUCTION

In legal theory, law is a system of rules usually enforced through a set of institutions. It affects politics, economics and society in numerous ways. Contract law regulates everything from buying a bus ticket to trading swaptions on a derivatives market. Property law defines rights and obligations related to transfer and title of personal and real property, for instance, in mortgaging or renting a home. Trust law applies to assets held for investment and financial security, such as pension funds. Tort law allows claims for compensation when someone or their property is injured or harmed. If the harm is criminalized in a penal code, criminal law provides venues by which the state prosecutes and punishes the perpetrator. Constitutional law provides a framework

for creating laws, protecting people's human rights, and electing political representatives. Administrative law relates to the activities of administrative agencies of government. International law regulates affairs between sovereign nation-states in every aspect of life. The impersonal quality of law led Aristotle to assert that "The rule of law", specifies that the ancient Greek philosopher Aristotle in 350 BC "is better than the rule of any individual" (Morrison, 2007).

In fact, legal systems around the world elaborate legal rights and responsibilities in different ways. Laws and legal systems reflect the society and culture out of which they arise. A basic distinction is made between civil law jurisdictions and systems using common law. Some countries base their law on religious texts, while others look to traditional customary law or socialist legal theory for edification. Scholars investigate the nature of law through many perspectives, including legal history and philosophy, or social sciences such as economics and sociology. The study of law raises important questions about equality, fairness and justice, which are not always simple. "In its majestic equality", said Anatole France (1894), "the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread." The most important institutions for law are the judiciary, the legislature, and executive, its bureaucracy, the military and police, the legal profession and civil society.

Aubert in search of law (1983) presents six functions of law thus:

- (a) a means of governance
- (b) a way of shaping the behavior of the citizens
- (c) a device for distributing resources and burdens in society
- (d) a method of safeguarding expectations
- (e) an expression of ideals and values
- (f) a method of dealing with conflicts, and contributing to their solution

However, Morrison (2007) maintains that it is in the legal system that these functions receive their institutional reality.

What is a Legal System?

The legal system is an effective process of allocating resources and resolving disputes. That is to say that a legal system is a particular technique of social action and engineering. The most important objective of criminal Justice is: (a) to punish, (b) to protect society, and (c) to deter people from breaking the law.

What are Legal Families?

Morrison and Geary (2007: 27) refers to legal families as coherent similarities that group together the various legal systems in the world into distinguishable traditions, customs or families. Some of these key features derive from religion, such as Islamic Legal System and others, for an example common law, civil Law or Roman law and the declining Socialist law, are associated with particular political and social ideologies. These families are not rigidly distinguished from each other, but they are significant differences to define them based on the following basic characteristics:

- (I) Objective of the legal system
- (II) Sources of law
- (III) Legal reasoning and methodology structure of pre-court and trial proceedings.

What Do You Mean by The Theory of “The Rule of Exclusion?”

In interpreting statutes or legislation, the English Judiciary adopted a rule that specified that one could not look at material beyond the legislation to determine its meaning. This has been a crucial rule used in interpreting statutes and many people have found it unduly restrictive in that it can lead to results at odds with the stated intention of the politicians who enacted the statute.

THE THEORY OF PARLIAMENTARY SOVEREIGNTY

This theory insists that the parliament is sovereign. Van Caenegem expressed the traditional view in 1987, pointing to the two pillars of the theory:

- (I) No parliament can bind a future parliament or be bound by a previous one.
- (II) There are no laws that parliament cannot make or unmake and no consideration of morality or natural law can prevail against a clear statute emanating from West Minister.

Furthermore, no judge can condemn a law and refuse to apply it on the ground that it is incompatible with the constitution or the fundamental principles of the common law; that would be a usurpation of the legislative function by the judiciary (Morrison and Gearey, 2007:29)

LEGAL SUBJECTS

- A. International law
- B. Constitutional and administrative law
- C. Criminal law
- D. Contract law
- E. Tort law
- F. Property law
- G. Trusts and equity
- H. Further disciplines

LEGAL SYSTEMS

- A. Civil law
- B. Common law and equity
- C. Religious law
- D. Jurisdictions

LEGAL THEORY

- A. History of Law
- B. Philosophy of law
- C. Economic analysis of law
- D. Sociology of law

LEGAL INSTITUTIONS

- A. Judiciary
- B. Legislature
- C. Executive
- D. Military and police
- E. Bureaucracy
- F. Legal profession
- G. Civil society (Morrison, 2007)

Legal subjects

All legal systems deal with the same or similar issues though different countries often categorize and name legal subjects in different ways. Quite com-

mon is the distinction between “public law” subjects, which relate closely to the state (including constitutional, administrative and criminal law), and “private law” subjects (including contract, tort, and property). In civil law systems, contracts and tort fall under a general law of obligations, and trusts law falls under statutory regimes or international conventions. International, constitutional and administrative law, criminal law, contract, tort, property law and trusts are regarded as the “traditional core subjects”, although there are many further disciplines that might be of greater practical importance (Wikipedia, the free encyclopedia 2007).

International law

The globalization of the economy has inevitably led to the globalization of law, too. International law can refer to three things: public international law, private international law or conflict of laws and the law of supranational organizations (Morrison and Geary, 2007).

- **Public International Law** concerns relationships between sovereign nations. It has a special status as law because there is no international police force, and courts lack the capacity to penalize disobedience. International law develops from the customs, practices, and treaties between sovereign nations. The United Nations, founded under the UN Charter, is the most important international organization, established after the failure of the Treaty of Versailles failure at the end of World War II. Other international agreements, like the Geneva Conventions on the Conduct of War, and international bodies such as the International Court of Justice, International Labour Organization, the World Trade Organization, or the International Monetary Fund also form a growing part of Public International Law (Morrison, 2007).
- **Conflict of Laws** also called “Private International Law” concerns which jurisdiction a legal dispute between private parties should be heard in and which jurisdiction’s law should be applied. Today, businesses are increasingly capable of shifting capital and labour supply chains across borders, as well as trading with overseas businesses. This increases the number of disputes outside a unified legal framework and the enforceability of standard practices. Increasing numbers of businesses opt for commercial arbitration under the New York Convention of 1958.
- **European Union Law** is the first and thus far only example of a supranational legal framework. However, given increasing global economic integration, many regional agreements, especially between the Union of South American Nations, are on track to follow the same model. In the EU, sovereign nations have pooled their authority through a system of courts and political institutions. They have the ability to enforce legal norms against

and for member states and citizens, in a way that public international law does not. As the European Court of Justice said in 1962, European Union law constitutes “a new legal order of international law” for the mutual, social, and economic benefit of the member states (Morrison and Geary, 2007).

Constitutional and Administrative Law

Constitutional and administrative law governs the affairs of the state. Constitutional law concerns both the relationships between the executive, legislature and judiciary, on the one hand, and the human rights or civil liberties of individuals against the state, on the other hand. Most jurisdictions, like the United States and France, have a single codified constitution, with a Bill of Rights. A few, like the United Kingdom, have no such document; in those jurisdictions the constitution is composed of statute, case law and convention. A case named *Entick v. Carrington* illustrates a constitutional principle deriving from the common law. Sheriff Carrington searched and ransacked Mr. Entick’s house. When Mr. Entick complained in court, Sheriff Carrington argued that a warrant from a Government minister, the Earl of Halifax, was valid authority. However, there was no written statutory provision or court authority. The leading judge, Lord Camden, stated that, “The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole . . . If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment.

The fundamental constitutional principle, inspired by John Locke, is that the individual can do anything but that which is forbidden by law, and the state may do nothing but that which is authorized by law. Administrative law is the chief method for people to hold state bodies to account. People can apply for judicial review for actions or decisions by local councils, public services or government ministries, to ensure that they comply with the law. The first specialist administrative court of this type was the *Conseil de’ Etat* set up in 1799, when Napoleon assumed power in France (Morrison, 2007).

Criminal law

According to Morrison (2007), criminal law is the body of law that defines criminal offences and the penalties for convicted offenders. The court of criminal procedure regulates the apprehending, charging, and trying of suspected offenders. The paradigm claim of a crime lies in the proof, beyond rea-

sonable doubt, that a person is guilty of two things. First, the accused must commit an act which is deemed by society to be criminal, or *actus reus* (guilty act). Second, the accused must have the requisite malicious intent to do a criminal act, or *mens rea* (guilty mind). However, proof of *mens rea* is not necessary for so called “strict liability” crimes, which include cases like dangerous driving. An *actus reus* is enough. The strict Liability crimes or traffic crime violates the so called “correspondence principles” (Smith and Mogan 2005).

Examples of different kinds of crime include murder, assault, fraud or theft. In exceptional circumstances, defenses can exist to some crimes, such as killing in self-defense, or pleading insanity. The 19th century English case of *R v. Dudley and Stephens*, was a case built on a defense of “necessity.” The *Mignotte*, sailing from Southampton to Sydney, sank. Three crewmembers and a cabin boy were stranded on a raft. They were starving and the cabin boy was close to death. Driven to extreme hunger, the crew killed and ate the cabin boy. The crew survived, were rescued, but put on trial for murder. They argued it was necessary to kill the cabin boy to preserve their own lives. Lord Coleridge, expressing immense disapproval, ruled, “to preserve one’s life is generally speaking, a duty, but it may be the plainest and the highest duty to sacrifice it.” The men were sentenced to hang, but public opinion, especially among seafarers, was outraged and overwhelmingly supportive of the crew’s right to preserve their own lives. In the end, the Crown commuted their sentences to six months.

Criminal law offences are viewed as offences against not just individual victims, but the community as well. The state, usually with the help of police, takes the lead in prosecution, which is why in common law countries cases are cited as “*The People v. . .*” or *R.* (for Rex or Regina v. People) Also, lay juries are often used to determine the guilt of defendants on points of fact: juries cannot change legal rules. Some developed countries still have capital punishment for criminal activity, but the normal punishment for a crime will be imprisonment, fines, state supervision (such as probation), or community service. Modern criminal law has been affected considerably by the social sciences, especially with respect to sentencing, legal research, legislation, and rehabilitation. On the international field, 104 countries have signed the enabling treaty for the International Criminal Court in Rome, which was established to try people for crimes against humanity.

Contract law

The concept of a “contract” is based on the Latin phrase *pacta sunt servanda* (agreements must be kept). Contracts can be simple everyday buying and

selling or complex multi-party agreements. They can be made orally (e. g. buying a newspaper) or in writing (e.g. signing a contract of employment). Sometimes formalities, such as writing the contract down or having it witnessed, are required for the contract to take effect (e.g. when buying a house). There are, however, three key elements to the creation of a contract. These are (1) offer and acceptance, (2) consideration and (3) an intention to create legal relations. For example, in *Carlill v. Carbolic Smoke Ball Company*, a medical firm, advertised that its new wonder drug, the smokeball, would cure people's flu, and if it did not, the buyers would get 100 pounds sterling. Many people sued for their 100 pounds sterling when the drug did not work. Fearing bankruptcy, Carbolic argued the advert was not to be taken as a serious, legally binding offer. It was an invitation to a treat, mere puff, a gimmick. However, the court of appeal held that to a reasonable man Carbolic had made a serious offer. People had given good consideration for it by going to the "district inconvenience" of using a faulty product. "Read the advertisement how you will, and twist it about as you will," said Lord Justice Lindley, "here is a distinct promise expressed in language which is perfectly unmistakable."

"Consideration" means all parties to a contract must exchange something of value to be able to enforce it. Some common law systems, like in Australia, are moving away from consideration as a requirement for a contract. The concept of estoppel or *culpa in contrahendo* can be used to create obligations during pre-contractual negotiations. In civil law jurisdictions, consideration is not a requirement for a contract at all. In France, an ordinary contract is said to form simply on the basis of a "meeting of the minds" or a "concurrence of wills." Germany has a special approach to contracts, which ties into property law. Their 'abstraction principle' (*Abstraktionsprinzip*) means that the personal obligation of contract forms separately from the title of property being conferred. When contracts are invalidated for some reason (e.g. a car buyer is so drunk that he lacks legal capacity to contract) the contractual obligation to pay can be invalidated separately from the proprietary title of the car. Unjust enrichment law, rather than contract law, is then used to restore title to the rightful owner.

Tort Law

Torts, sometimes called delicts, are civil wrongs. To have acted tortiously, one must have breached a duty to another person, or infringed some pre-existing legal right. A simple example might be accidentally hitting someone with a cricket ball. Under negligence law, the most common form of tort, the injured party can make a claim against the party responsible for the injury. The *Donoghue v. Stevenson case* illustrates the principles of negligence. Mrs.

Donoghue ordered an opaque bottle of ginger beer in a café in Paisley. Having consumed half of it, she poured the remainder into a tumbler. The decomposing remains of a dead snail floated out. She fell ill and sued the manufacturer for carelessly allowing the drink to be contaminated. The House of Lords decided that the manufacturer was liable for Mrs. Donoghue's illness. Lord Atkin took a distinctly moral approach, and said,

The liability for negligence . . . is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. . . . The rule that you are to love your neighbor becomes in law, you must not injure your neighbor; and the lawyer's question, who is my neighbor? Received a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor.

This became the basic for the four principles of negligence: (1) Mr. Stevenson owed Mrs. Donoghue a duty of care to provide safe drinks (2) he breached his duty of care (3) the harm would not have occurred but for his breach and (4) his act was the proximate cause, or not too remote a consequence, of her harm. Another example of tort might be a neighbor making excessively loud noises with machinery on his property. Under a nuisance claim the noise could be stopped. Torts can also involve intentional acts, such as assault, battery or trespass. A better known tort is defamation, which occurs, for example, when a newspaper makes unsupportable allegations that damage a politician's reputation. More infamous are economic torts, which form the basis of labor law in some countries by making trade unions liable for strikes, when statute does not provide immunity (Morrison, 2007).

Property Law

Property law governs everything that people call 'theirs.' Real property, sometimes called 'real estate' refers to ownership of land and things attached to it. Personal property refers to everything else: movable objects, such as computers, cars, jewelry, and sandwiches, or intangible rights, such as stocks and shares. A right *in rem* is a right to a specific piece of property, contrasting to a right *in personam* which allows compensation for a loss, but not a particular thing back. Land law forms the basis for most kinds of property law, and is the most complex. It concerns mortgages, rental agreements, licenses, covenants, easements and the statutory systems for land registration. Regulations on the use of personal property fall under intellectual property, company law, trusts and commercial law. An example of a basic case of most property law is *Amory v. Delamirie*. A chimney sweep's boy found a jewel encrusted with precious stones. He took it to a goldsmith to have it valued.

The goldsmith's apprentice looked at it, sneakily removed the stones, and told the boy it was worth three halfpence and that he would buy it. The boy said he would prefer the jewel back, so the apprentice gave it to him, but without the stones. The boy sued the goldsmith for his apprentice's attempt to cheat him. Lord Chief Justice Pratt ruled that even though the boy could not be said to own the jewel, he should be considered the rightful keeper until the original owner is found. In fact, the apprentice and the boy both had a right of possession in the jewel, but the boy's possessory interest was considered better, because it could be shown to be first in time.

This case is used to support the view of property in common law jurisdictions, that the person who can show the best claim to a piece of property, against any contesting party, is the owner. By contrast, the classic civil law approach to property, propounded by Friedrich Carl von Savigny, is that it is a right good against the world. Obligations, like contracts and torts are conceptualized as rights good between individuals. The idea of property raises many further philosophical and political issues. The English philosopher John Locke argued that our "lives, liberties and estates" are our property because we own our bodies and mix our labor with our surroundings. The idea of privately owned property has been contentious in the view of a number of thinkers. Pierre Proudhon, an anarchist thinker, argued in 1840 that "property is theft."

Trust and Equity

Equity is a body of rules that developed in England separately from the "Common Law" and administered by judges. The Lord Chancellor on the other hand, as the King's keeper of conscience, could overrule the judge made law, if he thought it equitable to do so. Equity, therefore, comes to operate more through principles than rigid rules. For instance, whereas, neither the common law nor civil law systems allow people to split the ownership for the control of one piece of property, equity allows this through an arrangement known as a 'trust.' 'Trustees' control property, whereas the 'beneficial' (or 'equitable') ownership of trust property is held by people known as 'beneficiaries'. Trustees own duties to their beneficiaries to take good care of the entrusted property. In the early case of *Keech v. Sandford*, a child had inherited the lease on a market in Romford, London. Mr. Sandford was entrusted to look after this property until the child matured. However, before then, the lease expired. The landlord had (apparently) told Mr. Sandford that he did not want the child to have the renewed lease. Yet the landlord was happy (apparently) to give Mr. Sandford the opportunity of the lease instead. Mr. Sandford took it. When the child (now Mr. Keech) grew up, he sued Mr. Sandford for

the profit that he had been making by getting the market's lease. Mr. Sandford was meant to be trusted, but he put himself in a position of conflict of interest. The Lord Chancellor, Lord King, agreed and ordered Mr. Sandford should disgorge his profits. He wrote,

I very well see, it a trustee, on the refusal a renew, might have a lease to himself few trust-estates would be renewed. . . . This may seem very hard, that the trustee is the only person of all mankind who might not have a lease; but it is very proper that the rule should be strictly pursued and not at all relaxed.

Of course, Lord King LC was worried that trustees might exploit opportunities to use trust property for themselves instead of looking after it. Business speculators using trusts had just recently caused a stock market crash. Strict duties for trustees made their way into company law and were applied to directors and chief executive officers. Another example of a trustee's duty might be to invest property wisely or sell it. This is especially the case for pension funds, the most important form of trust, where investors are trustees for people's savings until retirement. But trusts can also be set up for charitable purposes, famous examples being the British Museum or the Rockefeller Foundation.

Further Disciplines

Law spreads far beyond the core subjects into virtually every area of life. Three categories are presented for convenience, though the subjects intertwine and flow into one another.

Law and Society

- Labour law is the study of a tripartite industrial relationship between worker, employer, and trade union. This involves collective bargaining regulation, and the right to strike. Individual employment law refers to workplace rights, such as health and safety or a minimum wage.
- Human rights: Civil rights and human rights law are important fields to guarantee everyone basic freedoms and entitlements. These are laid down in codes such as the Universal Declaration of Human Rights, the European Convention on Human Rights, and the U.S. Bill of Rights.
- Civil procedure and criminal procedure concern the rules that courts must follow as a trial and appeals proceed. Both guarantee everybody's right to a fair trial or hearing.
- Evidence law involves which materials are admissible in courts for a case to be built.

- Immigration law and nationality law concern the rights of foreigners to live and work in a nation-state that is not their own and to acquire or lose citizenship. Both also involve the right of asylum and the problem of stateless individuals.
- Social security law refers to the rights people have to social insurance, such as jobseekers' allowances or housing benefits.
- Family law covers marriage and divorce proceedings, the rights of children and rights to property and money in the event of separation.

Law and Commerce

- Commercial law covers complex contract and property law. The law of agency, insurance law, bills of exchange, insolvency and bankruptcy law and sales law are important, and trace back to the medieval *Lex Mercatoria*. The UK Sale of Goods Acts and the U.S. Uniform Commercial Code are examples of codified common law based on commercial principles.
- Company law sprung from the law of trusts, on the principle of separating ownership of property and control. The law of the modern company began with the Joint Stock Companies Act, passed in the United Kingdom in 1865, which protected investors with limited liability and conferred separate legal personality.
- Intellectual property deals with patents, trademarks and copyrights. These are intangible assets dealing with the right to protect your invention from imitation, your brand name from appropriation, or a song you wrote from performance and plagiarism.
- Restitution deals with the recovery of someone else's gain, rather than compensation for one's own loss.
- Unjust enrichment is law covering a right to retrieve property from someone that has profited unjustly at another's expense.

Law and Regulation

- Tax law involves regulations that concern value added tax, corporate tax, income tax.
- Banking law and financial regulation set minimum standards on the amounts of capital banks must hold, and rules about best practice for investment. This is to insure against the risk of economic crises, such as the Wall Street Crash of 1929.
- Regulation deals with the provision of public services and utilities. Water law is one example. Since privatization became popular, private companies doing the jobs previously controlled by government have been bound by

social responsibilities. Energy, gas telecoms and water are regulated industries in most OECD countries.

- Competition law, known in the U.S. as Antitrust law, is an evolving field that traces as far back as to the Roman decrees against price fixing and the English restraint of trade doctrine. Modern competition law derives from the U.S. anti-cartel and anti-monopoly statutes (the Sherman Act and Clayton Act) of the turn of the 20th century. It is used to control businesses who attempt to use their economic influence to distort market prices at the expense of consumer welfare.
- Consumer law could include anything from regulations on unfair contractual terms and clauses to directives on airline baggage insurance.
- Environmental law is increasingly important, especially in light of the Kyoto Protocol and the potential danger of climate change. Environmental protection also serves to penalize polluters within domestic legal systems.

Legal Systems

In general, legal systems around the world can be split between civil law jurisdictions, on the one hand, and systems using common law and equity, on the other. The term civil law, referring to a legal system, should not be confused with civil law as a group of legal subjects, as distinguished from criminal law or public law. A third type of legal system (still accepted by some countries in part, or even in whole) is religious law, based on scriptures and interpretations thereof. The specific system that a country follows is often determined by its history, its connection with countries abroad, and its adherence to international standards. The sources that jurisdictions recognize as authoritatively binding are the defining features of legal systems. Yet classification of different systems is a matter of form rather than substance, since similar rules often prevail.

Civil Law

Civil law is the legal system used in most countries around the world today. Civil law emanates from two authoritative sources: primarily, legislation (codifications in constitutions or statutes passed by government) and, secondarily, custom. Codifications date back millennia, with one early example being the ancient Babylonian Codex Hammurabi, but modern civil law systems essentially derive from the legal practice of the Roman Empire, whose texts were discovered in Medieval Europe. Roman law in the days of the Roman Republic and Empire was heavily procedural, and there was no professional legal class. Instead a lay person, *index*, was chosen to adjudicate.

Precedents were not reported, so any case law that developed was disguised and almost unrecognized. Each case was to be decided afresh from the laws of the state, which mirrors the (theoretical) unimportance of judges' decisions for future cases in civil law systems today. During the 6th century AD in the Eastern Roman Empire, the Emperor Justinian codified and consolidated the laws that had existed in Rome, so that what remained was one-twentieth of the mass of legal texts from before. This became known as the *Corpus Juris Civilis*. As one legal historian wrote, "Justinian consciously looked back to the golden age of Roman law and aimed to restore it to the peak it had reached three centuries before." Western Europe, meanwhile, slowly slipped into the Dark Ages, and it was not until the 11th century that scholars in the University of Bologna rediscovered the texts and used them to interpret their own laws. Civil law codifications based closely on Roman law continued to spread throughout Europe until the Enlightenment; then in the 19th century, both France, with the *Code Civil*, and Germany, with the *Bürgerliches Gesetzbuch*, modernized their legal codes. These two codes influenced heavily not only the law systems of the countries in continental Europe (e.g. Greece), but also the Japanese and Korean legal traditions. Today countries that have civil law systems range from Russia and China to most of Central and Latin America.

Common Law and Equity

Common law and equity are systems of law whose special distinction is the doctrine of precedent, or *stare decisis* (Latin for "to stand by decisions"). Alongside this "judge-made law," common law systems always have governments who pass new laws and statutes. However, these are not put into a codified form. Common law came from England and was inherited by almost every country that once belonged to the British Empire, with the exceptions of Malta, Scotland, the U.S State of Louisiana and the Canadian province of Quebec. Common law had its beginnings in the Middle Ages, when the English monarchy had been weakened by the enormous cost of fighting for control over large parts of France. King John had been forced by his barons to sign a document limiting his authority to pass laws. This "great charter" or *Magna Carta* of 1215 also required that the King's entourage of judges hold their courts and judgments at "a certain place" rather than dispensing autocratic justice in unpredictable places about the country. A concentrated and elite group of judges acquired a dominant role in law making under this system, and compared to its European counterparts the English judiciary became highly centralized. In 1297, for instance, while the highest court in France had fifty-one judges, the English Court of Common Pleas had five. This powerful and tight-knit judiciary gave rise to a rigid and inflexible system of common

law. As time went on, increasing numbers of citizens petitioned the King to override the common law, and on the King's behalf, the Lord Chancellor gave judgment to do what was equitable in a case. From the time of Sir Thomas More, the first lawyer to be appointed as Lord Chancellor, a systematic body of equity grew up alongside the rigid common law, and developed its own Court of Chancery. At first, equity was often criticized as erratic, that it "varies like the Chancellor's foot." But over time it developed solid principles, especially under Lord Eldon. In the 19th century the two systems were fused into one. In developing the common law and equity, academic authors have always played an important part. William Blackstone, from around 1760, was the first scholar to describe and teach common law in Oxford University. Later, scholars who sought explanations and underlying structures slowly changed the way the law actually worked.

Religious Law

Religious law refers to the notion that the word of God is law. Examples include the Jewish Halakha and Islamic Sharia, both of which mean the "path to follow." Christian canon law also survives in some church communities. The implication of religion for law is unalterability, because the word God cannot be amended or legislated against by judges or governments. However, religion never provides a thorough and detailed legal system. For instance, the Quran has some law, but it acts merely as a source of further law through interpretation. This is mainly contained in a body of jurisprudence known as the *fiqh*. Another example is the Torah or Old Testament, in the Pentateuch or Five Books of Moses. This contains the basic code of Jewish law, which some Israeli communities choose to use. The Halakha is a code of Jewish law which summarizes some of the Talmud's interpretations. Nevertheless, Israeli law allows litigants to use religious laws only if they choose. Members of the clergy in the Roman Catholic Church, the Eastern Orthodox Church, and the Anglican Communion use canon law.

Until the 18th century, elements of Sharia law were found in legal systems throughout the Muslim world, for instance under the Ottoman Empire's *Mecelle* code. But since the mid-1940s efforts have been made, in country after country, to bring the law more into line with modern conditions and conceptions. In modern times, Sharia is merely an optional supplement to the civil or common law of most countries, though Saudi Arabia and Iran's whole legal systems source their law in Sharia. During the last few decades, one of the fundamental features of the movement of Islamic resurgence has been the call to restore the Sharia, which has generated a vast amount of literature and affected world politics.

Jurisdictions

Though the legal traditions described have resulted in a number of common traits across jurisdictions, each sovereign entity can have unique aspects. The lists below reflect and refers to articles on individual jurisdictions, organized by geography.

LEGAL THEORY

History of Law

According to Morrison (2007), the history of law is closely connected to the development of civilizations. Ancient Egyptian law, dating as far back as 3000 BCE, had a civil code that was probably broken into twelve books. It was based on the concept of Ma'at, characterized by tradition, rhetorical speech, social equality and impartiality. Around 1760 BCE under King Hammurabi, ancient Babylonian law was codified and put in stone in market places for the people to see; this became known as the Codex Hammurabi. However, like Egyptian law, pieced together by historians from records of litigation, few sources remain and much has been lost over time. The influence of these earlier laws on later civilizations was small (Morrison, 2007).

Morrison (2007) noted that the Old Testament is probably the oldest body of law still relevant for modern legal systems, dating back to 1280 BCE. It is what we call “Actus reus” and the New Testament is the mens rea where Jesus talks about the mind as a regulator of action. It takes the form of moral imperatives, as recommendations for a good society. From about the 8th Century BCE, ancient Athens, the small Greek city-state, was the first society based on broad inclusion of the citizenry, excluding women and the slave class. Athens had no legal science, and Ancient Greek has no word for “law” as an abstract concept. Yet, Ancient Greek law and teachings contained major constitutional innovations in the development of the Roman law. Greek law therefore formed the bridge to the modern legal world, over the centuries between the rise and decline of the Roman Empire.

Roman law underwent major codification in the *Corpus Juris Civilis* of Emperor Justinian I. It was lost through the Dark Ages, but rediscovered around the 11th century when medieval legal scholars began researching the Roman codes and using their concepts. In Medieval England, the King’s powerful judges began to develop a body of precedent, which became the common law. But also, a Europe-wide *Lex Mercatoria* was formed, so that merchants could trade using familiar standards, rather than the many splintered types of local law. The *Lex Mercatoria*, a precursor to modern commercial

law, emphasized the freedom of contract and alienability of property. As nationalism grew in the 18th and 19th centuries, *Lex Mercatoria* was incorporated into countries' local law under new civil codes. The French *Napoleonic Code* and the German *Bürgerliches Gesetzbuch* became the most influential codes. As opposed to English common law, which consists of enormous tomes of case law, codes in small books are easy to export and for judges to apply. However, today there are signs that civil and common law are converging. European Union law is codified in treaties, but it developed through the precedent laid down by the European Court of Justice (Morrison and Geary, 2007).

In the Middle East and Asia, India and China represented distinct traditions of law, and had historically independent schools of legal theory and practice. The *Arthashastra*, probably compiled around 100 AD (though containing some older material) and the *Manusmriti* (c. 100-300 AD), foundational treaties in India, were texts that were considered authoritative legal guidance. Manu's central philosophy was Tolerance and Pluralism, and was cited across Southeast Asia. This Hindu tradition, along with Islamic law, was supplanted by the common law when India became part of the British Empire. Malaysia, Brunei, Singapore, and Hong Kong also adopted the common law. The eastern Asia legal tradition reflects a unique blend of secular and religious influences. Japan was the first country to begin modernizing its legal system along western lines, by importing bits of the French, but mostly the German Civil Code. This partly reflected Germany's status as a rising power in the late 19th century. Similarly, traditional Chinese law gave way to westernization towards the final years of the Ch'ing dynasty in the form of six private law codes based mainly on the Japanese model of German law. Today Taiwanese law retains the closest affinity to the codifications from that period, because of the split between Chiang Kai-shek's nationalists, who fled there, and Mao Tsetung's communists who won control of the mainland in 1949. The current legal infrastructure in the People's Republic of China was heavily influenced by Soviet Socialist law, which essentially inflates administrative law at the expense of private law rights. Today, however, because of rapid industrialization China has been reforming its laws, at least in terms of economic (if not social and political) rights. A new contract code in 1999 represented a turn away from administrative domination. Furthermore, after negotiations lasting fifteen years, in 2001 China joined the World Trade Organization (Morrison, 2007).

Philosophy of Law

The philosophy of law is also known as jurisprudence. However, normative jurisprudence is essentially political philosophy and asks "what should law

be?” Analytic jurisprudence, on the other hand, is a distinctive field which asks “what is law?” John Austin, an early famous philosopher of law, a student of Jeremy Bentham and first chair of law at the new University of London from 1829 (Morrison, 2007) maintained that law is “commands, backed by threat of sanctions, from a sovereign, to whom people have a habit of obedience.” This approach was long accepted, especially as an alternative to natural law theory. Natural lawyers, such as Jean-Jacques Rousseau, argued that human law reflects essentially moral and unchangeable laws of nature. Immanuel Kant, for instance, believed a moral imperative requires laws “be chosen as though they should hold as universal laws of nature.” Austin and Bentham, following David Hume, thought this conflated what “is” and what “ought to be” the case. They believed in law’s positivism, that real law is entirely separate from “morality.” However, Friedrich Nietzsche, who believed that law emanates from The Will to Power and cannot be labeled as “moral or immoral,” also criticized Kant (Morrison, 2007).

In 1934, the Austria philosopher Hans Kelsen continued the positivist tradition in his book the *Pure Theory of Law*. Kelsen believed that though law is separate from morality, it is endowed with “normativity,” meaning we ought to obey it. Whilst laws are positive “is” statements (e. g. the fine for reversing on a highway is 500 pound staling), law tells us what we “should” do (i. e. not drive backwards). So every legal system can be hypothesized to have a basic norm (Grundnorm) telling us we should obey the law. Carl Schmitt, Kelsen’s major intellectual opponent, rejected positivism, and the idea of the rule of law, because he did not accept the primacy of abstract normative principles over concrete political positions and decisions. Therefore, Schmitt advocated a jurisprudence of the exception (state of emergency), which denied that legal norms could encompass all political experience.

Later in the 20th century, H. L. A. Hart attacked Austin for his simplifications and Kelsen for his fictions in *The Concept of Law*. As the chair of jurisprudence at Oxford University, Hart argued that law is a “system of rules.” Rules, said Hart, are divided into primary rules (rules of conduct) and secondary rules (rules addressed to officials to administer primary rules). Secondary rules are divided into rules of adjudication (to resolve legal disputes), and rules of change (allowing laws to be varied). Two of Hart’s students have continued the debate since. Ronald Dworkin was his successor in the Chair of Jurisprudence at Oxford and his greatest critic. In his book *Law’s Empire*, Dworkin attacked Hart and the positivists for their refusal to treat law as a moral issue. Dworkin argues that law is an “interpretive concept,” that required judges to find the best fitting and most just solution to a legal dispute, given their constitutional traditions. Joseph Raz, on the other hand, has defended the positivist outlook and even criticized Hart’s ‘soft social thesis’

approach in *The Authority of Law*. Raz argues that law is authority, identifiable purely through social sources, without reference to moral reasoning. Any categorization of rules beyond their role as authoritative dispute mediation is best left to sociology, rather than jurisprudence.

Economic Analysis of Law

Economic analysis of law is an approach to legal theory that incorporates and applies the methods and ideas of economics to law. The discipline arose partly out of a critique of trade unions and U.S. antitrust law. The most influential proponents, such as Richard Posner and Oliver Williamson and the so-called Chicago School of economists and lawyers including Milton Friedman and Gary Becker are generally advocates of deregulation and privatization, and are hostile to state regulation or what they see as restrictions on the operation of free markets. The most prominent economic analyst of law is 1991 Nobel Prize winner Ronald Coase. His first major article, *The Nature of the Firm* (1937), argued that the reason for the existence of firms (companies, partnerships, etc.) is the existence of transaction costs. Rational individuals trade through bilateral contracts on open markets until the costs of transactions reveal that using corporations to produce things is more cost-effective. His second major treatise, *The Problem of Social Cost* (1960), argued that if we lived in a world without transaction cost, people would bargain with one another to create the same allocation of resources, regardless of the way a court might rule in property disputes. Coase used the example of a nuisance case named *Sturges v. Bridgman*, where a noisy sweetmaker and a quiet doctor were neighbors and went to court to see who should have to move. Coase said that regardless of whether the judge ruled that the sweetmaker had to stop using his machinery, or that the doctor had to put up with it, they could strike a mutually beneficial bargain about who moves house that reaches the same outcome of resource distribution. Coase and others like him wanted a change of approach, to put the burden of proof for positive effects on a government that was intervening in the market, by analyzing the costs of action.

Sociology of Law

Sociology of law is a diverse field of study that examines the interaction of law with society. It overlaps with jurisprudence, economic analysis of law and more specialized subjects such as criminology. The institutions of law and the social construction of legal issues and systems are relevant areas of inquiry. Initially, legal theorists were suspicious of the discipline. Kelsen attacked one of its founders, Eugen Ehrlich, who wanted to emphasize the

difference between positive law, which lawyers learn and apply, and other forms of ‘law’ or social norms that regulate everyday life, generally preventing conflicts from reaching lawyers and courts. Around 1900 Max Weber defined his “scientific” approach to law, identifying the “legal rational form” as a type of domination, not attributable to people but to abstract norms. Legal rationalism was his term for a body of coherent and calculable law which formed a precondition for modern political developments and the modern bureaucratic state and developed in parallel with the growth of capitalism. Another sociologist, Emile Durkheim, wrote in *The Division of Labour in Society* that as society becomes more complex, the body of civil law concerned primarily with restitution and compensation grows at the expense of criminal laws and penal sanctions.

Other notable early legal sociologists included Hugo Sinzheimer, Theodor Geiger, Georges Gurvitch and Leon Petrazycki in Europe, and William Graham Sumner in the U.S.

Legal Institutions

The main institutions of law in industrialized countries are independent courts, representative parliaments, an accountable executive, the military and police, bureaucratic organization, the legal profession and civil society itself. John Locke in *Two Treatises on Civil Government*, and Baron de Montesquieu after him in *The Spirit of the Laws*, advocated a separation of powers between the institutions that wield political influence, namely the judiciary, legislature and executive. Their principle was that no person should be able to usurp all powers of the state, in contrast to the absolutist theory of Thomas Hobbes’ *Leviathan*. More recently, Max Weber and many others reshaped thinking about the extensions of the state that come under the control of the executive. Modern military, policing and bureaucratic power over ordinary citizens’ daily lives pose special problems for accountability that earlier writers like Locke and Montesquieu could not have foreseen. The custom and practice of the legal profession is an important part of people’s access to justice, whilst civil society is a term used to refer to the social institutions, communities and partnerships that form the political basis of law.

Judiciary

The judiciary is a group of judges who mediate people’s disputes and determine the outcome. Most countries have a system of appeals courts, up to a supreme authority. In the U.S. A., this is the Supreme Court; in Australia, the High Court; in the UK, the House of Lords; in Germany, the *Bundesverfas-*

sungsgericht; in France, the *Cour de Cassation*. However, for most European countries the European Court of Justice in Luxembourg may overrule national law, where EU law is relevant. The European Court of Human Rights in Strasbourg allows citizens of member states of the Council of Europe to bring cases to in concerning human rights issues.

Some countries allow their highest judicial authority to strike down legislation which looks unconstitutional. For instance, the United States Supreme Court struck down a Texan law forbidding assistance to women in abortion, in *Roe v. Wade*. The constitution's fourteenth amendment was interpreted to give Americans a right to privacy, hence a woman's right to choose abortion. The judiciary is theoretically bound by the constitution, much as legislative bodies are. In most countries judges may only interpret the constitution and all other laws. But in common law countries, where matters are not constitutional, the judiciary may also create law under the doctrine of precedent. On the other hand, the UK, Finland and New Zealand still assert the ideal of parliamentary sovereignty, whereby the unelected judiciary may not overturn law passed by a democratic legislature.

Legislature

Prominent examples of legislatures are the Houses of Parliament in London, the Congress in Washington D. C., the *Bundestag* in Berlin, the *Duma* in Moscow and the *Assemblée Nationale* in Paris. By the principle of representative government, people vote for politicians to carry out *their* wishes. Most countries are bicameral, meaning they have two separately appointed legislative houses. However, countries like Israel, Greece, Sweden and China are unicameral. Politicians are elected into the lower house to represent smaller constituencies. However, those elected into the upper house represent states in a federal system (as in Australia, Germany or the U.S. A.) or different voting configuration in the unitary system (as in France). In the United Kingdom the upper house is appointed by the government and functions as a house of review. One criticism of bicameral systems with two elected chambers is that the upper and lower houses may simply mirror one another. The traditional justification of bicameralism is that it minimizes arbitrariness and injustice in governmental action.

To pass legislation, a majority of Members of Parliament must vote for a bill in each house. Normally there will be several readings and amendments proposed by the different political factions. If a country has an entrenched constitution, a special majority for changes to the constitution will be required, making changes to the law more difficult. A government minister or member of Parliament usually leads the process (e. g. the UK or Germany).

But in the presidential system, an executive appoints a cabinet to govern from his or her political allies whether or not they are elected (e. g. the U.S. A. or Brazil), and the legislature's role is reduced to either ratification or veto.

Executive

The “executive” in a legal system refers to the government's centre of political authority. In most democratic countries, like the UK, Germany, India and Japan, it is elected into and drawn from the legislature and is often called the cabinet. Alongside this is usually the head of state, who lacks formal political power but symbolically enacts laws. The head of state is sometimes appointed (the Bundespräsident in Germany), sometimes hereditary (British monarch) and sometimes elected by popular vote (the President of Austria). The other important model is found in countries like France, the U.S. or Russia. Under these presidential systems, the executive branch is separate from the legislature, and is not accountable to it. The executive's role may vary from country to country, but usually it will initiate or propose the majority of legislation and handle a country's foreign relations. The military, police, as well as the bureaucracy often fall under executive control. Ministers or secretaries of state of the government head a country's public offices, such as the health department or the department of justice. The election of a different executive is therefore capable of revolutionizing an entire country's approach to government.

Military and Police

The military and police are sometimes referred to as “the long and strong arm of the law.” While military organizations have existed as long as governments themselves, a standing police force is relatively modern. Medieval England used a system of traveling criminal courts, or assizes, which used show trials and public executions to instill fear into the community and keep them under control. The first modern police were probably those in 17th century Paris, in the court of Louis XIV, although the Paris Prefecture of Police claimed they were the world's first uniformed police officers. In 1829, after the French Revolution and Napoleon's dictatorship, a government decree created the first uniformed police officers in Paris and all other French cities, known as *sergents de ville* (“city sergeants”). In Britain, the Metropolitan Police Act of 1829 was passed by Parliament under Home Secretary Sir Robert Peel, founding the London Metropolitan Police.

Sociologist Max Weber famously argued that the state is that which controls the legitimate monopoly of the means of violence. The military and police carry out enforcement at the request of the government or the courts. The

term failed state is used where the police and military no longer control security and order and society moves into anarchy, the absence of government.

Bureaucracy

The word “bureaucracy” derives from the French for “office” (*bureau*) and Ancient Greek for “power” (*kratos*). Like the military and police, all of a legal system’s government servants and bodies that make up the bureaucracy carry out the wishes of the executive. Baron de Grimm, a German author who lived in France, made one of the earliest references to the concept. In 1765 he wrote,

The real spirit of the laws in France is that bureaucracy of which the late Monsieur de Gournay used to complain so greatly; here the offices, clerks, secretaries, inspectors and *intendants* are not appointed to benefit the public interest, indeed the public interest appears to have been established so that offices might exist.

Cynicism over “officialdom” is still common, and the workings of public servants are typically contrasted to private enterprise motivated by profit. In fact, private companies, especially large ones, also have bureaucracies. Negative perceptions of “red tape” aside, public services such as schooling, health care, policing or public transport are a crucial state function making public bureaucratic action the locus of government power. Writing in the early 20th century, Max Weber believed that a definitive feature of a developed state had come to be its bureaucratic support. The typical characteristics of modern bureaucracy, Weber continued, are that officials define its mission, the scope of work is bound by rules, management is composed of career experts, who manage top down, communicating through writing and binding public servants’ discretion with rules.

Legal Profession

Lawyers give their clients advice about their legal rights and duties, and represent them in court. As European Court of Human Rights has stated, the law should be adequately accessible to everyone and people should be able to foresee how the law affects them. In order to maintain professionalism, the practice of law is typically overseen by either a government or independent regulating body such as a bar association, bar council or law society. The regulating body must certify an aspiring practitioner before undertaking his practice. This usually entails a two or three year program at a university faculty of law or a law school, earning the student a Bachelor of Laws, a Bachelor of

Civil Law or a Juris Doctor degree. This course of study is followed by an entrance examination (e. g. admission to the bar). Some countries require a further vocational qualification such as internship before a person is permitted to practice law. Those wishing to become a barrister spent a year's pupillage under the oversight of an experienced barrister. Outside the requirements for legal practice, many students pursued higher academic degrees to earn a Master of Laws, a Master of Legal Studies or a Doctor of Laws.

Once accredited, a lawyer will often work in a law firm, in a chamber as a sole practitioner, in a government post or in a private corporation as an internal counsel. In addition, a lawyer may become a legal researcher who provides on-demand legal research through a commercial service or through freelance work. Many people trained in law put their skills to use outside the legal field entirely. Significant to the practice of law in the common law tradition is the legal research to determine the current state of the law. This usually entails exploring case-law reports, legal periodicals and legislation. Law practice also involves drafting documents such as court pleadings, persuasive beliefs, contracts, or wills and trusts. Negotiation and dispute resolution skills are also important to legal practice, depending on the field.

Civil Society

The term "civil society" dates back to John Locke, who saw civil society as made up of people who have "a common established law and judicature to appeal to, with authority to decide controversies between them." German philosopher Georg Wilhelm Freidrich Hegel also distinguished the "state" from "civil society" (*Zivilgesellschaft*) in *Elements of the Philosophy of Right*. Hegel believed that civil society and the state were polar opposites, within the scheme of his dialectic theory of history. Civil society is necessarily a source of law, by being the basis from which people form opinions and lobby for what they believe law should be. As Australian barrister and author Geoffrey Robertson QC wrote of international law,

One of its primary modern sources is found in the responses of ordinary men and women, and of the non-governmental organizations which many of them support, to the human rights abuses they see on the television screen in their living rooms.

Freedom of speech, freedom of association and many other individual rights allow people to meet together, discuss, criticize and hold to account their governments, from which the basis of a deliberative democracy is formed. The more people are involved with, concerned by and capable of changing how political power is exercised over their lives, the more acceptable and legitimate the law becomes to the people. Developed political par-

ties, debating clubs, trade unions, impartial media, business and charities are all part of a healthy civil society.

THE RULE OF LAW

Barnett notes that the rule of law represents one of the most challenging concepts of any constitution, because the rule of law lends itself to different interpretations by different people, and it is this feature which makes an understanding of the doctrine elusive (Barnett, 2007). Aristotle noted that where laws do not rule, there is no constitution. Of all constitutional concepts, the rule of law is also the most subjective and value laden. The apparent uncertainties in the rule of law and its variable nature should not cause concern, although, inevitably, it will cause some insecurity. In the study of the rule of law, Barnett suggested that it is more important to recognize and appreciate the many rich and varied interpretations that have been given to it, than to be able to offer an authoritative, definitive explanation of the concept. For, the essence of the law lies in its potential to ensure limited governmental power and the protection of individual rights (Barnett, 2007).

Consequently, the rule of law may be interpreted either as a philosophy or political theory which lays down fundamental requirements for law, or as a procedural device by which those with power rule under the law. The essence of the rule of law is that of the sovereignty or supremacy of law over man (but in Nigeria, the opposite is true). The rule of law insists that every person—irrespective of rank and status in society—be subject to the law (but Nigeria rulers tend to be above the law and can do anything to the citizens). The rule of law is both prescriptive—dictating the conduct required by law—and protective of citizens—demanding that government acts according to law. This central theme recurs whether the doctrine is examined from the perspective of philosophy, or political theory, or from the more pragmatic vantage point of the rule of law as a procedural device. The rule of law underlies the entire constitution and, in one sense, all constitutional law is concerned with the rule of law (but it does not exist in Nigeria, in practice). This concept is of great antiquity and continues to exercise legal and political philosophers today.

The rule of law cannot be viewed in isolation from political society. The emphasis on the rule of law as a yardstick for measuring both the extent to which government acts under the law and the extent to which individual rights are recognized and protected by law, is inextricably linked with Western democratic liberalism. In this respect, it is only meaningful to speak of the rule of law in a society that exhibits the features of a democratically elected, responsible—and responsive—government and a separation of powers, which will result in a ju-

diciary that is independent of government. In liberal democracies, therefore, the concept of the rule of law implies an acceptance that law itself represents a “good”; that law and its governance is a demonstrable asset to society.

CONTRASTING ATTITUDES TO THE RULE OF LAW

The acceptance of law as a benevolent ruling force is universally accepted. Differing societies, such as Nigeria, do subscribe to very different political philosophies and the insistence on the rule of law—in the Western liberal sense—has little application. Marxist made it clear that the law serves not to restrict government and protect individual rights but rather to conceal the injustices inherent in the capitalist system. In Nigeria, law serves to conceal government injustices inherent in the election process and the announcement of the results. Accordingly, the concept of the rule of law—denoting some form of morality in law—represents no more than a false idealization of law designed to reinforce the political structure and economic status quo in society. Echoes of this thesis dominate the more moderate socialist conceptions of the rule of law and the critique of liberalism. It can be argued—from the socialist perspective—that attention has to be paid to the protection of property interests. The liberal domain thus becomes one, which, again, masks true social and economic inequality while at the same time proclaiming equality and justice under the rule of law. The rule of law, as understood in liberal democracies, also has little relevance in a totalitarian state. While it is true that such a state will be closely regulated by law, there will not be government under the law—as adjudicated upon by an independent judiciary— which is insisted upon under the liberal tradition.

In traditional Oriental society, the Western preference for law is an alien notion. By way of example, in relation to traditional Chinese society, David and Brierley write:

For the Chinese, legislation was not the normal means of guaranteeing a harmonious and smooth –working society. Laws, abstract in nature, could not take into account the infinite variety of possible situations. Their strict application was apt to affect man’s innate sense of justice. To enact laws was therefore considered a bad policy by traditional Chinese doctrine. The very exactitude that laws establish in social relations, and the way in which they fix the rights and obligations of each individual, were considered evils, according to the Chinese, not benefits. The idea of “rights,” an inevitable development of the laws themselves, ran counter to the natural order. Once individual’s think of their “rights” there is, it was thought, some form of social illness; the only true matter of concern is one’s duty to society and one’s fellow men.

The enactment of laws is an evil, since individuals, once familiar with them, will conclude that they have rights and will then be inclined to assert them, thereby

abandoning the traditional rules of propriety and morality, which should be the only guides to conduct. Legal disputes become numerous, and a trial, by reason of its very existence, is a scandalous disturbance of the natural order which may then lead to further disturbances of the social order to the detriment of all society.

Nigeria, too, went through the same process and experience.

INTRODUCTION

The Federal Republic of Nigeria is located in the Western part of Africa. It became an independent state on October 1, 1960, after about 100 years under British colonization, and attained a republican status within the British Commonwealth three years after in 1963. Since independence, Nigeria has come under both military and civil administrations. On 29 May 1999, after a general election that ushered in the present democratic dispensation, popularly referred to as “the Fourth Republic,” Chief Olusegun Obasanjo, a retired Army General and a one-time military Head of State became the President and Commander-in-chief of the Armed Forces. President Olusegun Obasanjo’s ruling party, the People’s Democratic Party, also won the second term after another general election in April 2003. In view of the fact that 28 of Nigeria’s post independence years were spent under the Military, the country may rightly be said to be experiencing its tender years of democracy.

Dina, Akintayo & Ekundayo (2005) note that at independence, Nigeria consisted of three regions, namely, the Northern Region, the Eastern Region and the Western Region. Apart from the Mid-Western Region, which was carved out of the Western Region in 1964 through the process laid down by the 1963 Republican Constitution, the other five subsequent exercises of creation of states were undertaken by the Military. Because of the multiplicity of these states, they are as a matter of convenience and political expediency grouped into the six geo-political zones of North East, North West, North Central, South East, South West, and South South. This grouping has not been accorded any constitutional recognition. There are close to 400 linguistic groups in Nigeria, but the three major languages are Hausa, Igbo and Yoruba, while English is the official language.

Legal System

As already discussed in a previous chapter, the Nigerian legal system is based on the English common law legal tradition by virtue of colonization and the attendant incidence of reception of English law through the process of legal transplant. According to Obilade (1979) English law has a tremendous influence on the Nigerian legal system, and “English law forms a substantial part of Nigerian law.” The sources of Nigerian law are

1. The Constitution
2. Legislation
3. English law
4. Customary law
5. Islamic law, and
6. Judicial precedents

Constitution/Legislation

Dina et al (2005) declare that the current Nigerian Constitution came into operation on May 29, 1999. The Constitution of the Federal Republic of Nigeria regulates the distribution of legislative business between the National Assembly, which has power to make laws for the Federation and the House of Assembly for each State of the Federation. The current legislation in force at the federal level is largely contained in the Laws of the Federation of Nigeria 1990 (LFN). Laws made after the 1990 law revision exercise of the federal laws are to be found in the Annual Volumes of the Laws of the Federal Republic of Nigeria. Federal laws under the Military, known as Decrees, and state laws, known as Edicts, form the bulk of the primary legislation.

Each of the 36 states and the Federal Capital Territory (FCT) Abuja has its own laws. Recently, some states have undertaken law revision exercises to present their laws in a compact and comprehensive form to guarantee easy access. Most of the pre-1990 Decrees were incorporated into the LFN and those patently incompatible with the new constitutional order were repealed on the eve of the inauguration of a new democratic government in May 1999. Primary and subordinate legislation made by the appropriate legislative body with competence to do so under the 1999 Nigerian Constitution are treated by the constitution as existing laws. Legislation is therefore the most important source of Nigerian law, for all other sources of Nigerian law are considered as such by virtue of a piece of legislation.

English Law

Dina et al. (2005) confirms that the English Law consists of:

7. (a) The received English law comprising:
 - (i) the common law;
 - (ii) the doctrines of equity;
 - (iii) statutes of general application in force in England on January 1, 1900;

- (iv) statutes and subsidiary legislation on specified matters and
 - a. English law (statutes) made before October 1, 1960 and extending to Nigeria which is not yet repealed. Laws made by the local colonial legislature are treated as part of Nigerian legislation. The failure to review most of these laws especially in the field of criminal law has occasioned the existence of what may be described as impracticable laws or legal provisions, which are honored more in breach than in observance. Despite the influence of English Law, the Nigerian legal system is very complex because of legal pluralism.

Customary Law

Nigerian traditional customary law is classified into the following two categories:

1. Ethnic/Non-Moslem
2. Moslem law/Sharia

Dina et al. (2005) points out that in the states in the Southern part of the country, Moslem/Islamic law, where it exists, is integrated into and has always been treated as an aspect of the customary law. Since 1956, however, Islamic law has been administered in the Northern States as a separate and distinct system. Even then it has only been in relation to Muslim personal law. However, it is better to accord Islamic law its distinct status as a separate source of law because of its peculiarities in terms of origin, nature, territorial and personal scope of application.

Ethnic/Non-Moslem Law

The ethnic customary law is the indigenous law that applies to the members of the different ethnic groups. Nigeria is made up of several ethnic groups each with its own variety of customary law. Customary law is a system of law that reflects the culture, customs, values and habits of the people whose activities it regulates. Dina et al described this law as a mirror of accepted usage. Customary law is particularly dominant in the area of personal and family relations like marriage, divorce, guardianship and custody of children and succession. Naturally, differences exist in the customary laws of different ethnic groups. Even within an ethnic group, instances of pockets of differences in aspects of customary law are noticeable. For example, the marriage customs and inheritance rules of the Ibos of the South Eastern Nigeria are

different from those of the Yorubas of the South Western Nigeria. Beyond this, the customary values and systems of various Yoruba sub-ethnic groups are bound to be different even if they are in the same State. Unfortunately, ethnic customary law is unwritten, uncertain and difficult to ascertain. It is flexible and has the capacity to adapt to social and economic changes without losing its character. There have been instances of legislative interventions to modify and at times abrogate rules of customary law. Customary law is usually enforced in customary courts, the courts at the lowest rung of the hierarchy of courts, which in most cases are presided over by non-legally trained personnel. However, higher courts are equally permitted to observe and to enforce the observance of rules of customary law by their enabling laws. The bulk of causes on the Cause List of customary courts, especially in South Western Nigeria, are matters relating to the dissolution of traditional marriages.

Islamic Law/Sharia/Moslem Law

According to Dina et al. (2005), that Islamic law, unlike ethnic customary law, is written. Its principles are clearly defined and articulated based on the Holy Koran and the teachings of Prophet Mohammad. This system of law has worked with detailed thoroughness and incisive precision. It is based on the Islamic religion and was introduced into Nigeria by its practitioners as a consequence of a successful process of Islamization. In some areas Islamic law after its introduction completely supplanted the pre-existing system of customary laws whereas in other areas it became incorporated with customary law and the two systems have become fused and are jointly administered. Islamic law is being enforced in some states of Nigeria, especially in the Northern part where populations are predominantly Moslem. The scope of operation of Islamic law has been broadened since the introduction of the Sharia legal system in the present democratic dispensation in a number of Northern states such as Zamfara, Kano, Kaduna, and Sokoto among others. The principal feature of this new development is the introduction of religious based criminal offences, especially on matters of morality and the punishments sanctioned by the Koran. The apex court, the Supreme Court of Nigeria, has not had the opportunity to pronounce on the constitutionality of punishments like amputation and stoning of a person to death, which the Sharia prescribes for certain offences.

Judicial Precedents

In Nigeria, the Supreme Court is the highest court of the land. It replaced the Judicial Committee of the Privy Council in 1963 as the final court of appeal.

The Court of Appeal (originally known as the Federal Court of Appeal) was established in 1976 as a national penultimate court to entertain appeals from the High Courts, which are the trial courts of general jurisdiction. The Court of Appeal sits in 10 Judicial Divisions scattered throughout the country but it is still a single court and is ordinarily bound by its own decisions. The Court of Appeal and all lower courts are bound by the decisions of this Supreme Court. The High Courts and other courts of coordinate and subordinate jurisdiction are equally bound by the decisions of the Court of Appeal. The doctrine of judicial precedents does not apply rigidly to certain courts like the customary/area courts and the Sharia courts in Nigeria. The list below shows the various types of courts that exist in the Nigerian legal system:

1. Supreme Court
2. Court of Appeal
3. High Court (Federal High Court, High Court of FCT and High Courts of States);
4. Sharia Court of Appeal, Customary Court of Appeal
5. Magistrates'/District Court
6. Customary Courts/Area Courts/Sharia Courts

GOVERNMENT BODIES

The system of government in the Federal Republic of Nigeria is modeled after the American presidential system with the following arms of government: (1) the Legislature, (2) the Executive, and (3), the Judiciary

Legislature

The Federal Legislature is responsible for law making and it follows law making procedures as specified in Sections 58 and 59 of the 1999 Constitution of Nigeria. The legislature is bicameral and made up of two Houses: the Senate and the House of Representatives. The Senate is made up of 109 elected members while the House of Representatives has 360 members. The membership of the Senate is based on broad-base equal representation where each state has three Senators. One senator represents the Federal Capital Territory (FCT). The number of representatives elected by each State is determined by population density.

In addition, each state has its own law-making organ known as the House of Assembly. The members elected into the Houses of Assembly represent the various state constituencies usually delineated on the basis of population. All

legislators are elected for a 4-year term, though the electorates reserve the power to recall any legislator.

Executive

The Executive power of the Federation is vested in the President by virtue of Section 5(1) (a) of the 1999 Constitution. Such powers can be administered directly or through the Vice-President or Ministers or officers of the Government. Similarly, in the states the executive power of a state is vested in the Governor and may be exercised directly by the Governor or through the Deputy Governor, Commissioners or other public officers.

Judiciary

Dina et al. (2005) confirms that by virtue of Section 6 (1) of the Nigerian Constitution 1999 the following courts are established in the Federal Republic of Nigeria:

1. the Supreme Court of Nigeria;
2. the Court of Appeal;
3. the Federal High Court;
4. the High Court of the Federal Capital Territory, Abuja;
5. a High Court of a State
6. the Sharia Court of Appeal of the Federal Capital Territory, Abuja;
7. a Sharia Court of Appeal of a State;
8. the Customary Court of Appeal of the Federal Capital Territory, Abuja;
9. a Customary Court of Appeal of a State

The only superior courts of record in Nigeria are those established by the Constitution. The Constitution empowers the National Assembly and the Houses of Assembly to establish courts with subordinate jurisdiction to the High Courts. Courts established pursuant to the Constitution are invariably inferior courts of record notwithstanding the status of the officer presiding in the courts.

The Supreme Court is the highest court and all decisions from the court are binding on all other courts. In Nigeria, the state court structure dovetails into the federal court structure at the level of the Court of Appeal. The Court of Appeal entertains appeals from the decisions of the High Courts, the Sharia Courts of Appeal and the Customary Courts of Appeal. Appeals from the decisions of the Court of Appeal go to the Supreme Court. In effect, the Supreme Court is not only a Supreme Court on federal matters; it is also the

final court in respect of state laws. However, State High Courts are the most important courts in each state. Whereas the Constitution establishes a High Court for each State directly, each state has an option to establish a Sharia Court of Appeal or a Customary Court of Appeal. The inferior courts, which are established pursuant to constitutional provisions, include Magistrate Courts, District Courts, Area/Sharia Courts, and Customary Courts. Generally, these courts are established by State Laws, except those in the Federal Capital Territory and the judicial hierarchy. The High Courts and other specialized courts exercise supervisory and appellate jurisdiction over the inferior courts.

PRIMARY & SECONDARY SOURCES OF INFORMATION

Like in all jurisdictions of the world, legal literature of the Nigeria is made up of primary and secondary sources. The list of these materials is inexhaustive but we will attempt to mention a few. Copies of some of these materials are available in the Library of Congress and the Institute of Advanced Legal Studies, London (See Appendix B.)

International Law

According to the findings of Dina et al. (2005), Nigeria is a signatory to many major international instruments two of which are the United Nations and The Commonwealth. It is also important to note that several Nigerian judges have served and are still serving on a number of international tribunals and courts.

Legal Education

The Council of Legal Education is the supervisory body responsible for the accreditation, control and management of legal education in Nigeria. The Council is in charge of the Nigerian Law School, a vocational institution responsible for the education and training of prospective legal practitioners in Nigeria. Abuja, the Federal capital of Nigeria is the headquarters of the Nigerian Law School. However, there are other campuses of the Nigerian Law School in Enugu, Kano and Lagos respectively. Any person wishing to study law in Nigeria must first undergo undergraduate training in Nigerian universities for the award of a first degree in law, LL. B after which he or she will proceed to the Nigerian Law School for practical training in any of its campuses. Successful candidates in the Bar Final examinations are called to the Nigerian Bar if they satisfy the Benchers that they are of good

character. The Council of Legal Education also recognizes degrees from foreign or overseas universities of repute for purposes of admission. In order to qualify to practise as a legal practitioner in Nigeria, a person called to the Nigerian Bar must enroll as a Solicitor and Advocate of the Court in the Supreme Court of Nigeria.

LEGAL PROFESSION

Dina et al. (2005) also insists that it is by virtue of enrollment at the Supreme Court that an individual can become a legal practitioner and a member of the legal profession in Nigeria. A legal practitioner is enrolled in Nigeria both as a Solicitor and Advocate (Barrister) because, unlike in England, the legal profession is fused. Statutory bodies like the General Council of the Bar and the Body of Benchers regulate the activities and conduct of members of the legal profession, established by the legal Practitioners Act, Cap. 207(LFN 1990).

The Nigerian Bar Association (N.wB.A) is the foremost professional association in the legal field. Though the N.B.A. is not a statutory body, statutes recognize it and it appoints members to supervisory bodies in the legal profession. In fact, the representatives of the N.B.A. participate in the deliberation of a constitutional organ, the National Judicial Council, for considering the names of persons for appointment to the superior courts of record. The N.B.A., organized at national level before independence, now has 86 recognized branches organized along judicial divisions of State High Courts, with at least one Branch in each of the 36 states. It has recently approved establishment of sections along the lines of the International Bar Association. Membership in the Association is open to all legal practitioners. The Association is funded in part through the annual practicing fees payable by legal practitioners to secure right of audience in court. The N.B.A., through its Disciplinary Committee, conducts preliminary investigation into cases of professional misconduct brought against legal practitioners. Cases of persons found to be *prima facie* guilty are then forwarded to the Legal Practitioners Disciplinary Committee of the Body of Benchers for consideration and determination. A person aggrieved by the decision of the Disciplinary Committee has a right of appeal to the Supreme Court of Nigeria whose decision is final. In addition, the Supreme Court may exercise original disciplinary jurisdiction over a legal practitioner who appears to the Court to have been guilty of infamous conduct in any professional respect with regard to any matter of which a court of record in Nigeria is seated.

REVIEW QUESTIONS

1. What is legal theory?
2. What is law?
3. What is legal realism?
4. What is international law, and what are the sources of international law?
5. What is customary law?
6. What are the sources of customary law?
7. What is justice?
8. How do judges make law?

Chapter Eleven

Changes in the Rank Order of Severity of Punishment

KEY TERMS

- | | |
|---------------------|--------------------|
| 1. Penalty | 11. Rehabilitation |
| 2. Unusual | 12. Controversial |
| 3. Disproportionate | 13. Proponents |
| 4. Minorities | 14. Eventual |
| 5. Measure | 15. Remanded |
| 6. Cruel | 16. Imposition |
| 7. Retribution | 17. Confirm |
| 8. Incapacitation | 18. Revise |
| 9. Transportation | 19. Surrender |
| 10. Deterrence | 20. Affirm |

INTRODUCTION

The purpose of this chapter is to describe and analyze the changes in the rank order of the severity of punishment that took place in the pre-colonial, colonial, and postcolonial eras of Nigeria. As indicated earlier, one measure of the severity of punishment is the death penalty. However, the death penalty might not be the severest punishment in some societies. In the three eras of Nigeria under examination—pre-colonial, colonial, and postcolonial—the death penalty was and still is regarded as the severest punishment. However, the crimes for which the death penalty was inflicted changed as the country progressed from the colonial era to the postcolonial era.

Some people consider capital punishment to be a “cruel and unusual” punishment (U.S. Eighth Amendment). Civil rights lawyers in the United States argued that the death penalty as imposed by the trial courts was “unusual” in that the death penalty was seldom imposed, and when it was imposed, it was usually imposed disproportionately against blacks, minorities, and poor people (Anderson & Newman, 1993:324). The lawyers further argued that the death penalty was “cruel” in that the intentional taking of a prisoner’s life after a sometimes lengthy period of incarceration could not reasonably be characterized as anything other than cruel (Anderson & Newman, 1993:324).

Following the same angle of analysis, capital punishment was also considered cruel and unusual in the colonial era of Nigeria, because it was inflicted for the offenses of treason and treachery, which Nigerians did not consider to be serious crimes that merited such severe punishment (Onu & Odi, 2003). Capital punishment has been and still is a controversial issue in criminal justice. The proponents of the death penalty argue that its use is “just deserts”—that taking the life of one who has taken another’s life is the only just retribution (Anderson & Newman, 1993). The crime of murder or whatever else might merit death is said to be annulled by the addition to it of execution, which is another evil. However, Pincoffs questions how two evils can yield a good (1966:10). This is supported by traditions going back to the pre-colonial era of Nigeria or to the Biblical prescription of “an eye for an eye and a tooth for a tooth.” The proponents also argue that the death penalty is necessary to deter others from committing murder and other atrocious crimes. However, Bentham agrees with Paley that punishment is itself an evil and should be used as sparingly as possible: “Upon the principle of utility, if it ought at all to be admitted, it is only to be admitted in as far as it promises to exclude some greater evil” (Pincoffs quoting Bentham, 1966:20).

The proponents of capital punishment also argue that death is necessary to assure that a criminal will never again commit a similar crime or any other crime, an assurance that does not hold true for life-term prisoners who may, and indeed sometimes do, commit crimes while in prison or upon release. In fact, most people sentenced to life imprisonment are eventually released (Anderson & Newman, 1993:336). Supporters of the death penalty also hold that the death penalty is an essential social symbol, expressing the boundaries of our cultural standards of decency and humanity (Anderson & Newman, 1993:336). All societies, it is argued, must set outer limits beyond which deviant behavior cannot be tolerated. For instance, in pre-colonial Nigeria, the crime of witchcraft was and in the postcolonial era still is regarded as a multiple crime, destroying humankind in secret, destroying crops, and making women and men barren. It was not tolerated; hence, the death penalty was inflicted on the offenders. Advocates of the death penalty also point out that

80% or more of Americans voice support for its infliction. The percentage of Nigerian voices in support of the death penalty for witchcraft in the colonial era was 100% (Njoku & Nwogo, 2004). For intentional murder, and armed robbery, in the postcolonial era, support is up to 98% (Njoku & Nwogo, 2004), but not so high for treason and treachery.

Death penalty supporters, on the other hand, point out that mistakes can be and have been made in its imposition, resulting the execution of innocent persons (Anderson & Newman, 1993:336). Chiefs and elders interviewed in Nigeria agreed and confirmed that such mistakes were often made, mostly in the pre-colonial era, when trial by ordeal was used, and in the colonial era, when the administration of justice often resulted in injustices and other racial evils. Recently, the research of Hugo Adam Bedau, a long-time opponent of capital punishment, and Professor Michael Radelet have presented a new challenge to capital punishment (Anderson & Newman, 1993:336). According to Anderson and Newman, Bedau's and Radelet's findings show that 23 persons have died wrongfully at the hands of the state since 1900, and another 300 have been sentenced to death. Many of them spent time on death row either before they were given new trials or exonerated. Their research shows that in every year of the century one or more persons on death row have eventually been proven to be innocent (Anderson & Newman, 1993).

Furthermore, opponents of capital punishment continue to maintain that the publicity surrounding an execution may induce unbalanced people to commit capital crimes rather than deter potential murderers; they seek attention like that given to the person being executed and therefore commit crimes in order to be on center stage themselves. Anderson and Newman (1993) noted the complaint by the police that when well-publicized mass killers are being sought, for instance, a number of "crazies" attempt to surrender and confess to crimes they never committed. Even if the deterrent effect of executions on rational persons is greater than the attraction executions exerted on potential murderers (as it probably is), opponents argue that the kinds of crimes for which the courts impose capital punishment are essentially non-deterable (Anderson & Newman, 1993). For instance, treason and treachery, crimes for which the colonial government of Nigeria used the death penalty, originate in deep-seated "true beliefs;" political values like terrorism and espionage are both nondeterable. Political martyrs are not amenable to change by making examples of others (Anderson & Newman, 1993). However,

Judicial punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime. (Pincoffs, 1966:3).

Capital punishment might deter rational and calculated offenses like many white-collar crimes, but the offenders in these cases were and still are never executed. In postcolonial Nigeria, only premeditated murder and armed robbery elicit the death penalty.

In addition, opponents of capital punishment point out that the long time-lag between the commission of any crime and the actual infliction of the punishment (averaging 7 years in capital cases) as well as the known probability of never getting caught or, if caught, of not being executed, makes any simplistic stimulus-avoidance equation irrelevant in crime control (Anderson & Newman, 1993:337). There is no evidence of any diminution in capital crimes even when the death penalty is rapidly and publicly used. Thomas Powell Buxton, speaking in the British House of Commons in 1821, said that the certainty of being caught or being executed in the case of capital offenses reduced crimes, not the severity of punishment. Buxton declared:

The system having been tried long enough, and largely enough, the foreigner who I am supposed to consult would next ask, what are the results? Has your law done that which you expected from your law? Are your houses safe? Certainly not. Are your streets safe? Certainly not. Are your jails empty? Certainly not. Is life more secure and property less endangered here than elsewhere? Certainly not. Has crime decreased? Certainly not. Has it remained stationary? Certainly not. Has it increased? It certainly has—and at a prodigious rate. Why, then, your system has failed? That is the answer which every reasonable man must give. The facts themselves bear with them the irresistible conclusion, that something somewhere must be wrong (Buxton, 1821:8).

In the cost-effectiveness controversy regarding life imprisonment and execution, it has been argued that life imprisonment is cheaper than execution (New York Times, October 3, 1983, Sec. 2:15). The most recent argument of the opponents of the death penalty is that the death rows of our nation should provide researchers with the opportunity to study murderers. They contend that executing them prevents research into their histories, personalities, and even their biological make-ups, research that might contribute to our knowledge of why people kill one another.

PRE-COLONIAL ERA

As already discussed, crimes were few in number during the pre-colonial era. Each community in pre-colonial times was self-supporting and self-contained, so the behavior of the people was fairly uniform or consistent (Chapter 8). However, witchcraft, murder, sorcery, theft, arson, and slavery

(a method of getting rid of persistent criminals) did exist. Except for witchcraft, other crimes were uncommon and at the same time were not taken seriously. The penalty for witchcraft as a serious crime was death by spearing, drowning, burning, burying alive, and/or impalement of the convicted person (Elias, 1956; Milner, 1969:288). For lesser crimes as well as for cases of compoundable murder, such as manslaughter, the punishment was fines and other compensatory payments that were rigidly enforced and exacted. In fact, there was little inclination either on the part of the elders or of the parties to compromise on the fixed rate of penalty payable.

The whole decision was generally that of an angry chief or council of elders peremptorily decreeing what must be paid to assuage injured feelings or physical impairment or loss of a blood relation. Most adult thieves were flogged in addition to other punishments, such as shaming and fines (see Table 11.1). Shaming included having to dance around the market without clothes (that is, nude exposure) and also the singing of bad songs about the criminal for years (Njoku & Nwogo, 2004). Young offenders were often flogged without additional punishments (Odi & Onu, 2003). Therefore, in pre-colonial Nigeria, there was no widespread use of imprisonment as an indigenous institution for punishing a criminal (Njoku, Odi, Onu, Nwali, 2003).

In the Yoruba land of southern Nigeria, however, there was an established practice of imprisonment (Elias, 1956:262). According to Elias, the Yorubas employed several devices for securing payment of their debts, and sometimes resorted to imprisonment, but this rarely cancelled the debt and was only a way of exacting interest. Elias added that all the chiefs and rich men had their own prisons or cells in which they kept their own criminals for such offenses as disobedience, drunkenness, etc. He further noted that those who had committed any serious crimes among the Yorubas, espe-

Table 11.1. Rank Order of Punishment Severity in Pre-colonial Era

<i>Order</i>	<i>Punishment</i>
1st	Death penalty
2nd	Slavery
3rd	Self-exile and sacrifice upon return
4th	Compensation to the injured party; sacrifice
5th	Caning adults who stole
6th	Shaming

Sources: Elias (1956); personal interviews, January through July, 1993.

cially in the chief's court, were usually detained in the prison of the Ogboni society. Bishop Ajayi Crowther (a Yoruba man) recorded that in 1853, three criminals who had previously been detained were executed by one Jagunain the Ogboni's council house at Abeokuta, a town in western Nigeria (Elias, 1956:262).

The amputation, decapitation, and disfigurement of vicious recidivists were practiced in some pre-British Nigerian societies. For the Ibo tribe of Nigeria, killing a witch or a wizard was highly cherished by all members of the tribe, but to decapitate a man after killing him by any method was an unpardonable crime itself. Even in tribal warfare, it was often customary to conclude a treaty between the belligerents on the assumption that in the event of the killing of a man, he must not be beheaded. The Ibos of Nigeria could not imagine the prospect of their relative going to the spirit world headless. To behead a man was an unpardonable crime, and in a civil war between Ibos, it would be equivalent to swearing eternal enmity between the opposing towns.

In the pre-colonial era of Nigeria, notorious evildoers, such as adulterers and thieves, were regarded as a menace to the entire community and were disowned by their immediate relatives. Those who betrayed and sold out community secrets were among those notorious evildoers (Nwelom, 2004). Such evildoers were banished (Odi, Njoku & Nwogo, 2003).

Notorious witches were thrown into a ditch and burnt alive and chronic thieves were banished and adulterers, they were publicly shamed (Nwali & Onu, 2003). These punishments may be seen as crude justice, but they were effective deterrents to evildoing because the crimes were reduced after a while (Onu & Nwogo, 2004). In an era when there was no organized police force or rationalized justice, these systems of group detection and group punishment of crime served a very useful purpose.

Data on the rank order of punishment severity in the pre-colonial era (see above) were derived from personal interviews with community leaders, such as chiefs, emirs, councilors, and elders. Information from the pre-colonial era was transmitted orally through these leaders since the criminal legal code was unwritten. Lawyers were also interviewed because they are a special professional group that utilized "case law" information from chiefs, elders, and councilors. Information regarding the rank order of punishment severity in this era was also assembled from Elias (1956). Unfortunately, Elias's presentation lacked the rank ordering of punishment severity in the form of a table. The results of the interviews on rank order of punishment severity showed that the respondents did not depart from information gathered from Elias (1956) and Elias et al. (1975). The two strategies used yielded the rank order of punishment severity shown in Table 11.1.

COLONIAL ERA

In the colonial era, the changes in the rank order of severity of punishment express a particular tilt, which reflects the maintenance needs of oppression—the survival and well-being of the colonial government. The changes were geared towards exploitation. Most of the time during this era, imprisonment was combined with forfeiture of property for one offense, and was sometimes coupled with deportation of the offender, especially for those who resisted British penetration into the River Niger Coast protectorate towards the end of the 19th century. Nana Olomu, a great Itekiri, an intermediary trader and a king of Benin, suffered imprisonment, forfeiture of property, and deportation from his home for resisting British penetration into the hinterlands of River Niger areas for the purchase of palm produce (Adewoye, 1977:84). Sometimes these offenders were sentenced to penal servitude for life as well as forfeiture of property.

It can be argued that the death penalty was “unusual” in the colonial era, in that when it was imposed, it was imposed on Nigerians, but not on British residents in Nigeria. This was true even though British people in Nigeria committed the same crimes that normally would have warranted the death penalty. What the colonialists did was “cruel and unusual”—cruel in that they intentionally took the lives of many Nigerians who continued to resist British penetration for exploitation, even after lengthy periods of incarceration; and because they were outsiders trying to control the indigenous people. The Benin trial of 1897 and 1899 regarding the deaths of some European officers of the Niger Coast protectorate in January 1897 provides a succinct example of this lopsided exercise of justice. In this case, the Acting Commissioner and Consul-General J. R. Phillips led a party of nine Europeans. The European group and about 250 African bearers, all of them probably on a spying mission, attempted to visit the Benin kingdom in defiance of the authority of Oba or King Ovonramwen and his chiefs, without waiting for the grant of a formal permission as was customary with foreign visitors (Adewoye, 1977:85). Under the apprehension that the party was a military expedition—the boxes carried by the Africans who followed the Europeans were believed to contain things that the white men would use to catch the king. Benin soldiers, having taken up defensive positions in ambush, fired on the party and killed seven of the European officials and about 174 of the African bearers in the party.

A massive punitive expedition followed, intended to bring to justice all of those supposedly connected with the so-called “Benin massacre” of 1897. The trial, conducted under native law and custom, was presided over by Ralph Moore, the Commissioner and Consulate-general of the Niger Coast protectorate, and was attended by two other European officers and 70 African

Table 11.2. Rank Order of Punishment Severity in Colonial Era

<i>Order</i>	<i>Punishment</i>
1st	Death penalty
2nd	Imprisonment and forfeiture of property
3rd	Whipping of adults
4th	Fine
5th	Caning of juveniles

Sources: Adewoye, 1977; Criminal Code of Nigeria and Lagos, Ch. 42, 1916–1958; Elias, 1956; personal interviews, January through July 1993.

chiefs. Under Benin's native law and custom, two of the chiefs standing trial, Obakhavbaye and Uso, were to be publicly executed. These chiefs were imprisoned for almost a year before their execution. Many of the other chiefs committed suicide rather than submit to the disgrace of public hanging. Chief Ologbose, still at large, according to Adewoye, and offering armed resistance, was condemned to death in absentia, while the Oba or king of Benin was deposed and demoted to an ordinary chief (Adewoye, 1977:87). The king attempted to escape, and at a reconvened session of the court on September 9, 1897, he was sentenced to deportation and indefinite exile from his kingdom. According to my interviewees, no Nigerian in the pre-colonial era had ever before been deported from his home or sentenced to penal servitude in a foreign country, but the colonialists practiced such severe punishments. Neither does the postcolonial criminal code make mention of such punishments (see *Criminal Code of Nigeria and Lagos*, Ch. 89, 1960–1995; also see Table 11.2).

Fundamental maintenance need is to preserve two categories of legal power, i.e., institutional configuration/belief and value system. Maintenance needs of oppression include anti-powerism, inequality of power, violence, infliction of ethnic suffering, and hypocrisy. Changes in the rank order of crimes and changes in the rank order of punishment severity in the colonial era indicate the maintenance needs of the oppressors

POSTCOLONIAL ERA

The postcolonial Nigerian government, based on its independent status achieved in 1960, deemed it appropriate to modify the criminal code inherited from the colonial government. Because of the change, the government assigned the first rank order of severity of punishment (death penalty) to premeditated murder and armed robbery (see Table 11.3). From 1960 to 1966,

there were obviously few records of punishment by death. There is therefore a significant reduction in the severity/harshness of punishment. One major point to remember is the change of motives. The utility of the pre-colonial and colonial harshness of criminal laws faded in the course of social development. This consisted, among other things, in men's becoming better socialized; they increasingly avoided harming others in the society, and they performed with increasing effectiveness what was socially useful. This modification of human behavior was brought about by changing human motivation. In this era, the goal of punishment is rehabilitation of the offender rather than retribution. Unlike during the colonial era, probation and parole, executive clemency, reprieve and pardons, etc., have become very important today, which was not the case in the previous eras.

The present government of Nigeria, in most cases, tries to meet two important criteria for criminal punishment. The first criterion constitutes a universal prerequisite for effectiveness of any aversive instrumental learning, direct or vicarious where punishments must be perceived as certain. The second criterion is that criminal punishments should be persuasive as moral communications where everyone is impressed that wrongdoers are being punished because their behavior was intrinsically wrong.

The second criterion is that criminal punishments should be persuasive as moral communications where everyone is impressed that wrongdoers are being punished because their behavior was intrinsically wrong. And finally, this condition can be done met effectively only if the punishments match the moral sentiments of the society under three conditions:

- a) The punishments must be imposed for behavior widely perceived as wrong (for instance, premeditated murder and armed robbery)
- b) The punishments must be applied with the degree of severity widely considered as right (for instance, death by lethal injection rather than behead-

Table 11.3. Rank Order of Punishment Severity in Postcolonial Era

<i>Order</i>	<i>Punishment</i>
1st	Death penalty
2nd	Imprisonment/forfeiture of property
3rd	Detention in a reformatory
4th	Fine
5th	Caning of juveniles

Sources: *Penal Code of Nigeria and Lagos*, Ch. 89, 1960–1994; Personal interviews, January through July 1993.

- ing, burying alive, or hanging as practiced in the colonial era of Nigeria); and
- (c) They must be applied consistently, that is, in accord with the principle of “treat like cases alike.”

These three requirements, if met, are called “just punishment.” The colonial government of Nigeria rarely met any of these requirements, so “unjust punishment” was practiced in that era (Adewoye, 1977). The result was that citizens developed an aversion to punishing (Gorecki, 1983), especially owing to the fear of sanction. The aversion could be void of the specifically moral emotive tone—with no persuasive moral power leading to a situation that the punishment cannot bring about the experience of duty. The growth and spread of moral aversion as the motive against wrongdoing, largely produced by the criminal code itself, makes the inherited severity of penalties unnecessary. There was no need for the present era to use the harshness of prior eras. This era sometimes is partial and sometimes impartial in the administration of justice, especially in the imposition of legal punishments. However, bribery and corruption do exist and sometimes lead to injustice.

THE NIGERIAN CIVIL WAR AND ITS AFTERMATH

The Nigerian civil war elevated the severity of legal punishment to its highest level. Every war, civil or noncivil, has its merits and demerits. The civil war in Nigeria (1968–1970) was preceded by two coups d'états. War itself presupposes the use of violent means to attain a desired objective. Nigerian youths witnessed the two coups d'états and lived through the war. The newspaper reporter Ishmail Alabi aptly described the period as a “teenage explosion”—in fashion and dress, in drug habits and sex, in comportment and general behavior. One who observed the youths could safely conclude that the negative, erosive, and dangerous after-effects of the events of 1966–1967 on our youths and on our society included moral exhaustion and moral decay, bewilderment, loss of faith, spiritual confusion. Among the educated class, it led to a tendency to brush aside religion in place of scientific humanism (Elias et al., 1975).

What place do the Nigerian youths or elders ascribe to morality in the new Nigerian society? How does morality fit in with the tempo of this society in a hurry?

A legal code may be humanly perfect, but still impotent and incapable of supplying the answer to the problem of crime. A number of basic intuitions are common to most civilizations, philosophical systems, and legal codes, the

respect for human life and respect for property. This was the reason that the laws of the present era of Nigeria made armed robbery and premeditated murder the most serious crimes, both being crimes affecting human life and property as opposed to treason and treachery, the most serious crimes in the colonial era.

The 1970s and 1980s were very difficult and trying times for most Nigerians. The civil war ushered in a decade of great fear: fear of violent crime, fear of armed robbery, and fear of breaking and entering with intent to kill or cause grievous bodily harm. The war left young men unemployed in addition to the loss of properties incurred by the majority of people. Many young men of Eastern Nigeria lost hope when Biafra lost the war. Most of them had overgrown school age, so they thought the only thing left for them was to take up their guns and commit robberies in order to survive. In May 1973, Dr. George Obinwa was shot right inside his house at Enugu (the capital of Enugu state), and in 1972, Victor Ogini was shot dead in the streets of Enugu by robbers intent on stealing. The years 1970 and 1971 were particularly hectic years for crimes of violence in Nigeria, especially Eastern Nigeria (now Enugu, Anambara, Imo, Akwa Ibom, Cross River, Byelsa, and Rivers states). The then East-Central state was forced because of violent crimes at the time to resort to public execution as a deterrent to armed robbery, and in May 1970, four armed robbers were publicly executed in Awka (Elias et al., 1975:2). Within four months (May–August 1970), a total of 11 armed robbers had been publicly executed at Enugu. In December 1970, another seven were executed at Uyo, the capital of Akwa Ibom state. The robbers migrated to safer areas around Lagos. They attacked cars and salary vans. On April 11, 1970, a mail van was attacked on the Benin Road. In Lagos, at least four people were robbed and killed within one month. On March 8, according to Elias et al., Mr. Awulabah was shot. As a result of these robberies, the federal military government responded and promulgated Decree No. 47 of 1970. An open war was thus declared against armed robbery, and since then, every state in Nigeria has been battling relentlessly against armed robbery and the murders that usually followed. There have been many public executions by firing squad as punishment for armed robberies and premeditated murders.

SUMMARY

The trial method, trial process, the instruments used, methods of adducing evidence, reasons for punishment, and the primary objective of punishment tend to reflect punishment severity. In the pre-colonial era, trial by ordeal was used; no due process of law was applied (Njoku, Odii, & Onu, 2003). In the

colonial era, due process was employed, but it was partial; while in the post-colonial era, all cases have been completely tried by due process of law. In the pre-colonial and colonial eras, plea bargaining was not used in the trial of cases, but it has been used in the postcolonial era. In the pre-colonial era, there was no jury trial in the modern sense, but one's relatives had to be present before an individual was pronounced guilty of an offense, especially any offense that merited the death penalty (Odi & Njoku, 2003). In many instances, the offender's own blood relations had to give him a little beating before an accused was beaten to death (Elias, 1956; Nwali, Njoku, & Odi, 2003). During the colonial era, trial by jury was limited only to those who could read and write the English language (Elias, 1956; Odi, Njoku, & Nwogo, 2003). Because of this delimitation of jury membership, only foreigners (mostly British citizens) were members of the jury. The jury was very partial in their determinations of guilty individuals, and the colonialists upheld policies geared to the maintenance needs of the colonialists. In the post-colonial era, jury trials were used, but they were later abolished due to bribery and corruption (Elias, 1963).

Methods of determining guilt in the pre-colonial era included diviners or oath swearing (Odi & Njoku, 2003). In the colonial era, guilt was determined through torture, but in the postcolonial era, the accused is cross-examined through witnesses. Whereas in the pre-colonial era punishment was based on reparation, in the colonial era, it was based on deterrence/ retribution. In the postcolonial era, punishment has been based on deterrence/rehabilitation. Methods used for execution in the pre-colonial era were stoning, drowning, and burying alive (Njoku, Onu, & Odi, 2003). In the colonial era, the methods used for execution were beheading with a sword, and drowning (Milner, 1967:288; *Political Memoranda, 1913–1918*). In the postcolonial era, the method of execution is by firing squad (Nigerian Constitution, 1979).

In the pre-colonial era, the least severe punishment was shaming, although shaming could be severe for some people. It was only during this era that shaming was used as punishment (see Table 11.1). Flogging was used on adult criminals; no cane was used, but a single-tailed thin stick (Odi & Njoku, 2003). In the colonial era, adults who committed certain offenses, such as minor thefts, were flogged with multiple-tailed whips (Milner, 1969:288). However, flogging with multiple-tailed whips was abolished for statutory offenses (Criminal Code Amendment 1933:288; §4 and *Native Court Corporal Punishment Regulation 1993*). In the postcolonial era, only juvenile offenders are still legally caned and sometimes they are sentenced to reformatory schools (see Table 11.3).

In the pre-colonial era, slavery was used for getting rid of persistent offenders (Milner, 1969:289). The metropolis initiated and supported the slave

trade and slavery for their maintenance needs. However, slavery was officially abolished as a penal sanction in 1833 (Milner, 1969). Pardon, commutation, and reprieve have been used in the postcolonial era, but there are no evidences that the colonial judges employed such techniques in their final court decisions. Maybe they did for British citizens in Nigeria.

Severity of punishment was ranked from first through sixth orders in the pre-colonial era, but in the colonial and the postcolonial eras, the rankings were limited to five (see Tables 11.1, 11.2, and 11.3). Severity is ranked in descending order, i.e., from the severest (death penalty) to the least severe (shaming in the case of the pre-colonial era, and caning in the cases of the colonial and postcolonial eras). The rank order of punishment severity in the pre-colonial era was geared to the protection of life and property because witchcraft was considered as the worst crime punishable with death. However, in the colonial era, this severity was geared to the maintenance needs of oppression, i.e., the survival and well-being of the colonial government, because treason and treachery were considered the worst crimes punishable with death. Under postcolonial status, the order and severity are once again geared to the protection of life and property, with retrospective consideration for the traditional period, the pre-colonial era. This is because armed robbery, premeditated murder, and trial by ordeal were considered the worst crimes and therefore punishable with death.

REVIEW QUESTIONS

1. What kind of crimes carry first degree, based on seriousness?
2. Why is capital punishment “cruel” and “unusual?”
3. How can two evils yield a good? Explain the theory as you know it.
4. Argue for and against the death penalty. Where do you stand in the argument and why?
5. What is the Council of Elders in the pre-colonial era of Nigeria? What are its functions?

Chapter Twelve

Changes in the Rank Order of Crimes

KEY TERMS

- | | |
|--------------------|------------------|
| 1. Statute | 11. Price-fixing |
| 2. Witches | 12. Abhore |
| 3. Wizard | 13. Fraud |
| 4. Seriousness | 14. Witchcraft |
| 5. Government | 15. Magic |
| 6. Property | 16. Ghost |
| 7. Self Supporting | 17. Spirit |
| 8. Immediate | 18. Tangible |
| 9. Harmony | 19. Intangible |
| 10. Pollution | 20. Prey |

INTRODUCTION

This chapter sets out to describe and analyze the changes in the rank order of crimes as Nigeria progressed from colonial to postcolonial status. In the pre-colonial era, witchcraft assumed the first order of seriousness, punishable with death, followed by other crimes, none of which was punished with death. The significance accorded the crime of witchcraft emanates from its very nature. First, it was a crime of which proof beyond reasonable doubt was practically impossible; second, witches caused a great deal of damage to the lives and crops of their enemies; and third, witches could also cause drought, and barrenness in both men and women (Idowu, 1973; Parrinder, 1965). However, in the colonial era, treason and treachery assumed first rank as the most

serious crimes punishable with death, followed by other crimes, none of which was punished with death. The seriousness assigned to these crimes in this era was due to their threat to the survival and well-being of the colonial government to resolve their power in Nigeria.

In the postcolonial era, premeditated murder and armed robbery are considered to be the most serious crimes punishable with death. However, other crimes may be punished with death in this era, but none of those crimes is as serious as premeditated murder or armed robbery. The seriousness assigned to premeditated murder and armed robbery in this era is that they are crimes against persons and property, just as the crime of witchcraft was in the pre-colonial period. The pre-colonial and postcolonial eras considered life and property as the most valuable assets. Nigerians in the pre-colonial and post-colonial eras believed and still believe that without life, there would be no government to be run, but the colonial government assigned more importance to the survival of the government; hence the seriousness assigned to treason and treachery in the colonial era. A change in the rank order of seriousness of crimes during the colonial era expressed a particular tilt, toward what was regarded as most threatening to the survival and well-being of the colonial government. The change reflects the maintenance needs arguments already mentioned, i.e., it reflects the preservation of colonial power.

PRE-COLONIAL ERA

There is a collaborative relation between development and crime. Elias (1956) maintained that the less developed a society, the less law to be enacted, but the more developed a society, the more laws, and the more laws, the more crimes to be committed by the members of that society (see Table 12.1). The preliterate peasant Nigerian society, known also as the pre-colonial Nigeria, was underdeveloped—with few laws and fewer crimes (see Tables 12.1, 12.2 and 12.3 for comparison). The lives of the citizens were not very much influenced by the social and economic issues shared by members of advanced societies (Odi & Njoku, 2003). The individual was a member not only of his immediate family, but also of his extended family and village. The preliterate era was thus a very large family, harmonious in its traditional culture (Elias et al., 1975). The people had very little contact with the outside world since each community at the time was self-supporting and self-contained. These characteristics made the behavior of almost the entire membership of the community nearly consistent, with little criminal intent ((Nwali & Ngwuta, 2003; Odi, 2003). Within each tribal group, few crimes were committed with witchcraft offenses constituting the most serious offense.

Table 12.1. The Rank Order of Seriousness of Crime: Precolonial

<i>Order of Seriousness</i>	<i>Crime</i>	<i>Punishment</i>
1st Order	Witchcraft	Punished with death
2nd Order	Premeditate Murder	Expected to commit suicide or self-exile for 7 years, Sacrifice to the land on return
3rd Order:	Murder—Manslaughter	Paid heavy compensation to the injured party
4th Order	Treason	Excommunication
5th Order	Stealing	Restitution, caning and shaming
6th Order	Arson	Restitution paid to the loser
7th Order	Adultery and incest	Shaming, bad songs for some years

Personal Interviews from January to July, 1993

Other offenses such as theft, arson, treason, etc. that were committed were mainly committed by non-members of the community upon members of the community or at times by members of the group upon non-members (Elias, 1956). However, treason in the colonial era was not assigned the death penalty. White-collar crimes, such as forgery and embezzlement, were rare during this era because there were no white-collar jobs. In the absence of taxation, elite crimes—environmental pollution, price-fixing, and tax fraud—were nonexistent (Odi, 2003). There were no bank robberies, because there were no banks then (Njoku, 2004). Property was very sparse and as a result, stealing from one another was scarce and limited in scope (Nwali, 2003). Morality was high, and a few people committed adultery and incest. However, it was very rare for a person to break the moral norms of his own community. Any violation of local custom or moral code was very much dreaded and abhorred, as no member of the group wanted to bring upon himself the obvious punishment of ostracism. Inside the village community, people were closely knit by social fusion of kin, so violence was strenuously avoided. Life was simple and an individual's needs were very few. There were also very limited areas of individual and group conflict (Nwelom & Ngwuta, 1993; Nwali, Onu, & Odi, 2003).

Crimes such as ritual murders existed, but the victims in those cases were outsiders or strangers to the social grouping (Elias, 1956). The moral norm of the indigenous era of Nigeria encouraged stealing from a stranger, and killing a stranger was even considered a brave and heroic act (Elias et al., 1975:8). Stealing from another member of the same community was punished with ostracism, although killing such a member had to be appeased by blood ransom (Elias et al., 1975:8). In fact, Table 12.1 shows, witchcraft was the most serious crime in this era, punished collectively and publicly by death in the form of burning alive, burying alive, etc., after trial by ordeal if the accused denied

the accusation (Elias, 1956:9). During this era, people believed in ritualism, magic, sorcery, and witchcraft. Witches were believed to be both men and women who preyed on human souls, using magic to harm their enemies (Idowu, 1973; Parrinder, 1965). Geoffery Parrinder (1965) also noted that witchcraft is nocturnal and that Africans in general, and Nigerians in particular, strongly believed in the existence of witches and thought that witchcraft was hereditary. They also believe that witches caused a lot of damage to life and crops, and could cause drought, and barrenness in both men and women. It was believed that witches had animal familiars with whom they worked in close contact. According to the people, night birds were the commonest associates of witches—nightjars, owls, bats, and fireflies. Black cats and snakes were and still are believed to be the popular agents of witches. Witchcraft was and is considered an antisocial phenomenon, because not only witches destroy individuals in secret, but also because they acted and still act against the society in which they live. Hence, the severe punishment for witchcraft of death was justifiable to the society. Parrinder (1965) noted that Nigerian law presently penalizes those who claim to have the power of witchcraft, apparently not realizing that people do not claim to have the power of witchcraft except under accusation (Parrinder, 1965:133).

Based on the mentioned characteristics of witches and on the fact that those who possessed or possess these characteristics have committed or do commit multiple crimes at one point in time, the punishment was and is severer than any other type of punishment. To detect an accused witch, an accuser had to subject the accused to an ordeal (a process of finding the truth). A wizard was considered to have polluted the land with his or her evil activities and had to be severely punished. The welfare of the community was the primary concern of the criminal sanction. As mentioned earlier, the collectivistic basis of inflicting punishment was very important. A family unit took collective responsibility for the conduct of its members in both civil and criminal cases (Elias, 1956; Elias et al., 1975). The death penalty was necessary for the crime of witchcraft in order to eliminate a wizard who could pass his or her witchcraft genes to others who could be potential witches (Idowu, 1973; Parrinder, 1965).

There were other crimes down the ladder in the rank order of crime seriousness, but such crimes—premeditated murder, manslaughter, external treason, stealing, arson, adultery, and incest—were not taken as seriously as the crime of witchcraft due to its peculiar nature already discussed. The punishments inflicted on the perpetrators of these “lesser” crimes were mainly caning (collective caning) or fines in kind since there was no money at the time for monetary fines. Compensations were also paid to the injured parties in these crimes. Adewoye (1977) noted that premeditated murder, being also a

serious crime if committed by a person of the same kindred or of the same community with the victim, was punished by self-exile for seven or more years and then sacrifices to the land upon return from exile. Occasionally, the murderer committed suicide to save his whole family, who could be attacked by the family of the victim, or the ignominy of being hanged by strangers. Chinua Achebe's *Things Fall Apart* depicts Okonkwo's case where he had to serve seven years for inadvertent murder or manslaughter and to hang himself later at the end of the novel to avoid being hanged by strangers. Manslaughter carried heavy compensations in money or in kind paid to the injured party, while the sacrifices were performed to cleanse the land that the murderer had polluted with the blood of a kinsman.

Pre-colonial Nigerians were concerned with treason—that is, when a member of a community revealed community secrets to any nearby community, especially when there were boundary disputes or intertribal wars. The crime of treason was punished by excommunication. The criminal had to be excommunicated. He was excluded from all meetings, and all social gatherings. If he had any problems, he solved them alone; no community member could help him (Njoku & Onu, 2004). Adewoye (1977) noted the influence and role played by conscience and religion as the major aspect of the law in this era. Collective conscience bound by religion was one of the aspects of traditional life (Durkheim, 1933). Adultery and incest were punished by shaming—the offenders were the targets of bad songs for several years (see Table 12.1). They might not find it easy to get married to any woman. They had defiled themselves and were expected to be punished by the land or the spirit of the underworld (Idowu, 1973; Parrinde Njoku & Nwelom, 2004).

COLONIAL ERA

Introduction

Crime is a social stigma accepted by a particular society or an organization, defined as such by that society or organization in the light of the prevailing social norms and cultural values cherished by that society or organization. For instance, precolonial Nigeria defined and accepted witchcraft as the worst social injury, while the colonizers in Nigeria (1861-1960) rejected witchcraft as a social injury, but accepted and defined treason and treachery as the worst crimes.

Certain values are common to all societies; thus, life and property are valued in nearly all, if not in all, societies—primitive, developing, or developed. However, the British colonial government in Nigeria was an exception to this

Table 12.2. Rank Order of Seriousness of Crime in Colonial Era

<i>Order</i>	<i>Punishment</i>
1st	Punished by death <ol style="list-style-type: none"> 1. Treason 2. Treachery
2nd	Life imprisonment <ol style="list-style-type: none"> 1. Attempted Murder 2. Manslaughter 3. Aiding suicide 4. Killing an unborn child 5. Preventing arrest 6. Intentionally endangering safety of a person 7. Stealing postal matter 8. Stealing will 9. Robbery 10. Arson 11. Rape 12. Destroying ships 13. Obstructing the use of railway 14. Destroying a house or vessel with explosives 15. Forging a seal
3rd.	Fourteen years of imprisonment <ol style="list-style-type: none"> 1. Judicial corruption 2. Official corruption 3. Perjury 4. Carnal knowledge of any person against the order of nature 5. Carnal knowledge of an animal 6. Conspiring to murder 7. Maliciously administering poison with intent to do harm 8. Attempt to commit rape 9. Child stealing 10. Slave dealing 11. Concealing will 12. Burglary 13. Entering a dwelling house with intent to commit felony 14. Breaking into a building to commit felony 15. Attempting to cast away ship 16. Destroying any part of railway
4th	Ten-year imprisonment <ol style="list-style-type: none"> 1. Repeated altering of counterfeit, current gold or silver coin or possession of several such coins 2. Directing unlawful trial by ordeal 3. Kidnapping
5th	Seven-year imprisonment <ol style="list-style-type: none"> 1. Rescuing a person escaping from custody 2. Escape from custody 3. Aiding prisoner to escape

	<ol style="list-style-type: none"> 4. In possession of filings or clippings of gold or silver 5. Fraudulent issue of money orders and postal orders 6. Grievous harm to another 7. Bigamy 8. Publishing defamation matter with intent to extort 9. Stealing cattle 10. Attempted robbery 11. Breaking into a place of worship with intent to commit felony 12. Keeping of fraudulent accounts by directors and officers of corporations and companies 13. Attempting to set fire to crops 14. Wrecking vessels 15. Sending letters threatening to burn or destroy 16. Making documents without authority 17. Purchasing forged bank notes 18. Falsifying warrants for money payable under public authority 19. Conspiracy to commit felony
6th	<p>Five-year imprisonment</p> <ol style="list-style-type: none"> 1. Criminal charms 2. Written threat to murder 3. Unlawful possession of human head 4. Abandoning a child 5. Compelling action by assault 6. Removing property under seizure
7th	<p>Three-year imprisonment</p> <ol style="list-style-type: none"> 1. Interference with telegraphs 2. Attempting to injure telegraphs 3. Serious assault 4. Concealment of matter affecting liberty 5. Obtaining goods by false pretenses 6. False certificate by public officer 7. Extortion by public officer
8th	<p>Two year imprisonment</p> <ol style="list-style-type: none"> 1. Negligently permitting escape from prison 2. Harboring an escaped prisoner 3. secreting letters and telegraphs 4. Resisting public officers or obstructing his or her way while in the discharge of his/her duties 5. Neglect of peace officer to suppress riot 6. Disturbing religious worship 7. Trading in prostitutes 8. Concealing the birth of children 9. Indecent assault on a woman 10. Frauds on sales 11. Wilful damage to boundaries 12. Making use of papers for postal purposes 13. Conspiracy to commit misdemeanor 14. Accessory after the fact to felony

(continued)

Table 12.2. (continued)

<i>Order</i>	<i>Punishment</i>
9th	One-year imprisonment <ol style="list-style-type: none"> 1. Officers charged with maladministration of property of a special character or of special duties 2. Impersonating soldiers or police 3. Obstructing officers of court of justice 4. Sending dangerous things by post 5. Neglecting to aid in suppressing riot 6. Neglecting to aid in arresting an offender 7. Being present at or making poison for unlawful trial by ordeal 8. Attempting to commit suicide unlawful assault 9. Compelling action by intimidation 10. Fraudulent dealing with property by debtor
10th	Six-months imprisonment <ol style="list-style-type: none"> 1. Public officers receiving property to show favor 2. Taking prohibited things into or out of prison 3. Keeping a brothel 4. Burial in houses
11th	Fine of £50 (N2,500) <ol style="list-style-type: none"> 1. Obstructing mails 2. Fraudulent evasion of postal laws
12th	Fine of £20(N1.200) <ol style="list-style-type: none"> 1. Destroying letter box
13th	Fine of £5 (N250) <ol style="list-style-type: none"> 1. Defacing post office or letter box 2. Failure to enter as a member of crew upon employment

Sources: *The Laws of the Federal Republic of Nigeria and Lagos*, Revised Edition, *Criminal Code*, Ch. 42, 1958; personal interviews, January through July, 1993.

common rule. The British colonialists valued government stability more than life and property. This is because witchcraft criminals destroy life and property; likewise, premeditated murder and armed robbery criminals in the post-colonial era destroy life and property. However, the colonial government defined treason and treachery as the worst crimes, being crimes against the government. These crimes were punished by death (see Table 12.2). This is to say that social injuries were and are still based on group opinion. Killing another human being intentionally and depriving him or her of his or her property by robbery have been noted as the worst social injuries (see Table 12.3), but that was not the case in the situation in Nigeria. This is to say that no injuries have absolute values. What was labeled as crime could change from time to time or from one society to another, depending upon societal values and who was in power at the time. For instance, the most serious crime

of witchcraft in the pre-colonial era of Nigeria (see Table 12.1) changed to treason and treachery (see Table 12.2) in the colonial period. To kill one's neighbor intentionally is bad, but to kill a public enemy may be a heroic and praiseworthy act (Elias et al., 1975:20). The exploitation fostered by the British government left a bitter legacy in relations among various ethnic groups in Nigeria. The colonial government prided itself on its accomplishments in the fields of housing, health care, religion (Christianity), and primary education. On the surface, these accomplishments looked plausible, but they were underwritten by the harmful and the exploitative intent of the colonialists.

For instance, Nigerians were deprived of their own natural resources and power. They were influenced and forced by colonialists to cultivate cash crops used as raw materials for European industries at the expense of food crops for their own subsistence.

As Table 12.2 shows, treason and treachery were the most serious crimes, punishable with death. The change in the criminal legal code, from witchcraft as the most serious crime in the pre-colonial era, treason and treachery, reflects the maintenance need of oppression. Other crimes down the ladder (see Table 12.2) were deemed less serious. Legal punishments inflicted on the offenders in less serious crimes, ranging from attempted murder, manslaughter, and aiding suicide to defacing a post office or letter box ranged from life imprisonment to six months imprisonment, fine, whipping of both adults and juveniles, and deportation (see Table 12.2). Deportation as a legal punishment for offenders was not included in the colonial legal code of law (*The Laws of the Federation of Nigeria and Lagos Criminal Code*, ch. 42, 1958). For the maintenance needs of oppression, the colonialists punished King Jaja of Opobo with deportation and forfeiture of goods for obstructing British penetration into the interior in pursuit of palm produce (Crowder, 1978). Crimes such as intentionally endangering the safety of a person traveling by rail, stealing postal materials, destroying ships, obstructing the use of railways, forging a seal and burial in houses, were punished during the colonial era with life imprisonment, but the same acts were considered less serious and were punishable with fines in the postcolonial era (see Tables 12.2 and 12.3). Fifteen crimes were punished with life imprisonment, sixteen were punished with 14 years in prison, three for 10 years, nineteen for 7 years imprisonment, six for 5 years imprisonment, seven for 3 years, fourteen for 2 years, eleven for 1 year, four crimes for 6 months imprisonment, and only five crimes were punished with fines (see Table 12.2). Crimes that merited life imprisonment during the colonial era, such as preventing arrests, stealing postal matters, obstructing the use of a railway, and forging a seal, are related to the maintenance needs of the colonial government. These crimes were not assigned life imprisonment during the postcolonial era (see Table 12.3).

POSTCOLONIAL ERA

Nowadays, Nigerians find themselves caught up in the theories and mesh of an intense culture conflict just like other pluralistic societies. "The Nigerian of today is called to dance to the rhythm of new religions, new values, new world views, and new political systems" (Elias et al., 1975:6). The changes continue to amaze and shock scholars of Nigeria history of criminology and criminal justice.

Pre-colonial Nigeria defined and accepted witchcraft as the worst crime or the most serious crime, while the colonial era rejected witchcraft as the most serious crime, but replaced it with treason and treachery as the most serious crime. On the other hand, postcolonial Nigeria rejected both witchcraft and treason and treachery as the most serious crimes, but defined and accepted trial by ordeal, abetment of suicide of a child or insane person, culpable homicide, and armed robbery as the most serious crimes carrying the death penalty (see Tables 12.1; 12.2; and 12.3).

The change in the seriousness of crime in the colonial era means that individuals created a situation where the natives became severed, cut off, pulled out, and separated from corporate morality, customs, and traditional solidarity. The present Nigerian society has no firm roots anymore. The society has been simply uprooted, but not necessarily transplanted (Elias et al., 1975:6). The Rev. Dr. Ifeanyichukwu Anozia, bewails this situation thus: "Our culture has been changing at a near-revolutionary pace since our first contact with the white man almost 500 years ago" (Elias et al., 1975:6).

The slave trade, commerce in palm oil, colonization, Christian evangelization, urbanization and industrialization followed one another in sequence without interruption as they invaded Nigeria. Colonial history and mentality have tied the political fortunes of Nigerians to those of their neighbors in a way that now seems irreversible unless tribal revolutions are carried out (Zahar, 1975:6). As a result of colonization, Nigerian culture has become problematic. The Rev. Dr. Theophilus Okeke put it this way:

Culture is a dynamic and living thing. It may have its indigenous base, its native root, but it derives new strength, new life, and, may be new shape from contact with other cultures in the process of cultural cross-pollination in which the new synthesis becomes the prevailing culture (Elias et al., 1975:7).

In any circumstance, what shall be punished as crime under any existing law, be it the Nigerian former indigenous law and custom, the colonial criminal code, or the present criminal code of law, reflects the opinion of the law making agencies during the particular period under study as well as the opinion of other influential groups in the society. At any such stage, the essential

Table 12.3. Rank Order of Seriousness of Crime in Postcolonial Era

<i>Order</i>	<i>Punishment</i>
1st	Punished by death <ol style="list-style-type: none"> 1. Premeditated murder 2. Armed robbery 3. Abetment of suicide 4. Trial by ordeal
2nd	Life imprisonment <ol style="list-style-type: none"> 1. Causing death of quick unborn child by act amounting to culpable homicide 2. Rape 3. Use of explosive with intent to destroy 4. Injury to public road, waterway, blocking travel 5. Causing fire to vessel 6. Burglary to commit suicide 7. False evidence to procure conviction of capital offense 8. Breach of official trust
3rd	Fourteen years of imprisonment <ol style="list-style-type: none"> 1. False evidence 2. Causing miscarriage 3. Act done to cause miscarriage 4. Act done with intent to prevent child being born alive 5. Abduction or kidnapping 6. Buying a slave or disposing of a slave 7. Carnal intercourse against the order of nature, with man, woman, or animal 8. Theft after preparing to cause death or hurt 9. Extortion by putting a person in fear of death 10. Extortion by threat 11. Voluntarily causing hurt in committing robbery 12. Criminal breach of trust by public servant 13. House trespass to commit offense punishable by death 14. House breaking in order to commit offense punishable with imprisonment 15. Forgery
4th	10-year imprisonment <ol style="list-style-type: none"> 1. Death caused in the act of committing an offense 2. Suicide abetment 3. Extortion voluntarily to hurt or to constrain an illegal act 4. Poisoning with an intent to commit a crime 5. Procuration of minor girl 6. Importation of a foreign girl 7. Robbery without harm 8. Trespass to commit offense 9. Deceitfully inducing belief of lawful marriage 10. Remarriage with concealment of former marriage

(continued)

Table 12.3. (continued)

<i>Order</i>	<i>Punishment</i>
5th	Seven-year imprisonment <ol style="list-style-type: none"> 1. Criminal conspiracy 2. Unlawful society membership 3. Acting contrary to law by public servant 4. False evidence 5. Obstruction of lawful arrest 6. Accepting gifts to recover stolen goods 7. Exhibition of false light mark 8. Voluntary causing hurt to extort confession or to compel restoration property 9. Theft by clerk or servant of property in possession of master 10. Attempted robbery 11. Robbery brigandage 12. Assembling for purpose of committing brigandage 13. Breach of trust 14. House trespass to commit offense punishable with imprisonment 15. Falsification of account 16. Marriage ceremony fraudulently gone through with lawful marriage 17. Incest 18. Criminal intimidation by an anonymous communication
6th	Five-year imprisonment <ol style="list-style-type: none"> 1. Unlawful assembly 2. Rioting with deadly weapon 3. Dishonesty of public servant 4. Giving false information to screen offender 5. Taking gratification to screen an offender from punishment 6. Criminal charm 7. Possession of human head 8. Causing miscarriage intentionally 9. Theft 10. Extortion 11. Cheating 12. Impersonation 13. Maiming cattle 14. Obstruction of public drainage
7th	Three-year imprisonment <ol style="list-style-type: none"> 1. Incorrect document framed by public servant 2. Personification by public servant 3. Public servant removing a seized property 4. Continuance of nuisance after injunction to discontinue 5. Obscene songs 6. Wrongful confinement to extort property or constrain to illegal act 7. Assault to deter public servant from discharge of his duty 8. Housebreaking by night 9. Breaking open receptacle by persons entrusted with custody

8th	<p>Two-year imprisonment</p> <ol style="list-style-type: none"> 1. Public servant causing danger by omitting to perform duty 2. Abandonment of duty by public officer 3. Public servant unlawfully purchasing property 4. Threat of injury to public servant 5. Destruction of document to prevent its production as evidence 6. Fraud 7. Influencing course of justice 8. Sale of noxious food or drink 9. Fouling water of public well or reservoir 10. Obscene or indecent act 11. Sale of obscene book 12. Keeping gaming or lottery house 13. Insulting religious creed 14. Trespass on place of worship 15. Cannibalism 16. Concealment of birth 17. Wrongful confinement in secret 18. Putting person in fear of injury in order to commit extortion 19. Fabrication of false key or instrument 20. Counterfeiting a property mark used by another 21. Adultery by a woman; Adultery by a man 22. Detaining a married woman with animal 23. Defamation 24. Criminal intimidation 25. Intentional breach of peace
9th	<p>One-year imprisonment</p> <ol style="list-style-type: none"> 1. Joining assembly of 5 or more persons knowing that it has been commanded to disperse 2. Third person profiting by gratification 3. Public nuisance 4. Keeping a brothel 5. Ill treatment of domestic animals 6. Disturbing religious assembly
10th	<p>Six-months imprisonment</p> <ol style="list-style-type: none"> 1. Interruption of public servant sitting in judicial proceeding 2. Drunkenness in private places
11th	<p>Three-months imprisonment</p> <ol style="list-style-type: none"> 1. Obscene songs
12th	<p>Fine of £50 (2,500)</p> <ol style="list-style-type: none"> 1. Disturbance of public peace 2. Contravention of residence order 3. Adulteration of drug 4. Overriding and neglecting wounds of animals 5. Wearing dress or carrying token used by public servant

(continued)

13th	Fine of £20 (1.200) <ol style="list-style-type: none"> 1. Failure to produce document to public servant 2. False information
14th	Fine of £5 (250) <ol style="list-style-type: none"> 1. Being drunk by alcohol

Sources: *The Laws of the Federation of Nigeria, 1960*, Ch. 89, *Penal Code*; personal interviews, January through July, 1993.

characteristic of crimes is that they attract punishment (Elias et al., 1975:7). For instance, in the pre-colonial era, witchcraft was the worst crime punishable with death; in the colonial era witchcraft was replaced by treason and treachery; but in the postcolonial era, armed robbery, premeditated murder, and trial by ordeal became the worst crimes, punishable with death.

As noted earlier life and property are valued in nearly all, if not in all, societies, be they primitive, developing, or developed. Postcolonial Nigeria was no exception to these common values. What was regarded as the most serious crime in the pre-colonial era of Nigeria was witchcraft. However, in the colonial era, treason and treachery replaced witchcraft as the most serious crimes, since the former crimes affected mainly the government. This attitude shifted value from people and their lives to the government and institutions. Human beings create government; in effect, there would be no government without human beings. This clearly shows the vulnerability in laws that define serious crimes and the changes that affect such definitions. Colonial Nigeria changed the laws of the indigenous people of Nigeria. These laws went through different validity tests, i.e., rules of customary law were subject to tests of validity prescribed by statute. An applicable rule of customary law was not to be enforced by the courts unless it passed the tests. There were three such tests. The first was that the customary law must not be repugnant to natural justice, equity and good conscience; the second was that it must not be incompatible either directly or by implication with any law for the time being in force; and the third was that it must not be contrary to public policy (Obilade, 1979:100).

Thus, for example, in *Edet v. Essien*, the appellant had paid dowry in respect of a woman when she was a child. Later, the respondent paid dowry in respect of the same woman to the woman's parents and took her as his wife. The appellant claimed custody of the children of the union because under customary law, he was the husband of the woman. He maintained that the woman could not contract another legal marriage until the dowry paid by him was refunded to him, and that he was entitled to any children born by the woman until the dowry was refunded to him. The colonial court held that the alleged rule of customary law had not been established. It then said that even if such

rule had been established, the court was of opinion that the custom was barbarous and was repugnant to natural justice and good conscience (Obilade, 1979:102). Again, in *Re: Effiong Okon Ata*, the court opinionated that the custom whereby the former owner of a slave was entitled to administer the personal property of the slave after the slave's death failed the repugnancy test (Obilade, 1979:102).

Further down the ladder as shown on the table above, other crimes assumed less seriousness of significance. Legal punishments inflicted on the perpetrators of these crimes range from life imprisonment to 6 months imprisonment, fine, caning for juveniles (not adults), and forfeiture of property. Nowadays, Nigerians, not foreigners, make up members of courtroom work groups—judges, lawyers, police, court clerks, and prosecutors. Indigenous Nigerian jury members once determined the facts of criminal cases during the post-colonial era. However, the jury system was abolished due to bribery and corruption. The police act as prosecutors in all criminal cases. The primary objective of the application of law in this era is to control the behavior of the people. The main objectives of legal punishments are specific and general deterrence and rehabilitation of the offenders. Cross-examination of witnesses as an ideal method of proving guilt has replaced to trial by ordeal in the pre-colonial era and torture in the colonial era.

SUMMARY

Changes in the Nigerian legal code have been the main object of this investigation. As earlier noted, witchcraft was the most serious crime in the pre-colonial era. In the colonial era, treason and treachery assumed first rank order as the most serious crimes. In the present era, premeditated murder and armed robbery have become the most serious crimes. These changes in the law and the rank ordering of crime and the rank order of crime seriousness in the colonial era express a particular tilt: the maintenance needs of the oppressor. In the pre-colonial era, punishing the crime of witchcraft with death helped to protect life and property. In the colonial era, the tilt reflected what was regarded as most threatening to the survival and well-being of the colonial government. In the postcolonial era, punishing premeditated murder and armed robbery with death is to deter potential murderers and robbers, so the death penalty helps in protecting life and property, just as it did in dealing with witchcraft in the pre-colonial era.

In the first order of crime seriousness, there were two crimes in the pre-colonial, two crimes in the colonial, and four crimes in the postcolonial era (see Tables 12.1, 12.2 and 12.3). There were fifteen crimes that were punished

with life imprisonment in the colonial era, but only eight crimes in the post-colonial era are punished with life imprisonment. No crime was punished with life imprisonment in the pre-colonial era because no prisons existed (Odi & Onu, 2003) (see Table 12.1). Stealing postal materials, destroying ships, obstructing the use of the railway, and forging a seal were crimes punishable with life imprisonment in the second order of crime seriousness in the colonial period, but none of these crimes was punished with life imprisonment in the postcolonial era (see Table 12.3). These crimes never existed in the pre-colonial era, because there were no post offices, ships, railways, nor seals to be forged (Nwali, 2003). This is important because the shift expresses a tilt toward the maintenance needs of the colonialists. In the third order of crime seriousness (see Table 12.3) in the colonial era, there were sixteen crimes punishable by 14 years of imprisonment, compared to the postcolonial era's list of fifteen crimes. The types of crimes punishable with 14 years of imprisonment also differed between the two eras (see Tables 12.2 and 12.3). There were only three crimes punishable with 10 years imprisonment in the colonial era compared to ten such crimes in the postcolonial period (see Table 12.3). Crimes that were punished with 7 years of imprisonment were nineteen in number in the colonial era, but there are eighteen in the postcolonial period. Crimes that were punished with 5 years of imprisonment were six in number in the colonial era, but fourteen in the postcolonial era.

In general, there were few crimes in the pre-colonial era. Seven of these crimes were legally punished, but in the colonial period, the number escalated to 103 in the colonial era to 121 the postcolonial era. Consequently, it could be concluded that the less developed a society, the less law to be enacted, but the more developed a society, the more laws, and the more laws, the more crimes to be committed by the members of that society (see Tables 12.1, 12.2, and 12.3). However, crimes have differed significantly in Nigeria from one era to another. In effect, crimes were punished more severely in the colonial era than in either the pre-colonial or the postcolonial period for the colonialist's maintenance needs. For instance, deportations, penal servitude for life, caning, and flogging adults were used as punishments during the colonial era (Adewoye, 1977:84). Lord Lugard specifically approved the beheading and drowning practiced under Maliki law as humane punishments (Political Memoranda, 1913-1918, Memo viii, paragraph 34; Milner 1969:288). The colonial government apparently did not question various forms of corporal punishment until 1933 (Milner, 1969:264). However, the only restriction introduced in 1933 merely limited the weapons of punishment to rattan canes and single-tailed whips of prescribed dimensions.

REVIEW QUESTIONS

1. What is meant by the term “reasonable doubt”? Explain the term by definition.
2. What is a reasonable person before the law? Explain.
3. In which era of Nigerian history was concept of “proof beyond reasonable doubt” so difficult, and why?
4. What crimes were punished with death in the pre-colonial, colonial, and post-colonial eras in Nigeria? Why they were different based on a particular era?
5. What crimes constitutes caning and shaving, and in what era did this happen?

Chapter Thirteen

The History of Punishment and the Post-Colonial Nigerian Prison System

KEY TERMS

- | | |
|----------------------------|--------------------|
| 1. Mutilation | 11. Opportunity |
| 2. Lynching | 12. Chief Warden |
| 3. Experience | 13. Superintendent |
| 4. Maximum Security Prison | 14. Overcrowded |
| 5. Medium Security Prison | 15. Kaduna |
| 6. Minimum Security Prison | 16. Courtyard |
| 7. Annual | 17. Detainee |
| 8. Incarcerated | 18. Welfare |
| 9. Kirikiri | 19. Survive |
| 10. Internal Affairs | 20. Monitoring |

INTRODUCTION

James F. Quinn (1999: 27) notes that many policies concerning punishment introduced over a century ago remain unquestioned today. Reliance on imprisonment as our main form of punishment is one of these. Knowing where and why these practices began can help us understand why the system works today. Quinn continued to note that each idea appeared in a unique social and political setting and must be examined in light of both past experience and the current situation. The focus on this chapter is on the issues and problems that guided corrections to its present state. The main concern is how the needs of society are translated into specific practices that create both opportunities and problems (Quinn, 1999).

The Origins of Punishment

Quinn (1999) noted that the early tribal societies did not recognize the idea of punishment beyond what was required to satisfy offended gods or families. In these cultures families were usually large, clan-like groups that exerted strict control over their members. The welfare of the group, not the quality of justice received by an individual, was their main concern (Quinn, 1999). Crime as we know it today was rare. When a wrong occurred, the victim's family sought vengeance. This often created a history of bloody feuds between clans. As cities developed, the family weakened as a primary source of social control. Hence, crime increased and lawlessness threatened to disrupt society. This led to a greater reliance on government efforts to control individual behavior. As crime became a problem, punishment became important as a method of controlling individuals, and formal legal codes appeared (Barnes, 1972).

The code of Hammurabi, written in Mesopotamia about 1700 B.C.E., is one of the most famous of the ancient criminal codes. It used the principle of *lex talionis*, (equivalent retaliation) to limit the severity of revenge that could be taken by families. Many ancient cultures, such as those in India and Egypt, used this principle as a basis for punishment. The Old Testament dictum of "An eye for an eye, a tooth for a tooth" resonates very well with proponent of this concept of revenge. Although used today as a justification for severe punishment, the original purpose was to limit vengeance to a retaliation that matched the offense. This principle helped control feuds but did not eliminate them (Quinn, 1999). Ancient societies had ideas about fairness that were very different from ours. Until the time of the American Revolution, the status of the victim and offender were vital in setting the level and type of punishment (Quinn, 1999). Crimes by slaves were always more severely punished than those of freemen; acts that hurt nobility were treated more harshly than those that injured peasants. These distinctions were seen as perfectly natural by their creators because they reflected the organization of those societies and their religious beliefs (Quinn, 1999).

Punishment in Ancient Societies

Most punishments in ancient times were corporal, financial, or capital. Corporal punishment involved inflicting physical pain on the offender. Fines and other economic penalties were sometimes used as a means of financial punishment; and capital punishment refers to use of the death penalty. In addition to these, banishment or exile from the group was common in many societies (Sellin 1976), notes that it was a kind of social death. In most early civilizations, however, punishment meant killing or hurting the offender. Imprisonment was

rarely used to punish; rather, it was simply a method of controlling someone who may otherwise flee (Bopp, William and Donald, 1977). Leonard (1999) noted that the ancient Greeks believed that punishment should serve more than mere vengeance. It should encourage reform in criminals and deter others from crime. Athens used jails to punish those who refused to pay their fines and to hold those awaiting trial or execution. The Greeks restricted the use of fines to citizens. Slaves are stoned, burned alive, strangled, poisoned, or banished for their crimes. The Romans used fines, loss of property, death and exile to punish offenders. Slaves and conquered people received the most severe punishments such as mutilation, branding, and death by burning or crucifixion (Sellin, 1976). This reflects the class structure of Greek and Roman societies (Leonard, 1999; Quinn, 1999).

Little reliable information is available on the facilities used to hold prisoners during ancient times. Historians feel certain, however, that various types of cages were used in many cultures; some also used abandoned stone quarries to house prisoners (Quinn, 1999). The Romans built Mamertine Prison underneath Rome's main sewer system in 64 B.C.E. to detain prisoners and apply corporal punishments. When Christianity became the state religion, the view of human nature began to change, and appropriate punishment for criminals became the norm (Laurel, 1983).

Christianity and the Medieval Era

The use of social isolation to punish criminals began in the Roman Empire during the fourth century C.E. after Christianity became the state religion. Unlike Pagans, Christians believe their God is entirely good. Therefore, most Christians do not accept divine explanations of criminal acts. At the same time, the quality of mercy is very important to Christians (Quinn, 1999). In the early days of Christian Europe, confinement in monasteries became an alternative to death, especially for powerful people. These sanctuaries provided an environment in which criminals could rehabilitate themselves through expiation, a form of social isolation to encourage offenders to reflect on their actions, recognize the wrongness of their acts, and repent. Lee (1970; 19–20) noted that after 529 C.E., most European countries such as France used some form of the Justinian Code, which listed all recognized crimes and provided a specific punishment for each offense. Corporal punishment could be avoided by paying a fee to the victim or his or her family. These early penal codes were based on the social class of the offender. Those who were too poor to pay for serious crimes could be executed while the rich often paid small fines for serious felonies (Cesare, 1977). Throughout the Middle Ages the severity of punishment increased as cities grew and crime became more

of a problem. Deterrents, such as blinding or the amputation of hands, noses, or ears, which had been reserved for slaves were applied to freemen in an attempt to slow the rising tide of crime (Anderson, 1988: 179).

Castle dungeons were more similar to our present day jails than to modern prisons. Their primary purpose was to hold people awaiting trial. As gunpowder came into use, castles became useless for military defense and were increasingly used to imprison political prisoners. These offenders often had enough power to make rulers uneasy about executing them (Quinn, 1999: 27). Long-term denial of freedom was beginning to be recognized as a form of punishment by the end of the middle Ages. For most offenders, however, punishment remained corporal and capital. Furthermore, the living conditions for most people at this time were brutal, and punishments reflected the norms of society in which they occurred (Pieter, 1995: 65). Howard John (1929: 1777) documented that English jails were called goals and were controlled by the sheriff. Most sheriffs were nobles who did not want to trouble themselves with prisoners, so they allowed private businesses to run these facilities. The sanitary conditions of these jails were terrible, even by the standards of that era (Quinn, 1999). Men, women, children, felons, debtors, unwed mothers, and the insane were housed together; and the strong routinely preyed upon the weak. Most of the people in goals were debtors. They were incarcerated as the result of a civil process. The purpose was to secure the debtor until the debt was paid, not to punish (Denis 1835–1985).

Payment for operating the goals was the main concern of the businessmen who ran them. They charged inmates for room and board, charged admission fees for visitors, and used whatever means they could to profit from their position (Quinn, 1999). Accused persons might be found innocent but die in the goal years later because they could not pay their bill. On the other hand, wealthy prisoners could have liquor and prostitutes brought to them if they were willing to pay for such services (Caldwell, 1965). These inequalities were rarely questioned during this era; it was unthinkable to treat the wealthy in the same way as peasants (Friedman, 1993: 155).

For more than four hundred years before the Anglo-Saxons invaded England in 500 C.E, Roman law was a major influence in England. Unlike Roman law, Anglo-Saxons law was unwritten and based on tribal customs. Eventually, the laws of the Anglo-Saxons tribes merged with those of the Romans to form a medieval justice system. Two of the guiding principles were: (1) the King's Peace and (2) the idea that the king was entitled to compensation for any injury done to a free man. The King's Peace promised the use of the monarch's power to provide peace, security, and order to his subjects. In return, citizens owed the King their loyalty (Quinn, 1999). Monarchs were thought to be God's appointed rulers on earth. Therefore, any misconduct in

the king's presence was an extremely serious crime. This notion grew to include any offense that disturbed the peace of the kingdom. Since all citizens were under the king's protection, the king should be paid for any harm inflicted on any one of them. This reasoning led to the state being defined as the injured party in criminal cases. Victims soon became little more than witnesses in the criminal justice system (Bopp and Schultz, 1977). Knights were appointed to enforce the King's Peace throughout the land, but they often abused this power. In 1215 King John was forced to sign the Magna Carta, which put formal limits on the king's power. This document gave many rights and powers to local governments, prohibited punishment without trial, limited the severity of punishments, and provided methods of redressing wrongs by government through the courts (Quinn, 1999). It gave many powers to minor nobles rather than to the people. However, this was the beginning of the popular control of government powers, which was to become unique to the English-speaking world (Holt, 1992). This English tradition of placing strict limits on government powers was brought to the North American colonies, where it grew even stronger (Lee, 1995).

Growth of the Cities

Between 1500 and 1800, Europe was rapidly urbanizing. The use of violence to settle disputes was common. Punishment was inflicted in public to deter others from committing similar acts. Hangings, floggings, and similar spectacles had been major sources of public entertainment for centuries. Punishments, especially executions, were public events that drew large crowds on a regular basis. The public was often allowed to help punish offenders. Passersby threw rotten food or stones at people in stocks and pillories. Despite these severe measures, crime continued to increase (Quinn, 1999). Banishment had been a common means of removing disruptive people. As cities grew, banished vagrants from one area caused problems in another. The obvious failure of pain and death to deter crime, and the fear of the crowds attracted by public punishments, forced authorities to find other ways to punish offenders. Fines were not effective for those too poor to pay. However, punishment that restricted a person's freedom and forced labor was one option (Quinn, 1999). The poor were the first to experience bondage, which originally was a disciplinary sanction, as a punitive sanction. Bondage indeed was intended to resolve the problems presented by the poor and marginal members of society, who posed as threats to the stability of the society (Siedenburg, 1995). Another form of bondage, public work, was used to punish those convicted of a crime. Forced labor in mines, working on roads, or collecting human waste was used as punishment in Spain beginning about 1550. The

idea spread through Europe and continued through the seventeenth and eighteenth centuries where it gradually was associated with imprisonment (Quinn, 1999).

The dramatic growth of cities in Europe gave birth to workhouses. The Industrial Revolution changed the nature of society. People left rural farmlands and flocked to cities in search of jobs. When unsuccessful at finding work, they took up begging or crime as a way of life. The family was no longer able to control individual behavior. Urban society had to find some way to control the increasing numbers of jobless and homeless poor congregating in the cities (Quinn, 1999). Religious beliefs at the time strongly supported a work ethic. Begging, gambling, and prostitution were considered immoral. Work was one way to reform this behavior. In 1556, Bishop Ridley converted Bridewell Palace to a work house to keep criminals, beggars, and the insane off the streets while teaching them to be productive workers. These Bridewell Houses, as they came to be known, were designed to teach the value of hard work and discipline (Quinn, 1999). Humanitarians hoped that a change from punishment to discipline would help curb crime. However, the Bridewells quickly became places to isolate criminals and other social misfits from the rest of society. In 1597, Parliament authorized the building of houses of correction, and by 1609, each county was required to have such a facility (Orland, 1999). Gaols, Bridewells, and houses of correction were indeed the ancestors of our prisons today.

The idea that inmate labor could be used to make a profit goes back to the ancient practice of enslaving offenders. France began leasing convict labor to private businesses in the early 1700's. The state was responsible for keeping the convicts healthy enough to work in factories, and the items they produced were sold to the state. In 1703 the Hospital of St. Michael opened in Rome under the control of Catholic monks (Ignatieff: 153–92). Young offenders, orphans, and the sick were housed in solitary cells so that they could reflect on their sins and repent. Labor was important to these experimental prisons. Inmates worked silently in groups to produce goods for the church. Solitary cells, work, and religious training were used as reform methods (Rothman, 1971). However, there were very few of these church-run facilities. The growth of colonial empires provided a more popular way to remove those who offended society, creating a new form of bondage.

In 1615, King James in England introduced the fourth type of bondage, transportation, as a penalty. Each of the European powers had a place of exile for serious offenders during the 1700s and 1800s: Spain had African colonies; French convicts were sent to South America or to remote Pacific islands; England could choose between North America and Australia. Up until the American Revolution in 1776, more than 30,000 convicts had been

transported to Colonial America. Growing opposition from Australian colonists to use of their islands as penal colonies soon followed. As the transportation of convicts to colonies ended, the English turned to the use of prisons (Ignatieff, 1981). Although the Bridewell originated as a social policy, it soon affects criminal policy. The Bridewells and houses of correction marked a shift in attitudes from a public spectacle of corporal and capital punishments to labor and serving a fixed amount of time.

The Age of Enlightenment

A new view of human nature, and the role of law and government in guiding behavior, appeared in the 1700's. This view rejected the idea that kings had a divine right to govern others. Instead, it stressed the unique value and dignity of each individual. The idea that all people are "created equal" surfaced during this era. This new outlook rejected supernatural explanations of crime based on spirit possession and similar ideas. Instead, the notion that law should serve the welfare of the majority became the basis of our Constitution and Bill of Rights. These views of law and crime control led to the classical school of thought and the "justice model" (Laurel, 1983: 3)

Enlightenment thinkers wanted to create and run a society based on personal freedom and equality. They believed that behavior results from conscious choices for which only the individual is responsible. They questioned the idea that nobles were superior to the rest of the population. They rejected the idea that punishment should vary with social status and focused on how a society of equals could govern itself. If actions were the responsibility of the individual, then each person should take full credit for his or her achievements and full blame for his or her wrongs. At first these principles were applied only to white males who owned land, but they were slowly expanded to include all adults. The Age of Enlightenment is the source of the personal freedoms that make our Constitution unique and lead us to grant a few rights even to convict offenders. However, enlightenment thought cannot be classified as "liberal" in today's use of that term because it also provided the basis for belief in deterrence (Rothman, 1971: xvi–xix).

Enlightenment thinkers believed that people made decisions on the basis of a calculation in which the possible costs of an act (punishment) are compared with its likely rewards (Bentham: 206–207). This greatest happiness principle assumes that people make choices that will help them avoid pain and obtain pleasure. Laws must encourage people to make choices that will benefit society as well as themselves. This is the basis for using punishing offenders (Rothman, 1971).

London was the largest city in the world during this era, and crime was its worst social problem. During the 1800s, the English created a system of prisons in hope that loss of individual freedom would deter crime. These prisons were modeled on the military. They emphasized labor, discipline, and separation from society. These principles symbolized society's idea of a good and orderly life. Prisons were seen as harsher than transportation, and it was hoped that they could reform offenders (Hay, 1980).

Overcrowding soon became a major problem for English jails and prisons. Many cities temporarily solved the problem by using old buildings as prisons in which criminals, women, children, and the mentally ill were held in group cells. Overcrowding also led to the use of old ships as prison. These hulks, often called "Hell Holds," were filthy, rat infested, and unventilated. Inmates performed degrading labor on these ships while townspeople paid a fee to be entertained by their misery. Disobedience was punished with flogging. The use of prison ship lasted until 1875. Ironically, almost exactly one hundred years later, three states seriously considered using old U.S. warships as prisons as a solution to prison overcrowding (Curtis, Graham, Kelly, and Patterson, 1835–1985).

Reform and the Birth of Modern Corrections

In 1777, an English sheriff named John Howard exposed the filth and brutality that were typical of jails at that time. He felt that religion, labor, and humane surroundings could be used to reform most criminals. As a result of his efforts, England passed a law calling for four major prison reforms: (1) prisons should be secure and sanitary; (2) prisons should be regularly inspected; (3) inmates should not be charged for basic services; and (4) prisons administration should become professional. Howard's reforms eventually led to the separation of criminals from other social outcasts in English institutions and a decrease in the use of execution (Howard, 1929). By the 1850s use of the death penalty was restricted to first degree murder and treason in England. In the 1860s executions were moved behind prison walls because the crowds they attracted threatened public order.

Punishment and Law in Colonial America

Colonial America followed the English tradition of using corporal and capital punishments for serious crimes. Milder forms of public punishment were used for minor offenses, and "women's crimes" were handled differently from those of men. Gossips were punished by "dunking" in a pond, and sexual misbehavior was punished by shearing off the woman's hair. Crime was

not a serious problem because there were few large cities, and offenders were easily encouraged to “go west,” an informal continuation of the practice of banishment. The main developments of the colonial era were in the laws that controlled punishment (Martinson, 1974: 22).

William Penn, a Quaker leader who founded the colony of Pennsylvania, established a penal code in 1682 that led to major correctional reforms. As a Quaker he was opposed to violence of any kind and objected to the use of corporal and capital punishments, especially for minor crimes. This rejection of violence had a dramatic impact on attitudes, and Pennsylvania was a leader in the early development of North American corrections (Hay, 1980).

North American Prisons

In 1787, Benjamin Rush, an author of the Constitution, helped found the Philadelphia Society for the Alleviation of the Miseries of Public Prisons. He felt that the humiliation of public punishment alienated offenders from society and led to even worse criminality. He wanted to create a system that would encourage offender to rejoin society (Quinn, 1999). It was believed that crime was the result of the evil influences of society. The penitentiary was seen as an institution that could isolate offenders from corrupting influences, instill the discipline they lacked, and provide the time to reflect on their misbehavior and be reformed into a useful citizen. Lawrence Friedman described the idea of the penitentiary—a “grim, total, silent monastery for criminals”—as winning many converts (Friedman, 1993).

Philadelphia’s Walnut Street Jail was the first real penal institution in North America. In 1790, the Pennsylvania legislature converted a wing of this jail into a penitentiary for convicted felons. Prior to this, felons were incarcerated along with misdemeanants and those awaiting trial in workhouses and jails. At first, the Walnut Street Jail kept prisoners in solitary confinement and did not allow them to work. This was very expensive and had a disastrous effect on inmates, leading to suicides and mental breakdowns. As a result, prisoners were eventually allowed to work and to receive religious instructions (Laurel, 1983).

Thomas Eddy took over New York City’s Newgate Prison in 1797. He introduced many new policies, such as evaluating the need to imprison each inmate. He concluded that no more than 10% of offenders actually required the kind of security provided by the prison. Job descriptions were required for all prison staff positions; hiring was based on the abilities of applicants rather than on friendship or political favoritism. Inmates’ diets were planned to be nutritionally adequate, and the menu changed daily. For the first time, the services of a physician and pharmacist were made available to inmates. Newgate

was the first prison with policies that promoted professionalism and brought basic service to inmates (Sheehan, 1992). However, these efforts were limited to facilities for men.

Prior to the 1800s, female offenders were few in number and were seen as especially depraved. They were held in unused areas of male prisons, such as attics, where they were separated from male inmates but guarded by men. Women were seen as inferior to men in all ways. They had few rights, and it was commonly believed they could not learn or change as easily as men. Therefore, little attention was paid to them by society. Elizabeth Gurney Fry's work at Newgate Prison in the early 1800s showed that even the most hardened women could be rehabilitated. Fry proposed separate facilities for women, staffed by females, with humane treatment as their central philosophy. Like John Howard, she argued for the use of work, education and religious training instead of punishment. Her efforts established the theoretical and practical bases for many modern correctional practices and helped to bring humane conditions to U.S. prisons (The American Prison).

The American Prison

The two central goals of the prison were also established in this era. The first—assuring custody of prisoners—meant giving top priority to preventing escapes. Second only to this goal was maintaining control of inmates within the prison's walls. Despite the reforms at Newgate, humane conditions or treatment was a distant third at best. Prisons were designed to keep inmates isolated and powerless. During the first half of the 1800s, policy was often based on the belief that solitary confinement could lead to repentance and reform. Crime was seen as a product of the evils of city life so rural settings were chosen to encourage inmates to contemplate their sins. Silence was used to enforce separation from others and to encourage penitence. Extreme discipline was thought to have rehabilitative effects, and labor was required to replace idleness.

The American Prison: Introduction:

These three assumptions about the requirements of rehabilitation—separation from society, hard work, and extreme discipline—became the basis of prison organization. People believed these factors would prevent exposure of prisoners to additional kinds of criminal behavior. Two types of prisons—Pennsylvania and Auburn systems—developed during this era. The main difference between the two was in how they tried to control and reform inmates.

The Pennsylvania System

Pennsylvania built the Western Penitentiary in Pittsburgh in 1826 and the Eastern Penitentiary in Cherry Hill in 1829. The Pennsylvania system extended the concepts of the Walnut Street jail. It was believed that solitary confinement would reduce violence because inmates would not be in contact with each other. Fewer guards would be required. Upon arrival at the prison, inmates were considered “dead to the world” and were told to expect little human contact while serving their sentence. “Social death” was part of the penalty for crime during this era, and convicts had no rights. Letters and visits from outsiders were almost entirely forbidden. Only clergy and a few citizens approved by the Pennsylvania Prison Society were allowed to see inmates. Religious education and services were offered as treatment; Bibles were the only permitted reading material (Roberts, 1997)

Roberts noted that being allowed to work was a reward for cooperative inmates that helped break the boredom of complete isolation. In theory, this led them to see labor as a reward than something to be avoided; in practice, it helped keep prisons from draining the state budget. The Pennsylvania system was not profitable, however; because prisoners working by themselves were not very productive. The separation of prisoners, called the segregate system, was eventually abandoned. The problem of financial support for the prison was never solved, and mental breakdowns among inmates were common. Despite these problems, the Pennsylvania system was copied throughout the world and some nations built similar institutions as recently as the 1960s. Due to financial problems and overcrowding, Pennsylvania finally adopted the congregate system that had been developed in Auburn, New York (Roberts, 1974).

The Auburn System

The Auburn system began in 1816. It was also based on the philosophy of expiation and enforced a “code of silence” among inmates. Prisoners worked in groups during the day and were confined to separate cell at night. Communication between inmates was restricted to the minimum required for work, and rule violations were quickly punished by guards armed with bullwhips. These prisons were actually profitable for the states that used them because they made better use of inmate labor.

Elam Lynda was the warden who made Auburn profitable during the 1830s. He believed that prisoners deserved to be whipped as often as possible and designed procedures and clothing to be as humiliating as possible. His cruelty was also felt by staff members, who described him as a sadistic dictator. The state government was pleased to see the prison make a profit but was

so embarrassed by his sadism that he was finally forced to resign (Barnes and Tethers, 1946).

Supporters of the Pennsylvania system claimed that Auburn's use of the whip to enforce the code of silence naturally led to the sort of cruelty for which Lynda became famous. They also felt that allowing inmates to work together was too great a temptation to violate the "code of silence" Advocates of the Auburn system pointed out that it was more profitable and led to fewer mental problems than the segregate system. Auburn-type prisons were also cheaper to build. Passionate debates between supporters of these tow models regarded for much of the early 1800s, but most U.S. prisons had adopted the Auburn approach by 1860. Auburn's code of silence was abandoned, however, as over crowding made its enforcement impossible (Roberts, 1974).

Regional Influences on Prisons

In the mid-1800s crowding led to the building of large prisons, designed to hold as many inmates as possible. The era of the "big house" overlapped with that of the Auburn and Pennsylvania systems but lasted into the early twentieth century. There was little interest in reforming criminals during this period. These huge institutions emphasized large size, efficiency, and production. All these values were admired by early industrial societies. Having a huge prison was a source of pride for many states during this period, just as having the most prison beds today is seen as beneficial (Quinn, 1999: 27).

During this period, state governments in the North and West took control of prisons away from cities and counties. In the South, control of convicted felons remained in the custody of county governments until the early 1900s. While industry provided the model of work and discipline in the North, slavery filled this role in the south long after the Civil War (Quinn, 1999:27). The south did not adopt the penitentiaries so popular in the North. Older public punishments, such as whipping, shaming or hanging remained prominent during this period. Race influenced punishment in the South. Killing slaves while "disciplining" that was not a serious crime in the Southern states. The death penalty was used for many felonies if committed by slaves, but whites who committed the same offense only received prison time. After the Civil War, prisons became more common in an attempt to control ex-slaves. The Thirteenth Amendment freed African Americans from slavery but allowed the use of convicts as slave labor for state and local governments. White inmates were given clerical jobs, and some even served as guards or foremen. African Americans worked 10–12 hour days on plantations and chain gangs.

The Reformatory Prison

Between 1870 and 1900, science replaced religion as the guiding principle for changing offenders. At least in theory, treatment had become a primary goal. This period saw the introduction of academic and vocational training, indeterminate sentencing and parole. The remedial prisons of this area tried to use scientific knowledge to reform inmates. McKelvey (1977) noted that it was at this point that the rhetoric of reform began to guide corrections. Reform described the process of using all available, ethical, and humane methods to change offender behavior patterns. The belief was that linking privileges to good behavior and hard work would help offenders achieve goals set by the authorities. The basic idea of reform had appeared much earlier in the efforts of Moonachie, Crofton, and Brockway (Quinn, 1999).

Alexander Maconochie served as warden of the Norfolk Island penal colony near Australia between 1840 and 1844. He required convicts to earn their room and board by working in small groups. The foundation of this system was the indeterminate sentence. Convicts could earn early release by working hard and behaving well. It was hoped that the disciplined habits learned in this structured environment would continue to guide offenders when they returned to society. This idea was adopted in Ireland by Walter Crofton (Quinn, 1999). Crofton's system was based on a series of stages through which prisoners passed to earn their release. Inmates were first assigned to solitary confinement and boring work under close supervision but could earn the privilege of being involved in more pleasant projects. If they continued to follow the rules, they were removed from solitary confinement and given work that was not supervised. Eventually they could win conditional release into the community. The modern practice of parole began in this way. By 1869, 23 states had passed good-time laws to encourage reform and good behavior among inmates and to relieve the overcrowding that again troubled U.S. prisons (McKelvey, 1977: 58–59).

A corollary to the idea that offenders could earn early release from prison was that some offenders were incorrigible—incapable of reform. Reform based on offering rewards had to have a balancing punishment. Habitual criminal laws had been used even in colonial days. In the late 1800s, laws were passed to treat recidivists much more harshly than first offenders (Friedman, 1993).

Early in the 1870s, Zebulon Brockway used indeterminate sentences to reduce crowding at Detroit's House of Correction for Women. In 1876 he was asked to manage the state prison at Elmira, New York. This was the first "reformatory," and it became a model for most of the prisons built between 1876 and 1913. Brockway tried to emphasize the value of education and hard work as a method of earning one's freedom. However lawsuits based on the capi-

talist demand that the state not compete with private companies soon forced him to replace labor with military drills and recreation. Inmates who were kept busy were much easier to control than those remained idle regardless of the activity they performed. This remains the central purpose of prison recreation to this day.

The practice of granting judicial reprieves had been used in England in the late 1700s to reduce jail and prison crowding. A reprieve was a suspension of sentence granted for offenders were not supervised but if they reappeared in court, the original sentence could be re-imposed. This practice was adopted by many American judges, especially in Massachusetts, and was used mainly with minor first offenders. Reprieves were found to violate the separation of powers principle in the Constitution in 1916, but their popularity during the 1830s led to the development of modern probation.

In 1841, a Boston shoemaker named John Augustus began asking the local court to release certain drunks, prostitutes, and other petty offenders to his custody. Augustus tried to help them rehabilitate themselves, and he at first allowed them to stay in his home. Later he and his wife opened a shelter to house these men, women, and children. If offenders cooperated and managed to lead decent lives before their trial, Augustus would request that the charges against them be dropped.

Local officials profited from jail crowding because they were paid based on the number of inmates in their facility. Augustus was a threat to their profits. However, municipal judges chose to cooperate with him, and he continued this activity until his death in 1859. He is brought to have taken in over two thousand offenders and was often successful in reforming them. His example inspired volunteers from all over Massachusetts to work with petty offenders and juveniles. In 1878 the state legislature created the position of probation officer and formalized the system. Three forces motivated the gradual expansion of probation systems throughout the nation: (1) an increasing concern with juvenile delinquency; (2) growing faith in the power of scientific treatment; and (3) financial problems caused by prison crowding (Quinn, 1999).

Parole traces its origins to Maconochie, Crofton, and Brockway. The same pressures that led to the expansion of probation also encouraged the growth of parole. Parolees were rarely minor offenders, however. They had experienced imprisonment and were generally more hardened than probationers. Today, the executive branch at the state level usually controls parole. This encourages communication between prison officials and parole officers. It also allows some states to give parole officers limited police powers over their charges. Probation, on the other hand, works closely with the local court system.

The principles of the reformatory, which still guide some correctional practices, were outlined in Cincinnati, Ohio, at the 1870 meeting of prison experts from throughout the nation. This group called for an emphasis on treatment to replace that of punishment. They argued for standardized but indeterminate sentencing, parole services, the use of rewards to control inmate behavior, and the creation of a single national correctional system. Most striking was their belief that society was partly responsible for crime and therefore should develop crime prevention programs. However, such progressive ideals were accepted only in the North and Midwest. In the South, dealing with the damage caused by the Civil War and controlling freed slaves were still the major concerns.

Positivism and the reform ideology were ignored in the Southern states where the Civil War had destroyed the economy and most prisons (Quinn, 1999). Southern jurisdictions adopted a lease system that allowed private businesses to rent convict labor from the state or county. A contractor took custody of the inmates and made them work long hours under terrible conditions. This system was modeled on slavery; the prison, not the convict, was paid for the labor. The lease system made many prisons profitable but led to terrible abuses of human rights. Conditions at many convict-lease operations were so bad that the bureaucrats assigned to inspect them refused to even enter the facilities. Illegal deals and outright bribes added to their corruption. Objections to convict leasing by the federal government and labor unions led to the collapse of this system at the turn of the century (McKelvey, 1977).

As we move today toward increased reliance on private prisons, the abused of the lease system must be remembered. Issues such as the morality of making a profit from human misery and the conflict between the profit motive and decent living conditions are very relevant today. The abuses of the lease system eventually forced Southern states to take control of prisons away from the counties. They were also one of several forces that led to the creation of the Federal Bureau of Prisons.

The Federal Bureau of Prisons

Quinn (1999) noted that until 1895 there were no federal prisons for civilians. Persons convicted under military law were confined at Leavenworth, Kansas, or Portsmouth, New Hampshire. Civilians sentenced to a year or more were housed in state prisons; those with shorter sentences were kept in local jails. The federal government simply paid the state or county for the room and board of these prisoners (Quinn, 1999). This was a problem in the South because U.S. law prohibited the leasing of federal prisoners, but Southern jurisdictions routinely ignored these laws. By 1890 prison crowding was again a

major concern, and many jurisdictions were reluctant to continue housing federal inmates.

At the same time, federal law was expanding to cover more offenses, so the number of federal prisoners was also rising. These problems led to the creations of the federal prisoners were also rising. These problems led to the creation of the federal prison system. Construction of the federal prison at Leavenworth, Kansas, began in 1896 but the facility did not open until 1928. The U.S. penitentiary at Atlanta, Georgia, opened in 1899 and the territorial jail at Mc Neal Island, Washington, became a federal prison in 1907. A federal facility for women opened in West Virginia in 1927. These prisons were immediately overcrowded because of the federal government's increasing involvement in criminal law enforcement. All of these facilities are still in operation today. In 1930 these prisons were combined into the Federal Bureau of Prisons, which is part of the U.S. Department of Justice (Quinn, 1999). Many consider the Federal Bureau of Prisons to be the most professional and modern prison in the world. Its early development was guided by a reform mood that swept the nation at the turn of the century.

The "Progressive" Era

The reformers who were active between 1870 and 1930 were called "progressives." They were optimistic about the ability of science to deal with social problems (Rothman, 1980). Many of their ideas, such as humane treatment, diagnosis, and classification, have become basic parts of our correctional system. Other progressive ideas, however, like democratic government of prisons by inmates, met with failure. Thomas M. Osborne, the warden at Sing Sing and Auburn prisons in New York, felt that regulating all inmate behavior and providing all essential needs made offenders less responsible than ever before (Quinn, 1999). He allowed inmates to elect representatives who created rules for the prison and sentenced violators. His reforms increased industrial production and reduced violence, but the idea of democracy in prison seems to have worked only because of Osborne's unique personality (Rothman: 5). Nonetheless, his work was typical of the Progressive Era because he questioned popular beliefs and tried to change traditional ways of doing things.

This was also a time of change in the status of women and juveniles. Until the late 1800s juveniles were handled in about the same way as adults. Progressives created special juveniles were handled in about the same way as adults. Progressives created special juvenile courts and facilities. Many progressives were women who volunteered their services. While some worked with immigrants from urban slums, others devoted themselves to reforming female offenders.

During the Progressive Era, science was used to support the idea that females were more passive and less dangerous than men. Women's prisons, therefore, had more freedom to experiment with programs (Quinn, 1999). Many modern prison programs such as libraries, work release, and behavior-based classification systems were first used in women's prisons.

Quinn (1999) notes that despite attempts at reform, imprisonment remained the basic way to punish those convicted of serious crimes. "The great penitentiaries were not pulled down. There they stood—corrupt and brutal; warehouses for convicts (Friedman, 1993). The reforms tested in some of the large prisons had no effect on county and local prisons and jails. Thousands arrested for drunkenness or vagrancy was subjected to filthy conditions and had little recourse. Lawrence Friedman states "In general, prison and jail conditions everywhere in this county were a scandal—hidden lesions and sores on society. They were also a lesion on the meaning of race, poverty, and lack of power—and the terrible indifference of respectable people to the miseries of life underneath their feet.

This era was far from progressive so far as civil rights for minorities were concerned. Although people of all races were treated badly by justice practitioners, minorities were handled with special savagery. The period between 1882 and 1903 saw the lynching of nearly two thousand African Americans who had committed no crime. Legal executions were also used in a very racist manner during this era as well; more than 90% of those executed for nonfatal rapes and burglaries were people of color. The huge majority of those executed for murder were minorities as well (Paternoster, 1991).

The "Warehouse" Prison

The stock market crash of 1929 signaled the end of the Progressive Era. Economic problems led to gross neglect of the correctional system during the Great Depression that followed. The loss of prison industries that had begun in the late 1800s was hastened by the economic pain of the Depression. In 1929 the Hawes-Cooper Act subjected all items produced by prison labor to the laws of the state to which they were shipped (Quinn, 1999). The 1935 Amherst-Summers Act further restricted the sale of prison products, and a 1940 amendment to this law stopped the sale of items produced with inmate labor. These laws were written to protect businesses and the jobs of their employees from competition with prison industries. License plates and furniture for government offices were the only items that prisons could continue to produce and sell (Quinn, 1999). Prison riots had been a major problem in the early 1800s but faded as the reformatory movement and prison industries took hold. This was largely because treatment and labor kept inmates tired

and busy. Riots began again in 1930 as prisons lost these industries, governments cut treatment funding, and crowding worsened. Idleness, filth, and overcrowding again became the norms of prison life. The early 1940's were relatively quiet due to the Second World War, but riots recurred after the war ended and continued into the 1950s (Quinn, 1999). Boredom, poorly trained staff, crowding, huge institutions, haphazard sentencing, poorly designed parole policies, and politically controlled management led to serious problems in most U.S. prisons. Riots in the 1950s led to the study of prison organization and the effects on inmates. There was a renewal of interest in prisoner welfare. The economic recovery after World War II and the emphasis on public education created an atmosphere in the 1950s that renewed the emphasis on rehabilitation and individualized treatment. The medical model was once again prominent. Professionals schooled in psychology helped classify offenders for treatment programs. Treatment based on the needs of the offender, rather than punishment to fit the crime, was the focus. Social upheaval in the 1960s reinforced this trend and led to reforms in the civil rights of prisoners, but rising crime rates soon hardened attitudes about the goals of corrections (Quinn, 1999).

President Johnson tried to reduce crime by attacking the causes of social and economic inequality in the mid-1960s. He appointed a special panel of experts to study the problems of the U.S. justice system. The need for crime prevention programs, sensitivity to minority rights, and improved practitioner training were major themes of their report (Quinn, 1999). Increases in the crime rate and a series of riots during the late 1960s led to renewed concern with crime control. Racism was so widely accepted that many agencies had no minority employees what so ever, and the justice system was still seen as a tool of racial oppression by most minority citizens (Walker: 222–224). It was at this time that the Supreme Court began to demand that the Constitution be enforced by all levels of government. This shift in judicial philosophy is known as the due process revolution (Quinn, 1999).

The Due Process Revolution

Up until the 1960s, a variety of legal doctrines was used to keep the courts from becoming involved with the operation of prisons. The constitutional separation of powers between the three branches of government was used to argue that judicial oversight of prisons could undermine the powers of the legislative and executive branches. The idea of federal abstention suggested that federal courts had no authority to interfere in the operation of state prisons (Quinn, 1999). Fear that giving inmates legal rights would threaten the authority of prison officials and the safety of their staff provided another

reason to avoid hearing the complaints of convicts. Apprehension that frivolous inmate suits would overwhelm the courts had a similar effect (Branham & Krantz, 1997).

Many of the courts' reasons for avoiding suits about prison conditions and practices were summarized in the rights-verses-privileges doctrine, which is still recognized in a limited form today. This doctrine holds that the "rights" are protected by the Constitution but "privileges" are controlled by the agency. Until the due process revolution, conviction meant the loss of all rights; anything given to inmates beyond food, shelter, and clothing was a privilege. The due process revolution, however, led to the belief that a felony conviction limited a person's rights but did not strip them of all constitutional protections. For example, convicts have less control over their privacy and property than ordinary citizens but they should be assured sufficient rights to keep their basic human dignity (Quinn, 1999).

Prison administration was defined as largely beyond the jurisdiction of the courts because no civil rights were felt to be involved during the hands-off era. Courts sometimes examined the legality of confinement but rarely heard complaints about prison conditions. These were seen as administrative issues beyond judicial control (*Monroe v. Pape* 1961). The Supreme Court began to reconsider these ideas in *Monroe v. Pape* (1961), which involved an illegal police search. This decision held that claims that federal rights had been violated by a state or local official should allow the victim to be heard by federal rights had been violated by a state or local official should allow the victim to be heard by federal courts without first going through the state courts. In 1964, *Cooper v. Pate* made it clear that this right of access to the federal courts was available to state prisoners (Friedman, 1988). This granting of limited rights to prisoners encouraged inmates to file suits seeking other constitutional rights. The Eighth Amendment ban on cruel and unusual punishment was applied to the conditions within prisons (Quinn, 1999)

The fourteenth Amendment's guarantee of equal justice and due process was applied to prison disciplinary decisions and soon became the basis for much judicial intervention in U.S. prisons. The suits that followed established a number of rights for inmates in the areas of religion, speech, medical care, and due process (*Johnson v. Avery*, 1970). Sixth Amendment rights to a fair trial and Fourth Amendment rights to privacy, however, were withheld from inmates (*Holt v. Sarver* 1970).

The 1970 case of *Holt v. Sarver* was an important turning point in due process reforms (Quinn, 1999). A U S. district court ruling found the entire Arkansas prison system to be in violation of the Eighth Amendment because: 1) some inmates guarded other; 2) the prisons' design encouraged violence; 3) isolation cells were unsanitary; and 4) there were no treatment opportuni-

ties for inmates. This ruling was strengthened and clarified by *Pugh v. Locke* (1976), which made the “totality of conditions,” rather than any one aspect of the prison, the central issue in Eighth Amendment cases (Quinn, 1999). The *Pugh* decision touched on most of the problems in modern prisons: overcrowding, poor classification procedures, unsanitary conditions, racial discrimination, and the use of violence by guards. Prison officials had allowed their facilities to be overrun with insects; one prison housed more than 200 men but had only one toilet for inmates. Conditions like these violated the Constitution and constituted cruel and unusual punishment (*Pugh v. Locke* 1976).

The courts ruled that a prison procedure was unconstitutional if it debased the human dignity of inmates, was worse than the crime committed, or was unfair and/or shocking to the public conscience. Most of the case law that guided these decisions was written long before the 1970s when it was finally enforced (*Trop v. Dulles* 1958). Within a few years, the conditions and policies of prisons in many states had come under court control as a result of illegal practices or conditions. It was the *Ruiz* decision, however, that led to most takeovers of state prisons by the federal crisis (*Troop v. Dulles* 1958).

Ruiz v. Estelle (1980) was a Texas case in which a federal court defined overcrowding as a violation of the Eighth Amendment ban on cruel and unusual punishment (*Ruiz v. Estelle* 1980). This allowed the courts to more or less take control of prisons in nearly three-quarters of the states. The *Ruiz* decision also put an end to the practice of giving some inmates power over others, which had been common throughout the South. These powers were often badly abused, and the practice has been condemned by virtually all U.S. courts and correctional associations (*Ruiz v. Estelle* 1980).

Idealism similar to that of the Progressive Era became dominant again during the late 1960s and the notion of democratically operated prisons reappeared. These interactive prisons were sensitive to the power of guards, treatment staff, and inmates but were also dramatically affected by the media and courts. The goal of the interactive prison was to imitate the outside world so that inmates could rejoin society more easily when released. However, these reforms made prisons as dangerous as the city streets from which the inmates had come, and the idea of the interactive prison did not last long (Stastny and Tyrnauer, 1987).

In the 1970s, some researchers claimed that most treatment programs had failed to reduce recidivism (Martinson, 1974). As faith in treatment declined, the incapacitation approach was once again the primary focus. This led to a reduction in prisoners’ rights and more severity in sentencing. These changes, and the crime wave that led to them, also led to overcrowded jails and prisons (Quinn, 1999).

The current trend is toward greater expansion of state and federal prison systems. California and Texas lead the nation in the number of prison beds as well as the expansion of prison populations. However, the foundation of this trend is political rather than scientific. A recent California study found that tripling the number of people held in prison had not curbed the state's growing crime rates (Crime Prevention News, 1995). The inmates were more likely to become embittered and violent under worse prison conditions and longer sentences. This is in stark contradiction to the beliefs of many citizens, who see imprisonment as a method of reducing crime. Crowding led to massive prison building campaigns in the late 1980s (Quinn, 1999). However, within five years of opening these new and expanded prisons, many states again face space shortages (Mauer, 1997).

Postcolonial Nigerian Prison System

There are maximum, medium, and minimum-security prisons and some "open" prisons in many metropolitan cities of Nigeria. Pre-colonial Nigeria did not employ prisons as penalties. Punishment took the form of fines, mutilation, castration, excommunication, lynching, and dedication to the gods, whereby the offender became an untouchable (Ebbe, 2006). Ebbe (2006) contends that the British Imperial Government introduced the prison system in Lagos between 1861 and 1900. By 1960, there was a prison in every provincial headquarters in Nigeria; some District Headquarters established minimum security prisons (Ebbe, 2006). The largest prison complex in Nigeria, which has both medium and maximum security branches, is Kirikiri Prison in Lagos (Igbinovia, 1984).

As of 1983, there were a total of 123 prisons, 2 borstal homes, and 244 county lockups in Nigeria. Borstal homes are categorized as between a minimum and maximum security prison. Most offenders in these homes are young and have not committed very serious offenses. The only women's prison in Nigeria is located at Kirikiri, Lagos. It is a medium security prison and is located adjacent to the only maximum security prison in the country (Alemika, 1983). In response to the severe economic problems of Nigeria and the overcrowding in Nigerian prisons, community-based corrections exist for offenders convicted of trivial crimes. These community-based programs include: labor camps, open prison, incarceration, and community service (Ebbe, 2006).

Number of Prison Beds:

In 1983, the Nigerian prisons had a total capacity for 26,000 inmates, but the actual inmate population was over 41,000. Thus, over-crowding is one of the major problems of the Nigerian prisons (Alemika, 1983).

Average Daily Population/Number of Prisoners:

In 1983, the Nigerian prison inmate population was over 62,153. In 1977, the Nigerian prison inmate population of convicted offenders was 34,000 (Rotimi, 1982). Most of these convicted prisoners are incarcerated in county jails, minimum security prisons, or what used to be called provincial prisons (Rotimi, 1982). In July 1980, there were 837 convicted inmates in Kirikiri maximum security prison, 832 convicts in Ikoyi medium security prison, and 510 convicts in Maiduguri medium security prison (Ebbe, 1982).

Female Prisoners:

There are few female prisoners in Nigeria. In 1988, female prisoners in Nigeria numbered 298 (Ebbe, 1982).

Actual or Estimated Proportions of Inmates Incarcerated:

There are no systematic records kept of Nigerian inmates by type of offense. However a study of 450 prisoners in four Nigerian prisons, including the only maximum security at Kirikiri, conducted in 1980, revealed the following:

- Drug Crimes—1% inmates
- Violent Crimes—11% inmates
- Property Crimes—70% inmates
- Other Crimes—18% inmates

PRISON ADMINISTRATION

Administration:

Nigeria has a centralized system of prison administration. In effect, every prison in Nigeria is a federal prison. Similar to the Nigerian Police Force, the Nigerian prisons fall under the authority of the Ministry of Internal Affairs, a department which is reminiscent of the Home Office in England. At the top of the organizational hierarchy of the Nigerian prisons is the Director of Prisons. He is appointed by the President of Nigeria only with approval of the Public Service Commission. The overall chain of command in the Nigerian Prison Service, from the highest to the lowest, is the following: Director of Prisons, Deputy Director of Prisons, Assistant Director of Prisons, Chief Superintendent of Prisons, Superintendent of Prisons, Assistant Superintendent of Prisons, Cadet Superintendent of Prisons, Chief Warden Grade I, Chief

Warden Grade II, Assistant Chief Warden, Sergeant, Corporal, and Warden (Nigerian Prisons Service Annual Report, 1982 and 1989). There is a Deputy Director of Prisons for each of the thirty states. The maximum security prison and every medium security prison are placed under the leadership of a Chief Superintendent of Prisons or a Superintendent of Prisons.

Training and Qualifications:

Prison wardens must hold at least a First School Learning Certificate prior to their training. The minimum qualification for entrance into the prison cadet school is a high school diploma. In addition, university graduates have begun to join the Nigerian prisons service.

Expenditure on The Prison System:

The annual expenditure of the Nigerian prison service was not available at the time of this writing. However, the salaries of the prison officials are among the lowest in the Nigerian civil service (World Factbook of Criminal Justice).

PRISON CONDITIONS

Remissions:

Nigeria has no parole system. Persons convicted of political crimes and inmates serving a life sentence can be granted a pardon by the Nigerian President. Inmates can also gain time off for good behavior or lose time for bad conduct.

Work/Education:

Inmates in all prisons are allowed to work on community programs or projects of the Nigerian Ministry of Works. They can also attend classes to obtain a primary school or high school diploma. Some inmates are allowed to participate in correspondence programs with schools in Nigeria and Great Britain in order to obtain an ordinary or advanced General Certificate of Education. Prisons do not have organized university degree programs.

Amenities/Privileges:

All prisons have visiting days. Only minimum security and open prisons have weekend leave programs. Vocational education is considered central to of-

fender rehabilitation in maximum and medium security prisons. Group therapy and medical care is available to all prisoners.

Extradition and Treaties:

The countries of the Economic Community of West African States (ECOWAS), of which Nigeria is a member, have a reciprocal extradition agreement. This agreement allows citizens of member states to move about within the community without the need for visas (Ebbe, 1984).

Exchange of Prisoners:

All ECOWAS countries can exchange or transfer prisoners if the situation warrants such a settlement.

An article from the UN Office for the Coordination of Humanitarian Affairs: An Eye Witness Account: KADUNA, 11 January 2006 (IRIN)

As visitors approach the death row block at Kaduna's central prison in northern Nigeria, a sea of hands waving tin cups automatically jerk through the bars of the dark cells. "Get back!" shouts the prison guard at the 118 detainees crammed inside a dilapidated building originally meant to house 33. Up to three inmates live in less than four square meters of space. An overpowering stench of urine and mould billows out into the courtyard. In the turmoil of the shouts some of the prisoners draw back to their spots on a tattered mat on the floor that aside from a few plastic bowls is the only object in the cell. But the guard is jumpy and cuts short the visit, prohibiting any further interaction with the detainees. Rights organizations working in Nigerian prisons—and even prison officials themselves—say the conditions of death row inmates do not fulfill even minimum international human rights standards.

In Kaduna prison, death row inmates are locked up all day long, said Festus Okoye, Executive Director of Human Rights Monitor (HRM), a group based in the northern city. "They are allowed out only rarely, for a few minutes, one by one," he said. Meanwhile some prisoners collect the buckets used as toilets. Most of the death row inmates are utterly alone and never receive visitors—their families living too far away and having abandoned them for fear of being associated with their crimes, rights group sources say. Some simply cannot pay the 'visiting rights' fee charged by the wardens. Nigeria this year acknowledged the sorry state of its jails, announcing plans to free

some 25,000 inmates still awaiting trial—some for as long as 10 years—in a bid to relieve overcrowding and bad conditions.

The move could ease conditions for those left waiting on death row for years. Since 1999 only one prisoner has been executed in northern Nigeria, with authorities openly reticent to carry through with executions, according to HRM. A report from Ernest Ogbozo of Prisons Rehabilitation and Elfare Action (PRAWA), Nigeria's largest prison's rights organization, reveals that Nigeria has a total 40,000 detainees out of whom 548 are on awaiting capital punishment. Of the 548, 10 are women. Under Nigerian law, crimes punishable by death include armed robbery, murder, and treason. Islamic Sharia law, in force in twelve northern Nigerian states, also calls for the death penalty in other crimes such as adultery.

Lack of food: If conditions for death row inmates are harsh, they are hardly any better for other prisoners. For the sick and weak, incarceration can be tantamount to a sentence to death. "The two main problems in Nigerian prisons are congestion and lack of food," said Hassan Saidi Labo, assistant to Nigeria's prison inspector general. Kaduna is a clear example. In December 2005, 957 detainees were crammed into 10 buildings—constructed nearly a century ago—designed for about 550 people. Labo says some prisons hold up to four times their capacity. According to 52-year-old Felix Obi who was condemned to 27 years in prison in 1986 for drug trafficking, in such conditions, just surviving is a daily battle. Obi spent 13 years and three months behind bars in the economic capital, Lagos, before benefiting from an amnesty in 1999. "You fight for a scrap of blanket, a piece of soap, a bit of food or medicine if you get sick," said Obi, who now works with PRAWA. "Prisoners fight for space on the floor to sleep, they fight not to become depressed, and not to be victims of violence. They fight to survive." Monitoring by outside groups has had some impact. Authorities assert that since prisons were opened to religious and humanitarian organizations more than 10 years ago, the prison death rate has fallen from 1,500 per year in the late 1980s to 89 deaths in 2003. . Still the risk of death in prison remains high, particularly because of lack of food, said Harp Damulak, the Kaduna prison hospital doctor. The daily ration generally consists of a bowl of beans in the morning then cassava in the afternoon and evening. Prisons have a budget of 150 Naira (US \$1.15) per prisoner per day. But this small amount does not necessarily get to all prisoners. Supply is in the hands of subcontractors who sometimes dip into the goods or embezzle the money, according to PRAWA, HRM, and prison officials. The UN Office on Drugs and Crime says a prison employee earns about 6,000 Naira (\$45) per month at the start, earning a maximum of about 40,000 Naira monthly at the end of a career. Therefore, corruption is common.

Conditions favor disease: Lack of food moreover aggravates already poor hygiene conditions. Damulak said that malnutrition makes prisoners highly vulnerable to infectious diseases such as tuberculosis or skin diseases caused by lack of hygiene. The situation is the same for women inmates in Kaduna prison, where 18 women live in two cells, sleeping on iron beds stacked one atop another, some without mattresses. The bathroom has long been without running water.

“We are devoured by mosquitoes, we all suffer malaria but don’t have bed nets and the hospital has no medicine except paracetamol,” said Zainab, 32, who has been incarcerated since April. “There is nothing. Even sanitary napkins—we have to share one between two women every month, or even every two months.” Damulak maintains that prison conditions weigh heavily on the detainees, often causing depression and other psychological problems, and prison personnel are not sufficiently trained to handle such issues. To survive in their environment, some prisoners have taken things into their own hands. “They have created a veritable government,” HRM’s Okoye said. “One prisoner is president, another police chief, another head of justice.” He added that some prison officials see the initiative as a positive thing because it helps foster order in the institutions. Former prisoner Obi said, “Some [prison ‘leaders’] invent rules that are impossible to follow.” Punishment generally comes in the form of an order to do chores, such as washing the clothes of ‘chiefs,’ but often prisoners pay for misdeeds by being beaten or even sexually assaulted. Despite efforts by inmates to impose some sort of organization, prison riots are common, PRAWA’s Ogbosor said. “In the past six months we have seen five riots in prisons across the country—all linked mostly to the lack of food for detainees.” Under the recently announced plan to release prisoners, those who have spent three to 10 years awaiting trial will have their cases reviewed for immediate release. Also eligible will be the elderly, the terminally ill and those with HIV, as well as people locked up for longer than the prospective sentence for their crime. Human rights activists say that among those who have languished in prisons for years are people who were picked up by mistake or for minor infractions and who simply could not pay the fine or bribe to get out of jail.

REVIEW QUESTIONS

1. Outline and explain in detail the five security levels in the Nigerian post-colonial prisons.
2. Name the types of community-based corrections in the post-colonial Nigeria.

3. Why are there few female prisons in Nigeria?
4. Give the chain of command in the Nigerian prison system, from the highest to the lowest.
5. What are the major causes of death in Nigerian prisons? Explain.
6. Discuss in full the origin of punishment.
7. Can we blame cities for producing crimes, and why or why not?
8. Discuss the Age of Enlightenment.
9. Write all you know about Reform and the Birth of Modern Corrections.
10. Compare and contrast the Pennsylvanian Prison System and the New York Auburn system.
11. Discuss in detail the concept of the Reformatory System.
12. Write all you know about the Progressive Era in Prison Reform.

Chapter Fourteen

The Legislature and the Making of the Laws

KEY TERMS

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|----------------------|------------------------|
| 1. Coherent | 12. Plain Meaning Rule |
| 2. Justice | 13. Void for Vagueness |
| 3. Congress | 14. Adjourned |
| 4. Legislature | 15. Bill |
| 5. Enumerated Powers | 16. Senate |
| 6. Implied Powers | 17. Poison Bill |
| 7. Constitution | 18. Amendment |
| 8. Predecessors | 19. Pocket Veto |
| 9. Absolute | 20. Committee |
| 10. Session Law | 21. Subcommittee |
| 11. Mala Prohibita | |

INTRODUCTION

In every developed country, criminal justice, police, courts, and correction or prison is a complex process involving a plethora of specialized agencies and officials. In the United States, criminal justice is particularly complex, largely because of federalism, which defines the constitutional division of authority between the national and state governments. Under this scheme of federalism, the national government operates one criminal justice system to enforce federal criminal laws, and each state has a justice system to apply its own criminal laws. Because of this structural complexity, it is difficult to provide a coherent overview of a national criminal justice system. Each system is to some

extent different in both substantive and procedural law. Regardless of the differences that exist between federal and state criminal justice systems, there are certain similarities. All fifty-one criminal justice systems in the United States involve legislative bodies, law enforcement agencies, prosecutors, defense attorneys, courts of law, and correction agencies. All adhere to certain general procedures beginning with arrest and, in some cases, ending in legal punishment. Finally, all systems are subject to the limitations of the United States Constitution, as interpreted by the courts. They all make use of the police, courts and corrections.

Legislatures

The governmental institution with primary responsibility for enacting laws is the legislature. The United States is organized on the principle of federalism, with fifty-one legislatures, the Congress and the fifty state legislatures. Each of these bodies has the power to enact statutes that apply within its respective jurisdiction. The U.S. Congress adopts statutes that apply throughout the United States and its territories, whereas the Illinois General Assembly, for example, adopts laws that apply only within the state of Illinois. For the most part, federal and state statutes complement one another. When there is a conflict, the federal statute prevails, or takes precedence.

Legislative Powers of Congress

Congress's legislative authority is divided into two broad categories: enumerated powers and implied powers. Enumerated powers are those that are mentioned specifically in Article I, Section 8 of the Constitution, such as the power to tax and the power to borrow money on the credit of the United States. Among the constitutionally enumerated powers of Congress, there are only two direct references to criminal justice. Congress is explicitly authorized to "provide for the Punishment of counterfeiting the Securities and current Coin of the United States" and to "define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations." Of course, Congress's power to define federal crimes is much more extensive than these two clauses suggest. The enumerated power to "regulate commerce among the states" has provided Congress with a vast reservoir of legislative power. Many of the criminal statutes enacted by Congress in recent decades have been justified on the basis of the Commerce Clause of Article I, Section 8.

Congress's implied powers are those that are deemed to be "necessary and proper for carrying into Execution the foregoing Powers and all other Powers

vested . . . in the Government of the United States, or in any Department or Officer thereof.” The *McCulloch v. Maryland*, (17 U.S) case maintains that as long as Congress’s policy goal is permissible, any legislative means that are “plainly adapted” to that goal are likewise permissible (4 Wheat.) 316, 4, L. Ed. 579 (1819)]. Under the doctrine of implied powers, scarcely any case exists over which Congress is absolutely barred from legislating, because most social and economic problems have a conceivable relationship to the broad powers and objectives contained in the Constitution. As the nation expands and evolves, Congress becomes more active in passing social and economic legislation. In the last several decades, especially, Congress has established a host of federal crimes such as mayhem and kidnapping across interstate lines. There is now an elaborate body of criminal law. Of course, Congress may not enact laws that violate constitutional limitations such as those found in the Bill of Rights.

Publication of Federal Statutes

Federal statutes are published in the *United States Statutes at Large*, a yearly publication dating from 1789 in which federal statutes are arranged in order of their adoption. Statutes are not arranged by subject matter, nor is there any indication of how they affect existing laws. Because the body of federal statutes is quite voluminous and new statutes often repeal or amend their predecessors, it is essential that new statutes be merged into legal codes that systematically arrange the statutes by subject. However, the latest edition of the *Official Code of the Laws of the United States*, generally known as the U.S. Code, has attempted to arrange the statutes by subject matter. The U.S. Code is broken down into fifty subjects, called *titles*. Title 18, “Crimes and Criminal Procedure,” contains many of the federal crimes established by Congress.

The most popular compilation of the federal law, used by lawyers, judges, and criminal justice professionals, is the *United States Code Annotated* (U.S. C. A.). Published by West Group, the U.S.C.A. contains the entire current U.S. Code, but each section of statutory law in U.S.C.A. is followed by a series of annotations consisting of court decisions interpreting the particular statute along with historical notes, cross references, and other editorial features.

State Legislatures

Under the U.S. Constitution, each state must have a democratically elected legislature because that is the most fundamental element of a “republican

form of government.” State legislatures for the most part resemble the U.S. Congress. Each is composed of representatives chosen by the citizens of their respective states. All of them are bicameral (i.e., two-house) institutions, with the exception of Nebraska, which has a unicameral legislature. In adopting statutes, they all follow the same basic procedures. When state legislatures adopt statutes, they are published in volumes known as session laws. Then statutes are integrated into state codes. Annotated versions of most state codes are available to anyone who wishes to see how state statutes have been interpreted and applied by the state courts.

After the American Revolution, states adopted the English common law as their own state law. (Congress, on the other hand, never did). Eventually, however, state legislatures codified much of the common law by enacting statutes, which in turn have been developed into comprehensive state codes. Periodically, states revise portions of their codes to make sure they remain relevant to a constantly changing society. For example, in 1989 the Tennessee General Assembly undertook a modernization of its criminal code. Old offenses that were no longer being enforced were repealed, other offenses were redefined, and sentencing laws were completely overhauled.

Statutory Interpretation

Statutes are not always written in general language, so legislation often requires judicial interpretation. Because legislative bodies have enacted vast numbers of laws defining offenses that are *mala prohibita* (Latin), such interpretation assumes an importance largely unknown to the English common law. Courts have responded by developing certain techniques to apply when a statute appears unclear as related to a specific factual scenario. These techniques are generally referred to as rules of statutory interpretation, and over the years these rules have given rise to various maxims that courts apply in attempting to determine the legislation’s intent in enacting a statute.

Courts recognize that it is the legislative bodies and not the courts that exercise the power to define crimes and penalties. Therefore, the most frequent maxim applied by courts in determining legislative intention is the plain meaning rule. As the U.S. Supreme Court observed early in the twentieth century that “Where the language [of a statutory law] is plain and admits of no more than one meaning the duty of interpretation does not arise . . .” *Caminett v. United States*, 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917). The Court’s dictum seems self-evident, yet even learned judges often disagree as to whether the language of a given statute is plain. This gives rise to certain canons of construction applied by courts to determine the legislative intent behind a statutory definition of a crime. A primary canon of construction is

that criminal statutes must be strictly constructed. The rule originated in common law, when death was the penalty for committing a felony, but the rule has remained. However, it is now based on the rationale that every criminal statute should be sufficiently precise to give fair warning of its meaning. Today we see the rule applied most frequently in a constitutional context when courts determine a criminal statute to be void for vagueness. We address this aspect in more detail in the next lecture. Another canon of construction provides for an implied exception to a statute. For example, courts have ruled that there is an implied exception to a law imposing speed limits on the highway in instances where police or other emergency vehicles violate the literal text of the law. Would a court apply a statute that makes it an offense for any person to sleep in a bus terminal and thereby convict a ticketed passenger who fell asleep while waiting for a bus that was overdue? The implied exception doctrine seems to reflect a commonsense approach in determining the meaning of a statute.

Often a statute uses a term that has a definite meaning in common law. In general, courts interpret such terms according to their common-law meaning. (See Chapter 10 for more details). In defining the crime of burglary, a legislature might use the word *curtilage* without defining it. In such an instance, a court would ordinarily look to the common law, which defines the term to mean “an enclosed space surrounding a dwelling.” But this rule does not always apply when dealing with modern statutes, particularly at the federal U.S. level, where there is generally considerable legislative history in the form of committee reports and floor debates recorded in the *Congressional Record* that can aid in determining the true intent of a statute. Thus, in *Perrin v. United States*, 444 U.S. 37, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979), the Supreme Court determined that the word *bribery* in a federal statute was not limited to its *definition per se*.

HOW THE US LAWS ARE MADE

Introduction

This is a concise overview of the entire process and though it does go into some detail, there are many it leaves out (see *How Our Laws Are Made*, a publication of the Library of Congress; *U.S. Constitution:1*). The general process for making a bill into a law is described in the Constitution. As with many things, however, the Constitution leaves most of the details to the people of the day, providing just the overall picture. Before we delve into those details, however, a look at the general process is very important.

The Constitution states that a bill must pass both houses of Congress by a majority vote. After it has passed out of Congress, it is sent along to the President. If the President signs the bill, it becomes law. However, if the President specifically rejects the bill, (called a veto), the bill returns to Congress. Thereafter, it is voted on again, and if both houses of Congress pass the bill again, but this time by a two-thirds majority, then the bill becomes law without the President's signature. This is called "overriding a veto," and is difficult to do because of the two-thirds majority requirement (*Steve Mount, 2006*). In an alternate, the President can sit on the bill, taking no action on it at all. If the President takes no action at all, and ten days pass (not including Sundays), the bill becomes law without the President's signature. However, if the Congress has adjourned before the ten days pass and without a Presidential signature, the bill fails. This is known as a pocket veto (*Mount, 2006*).

The process laid out in the Constitution is relatively complicated when it comes to vetoes, but pretty simple when it comes to approving a bill. But in reality, there is a lot more to law making than these steps spelled out in a clause of the Constitution (*U.S. Constitution, 2006*).

Submitting a Bill

Bills originate from several different sources, but primarily from individual members of Congress. In addition, bills might be brought to a member by a constituent or by a group of constituents; a bill can be submitted to a member of Congress by one or more state legislatures; or the President or his administration might suggest a bill (*U.S. Constitution*). However, if it is brought to the attention of a member, the member must submit it for consideration. In the House, Representatives need merely drop a copy of a bill into a bin specifically placed to receive new bills. In the Senate, the bill is given to a clerk at the President's desk. Bills can be introduced in either house, though as noted above, a bill must eventually pass both houses to become law. The exception to this is that bills for raising revenue must originate in the House, and never in the Senate (*U.S. Constitution*).

Committees

Both houses of Congress (the House and the Senate) are divided into large groups called Committees, with most committees divided yet again into Subcommittees. Each Committee tends to a general topic in the nation's business, like Finance or the Military. Subcommittees are even more specialized, with one on, for example, Military Nuclear Weapons, and another on Military Pay (*Mounts, 2006*). Bills typically concern a specific topic, like raising the pay

of soldiers. Most will, then, fall into a specific sub-committee's area of responsibility. There is a Subcommittee on Pay, Promotion, and Retirement that would consider the pay bill. Once a bill is introduced, it is assigned to a committee. A bill is scheduled to have hearings, at which time witnesses may be called to testify as to why a bill is needed, and sub-committee members ask questions of the witnesses to determine the need or the validity of the bill. Once the hearings are held, the members of the subcommittee will then vote on the bill to see if it should proceed further on to the full committee. If the vote fails, then the bill dies (*U.S. Constitution, 2006:2*).

Some bills are broad enough to warrant direct consideration by the full committee itself. These types of bills, and bills that are referred to the full committee by a subcommittee, are debated in the committee, which might call witnesses, too. Finally, a vote on the bill is taken at the committee level. If the bill is defeated in the committee vote, it dies. If it passes, a committee report is attached to the bill and it is sent to the full house (*U.S. Constitution, 2006:2*).

House Procedure

In the House, a bill approved by a committee is referred to the whole House. Most are then referred to the so-called Committee of the Whole, which consists of all members of the House, but with a much lower quorum requirement. Once in the Committee of the Whole, it is read and debated upon. In the House, time is allotted for debate on the bill, with equal time given to the two main parties in the House. When the time for debate is up, a second reading is done. After the second reading, amendments to the bill may be offered, debated upon, and voted upon. Once the Committee of the Whole is done with the bill, it is referred back to the full House. Note that a bill cannot be killed in the Committee of the Whole, although amendments may be placed on the bill that makes it undesirable. In the latter case, we have a "poison pill" (*U.S. Constitution, 2006:2*).

Mounts (2006) notes that once in the hands of the full House, the amendments placed on the bill by the Committee of the Whole are voted upon—either en masse or one at a time. After that, one of two votes can happen—either a vote to recommit (which can send the bill back to committee if approved), or a vote on the bill, as amended. If a recommit vote fails, a full vote is taken. If a bill passes, it is organized and published. The House uses blue paper for approved bills (*U.S. Constitution, 2006:2*).

Senate Procedure

The U.S. Constitution stipulates that after a Senate committee refers a bill to the full Senate, it can take one of two main routes. In some cases, with emergency

or other non-controversial bills, a simple voice vote is taken of the Senate, and the bill either passes or fails. Amendment is possible even when the simple voice vote can be used. If the bill fails to gain support, the bill is placed on the calendar for review by the entire Senate at a later date.

When time comes up for the bill to be reviewed, the Senators can raise objection to it. If no objection is noted, each Senator has five minutes to speak on the bill. During this time, amendments may be offered. If objection was offered, then each Senator has the opportunity to speak on the bill for as long as he or she wishes. From time to time, a Senator may “filibuster” by speaking about a bill for an extended period of time, never yielding the floor to another Senator. This is usually, at most, a delaying tactic, since a single member cannot speak for an indefinite amount of time. By combining forces with other Senators, however, filibustering can be an effective tool for stopping action on an item, or for forcing compromise on an item. After all amendments are offered and voted upon, and all Senators who wish to talk have had a chance to, the bill is put forth for a vote.

Conference

Once a bill leaves the House and the Senate, it must be checked. If anything in the two versions of the bill differ, in any way (even in something as minor as punctuation), the bill must be reconciled. The house in which the bill originated is given a copy of the bill with its modifications. For example, if the House originated a bill, then sent it along to the Senate for consideration, and the Senate made changes, the bill is sent back to the House. If the changes are minor, they might be accepted by the originating house with no debate. If changes are of a more substantial nature, however, a conference is called for.

In a conference, a number of Representatives and a number of Senators (known as managers) meet to work out the differences in the two versions of the bill. The number of managers from each house of Congress is of little concern, because the managers from each house vote separately. So, for example, a conference committee might have ten Representatives and seven Senators. Managers are not allowed to substantially alter the bill. They may add an amendment from one bill into the other, or take out an amendment added but not in the other. But they cannot add new amendments to both versions of the bill. When there is disagreement, a new text, which might be a compromise between two versions, can be proposed. But the changes must be consistent with the bill itself (*U.S. Constitution, 2006:3*).

Following negotiations, the managers make reports back to their respective houses that they were able to agree on the bill, able to agree only on some

parts of the bill, or were unable to agree at all on the bill. For the first case, the bill is revoked upon in both houses. For the latter two cases, the bill may go back to a new conference committee, referred back to the committees in the two houses, or it may just die because the differences are too vast to reconcile (*U.S. Constitution, 2006:3*).

The Presidency

Once the bill leaves the Congress, it goes to the President for his signature. The legislative process does not operate in a vacuum, and the President, or his staff, always tracks bills that pass through the Congress. A bill showing up on the President's desk, then, is never a surprise. In all likelihood, the President has commented on the bill, indicating his likelihood of signing it, or perhaps indicating that he will veto it unless certain provisions are in the bill, and so on. By the time the President officially sees the bill, it is either in accordance with his wishes, or in defiance of them. Officially, the Speaker of the House and the President (or President Pro Tem) signs all bills that pass both houses of the Senate before it is presented to the President. This process does not usually include any politicized delays, but it could delay a bill a day or two. Then, the bill is delivered to the President and the 10-day clock starts to tick.

The President may sign the bill at any time after its deliverance. If it sits unsigned for more than the 10-day period, it becomes law regardless of his signature or not. The exception to this 10-day period is commonly called a pocket veto. In a pocket veto, the President can kill a bill if it goes unsigned and Congress adjourns prior to the 10-day time limit. The term "pocket veto" comes from the fact that if the President knows an adjournment is coming, he can place the bill in his pocket and forget about it. The general interpretation of the adjournment needed for a pocket veto does not include short-term adjournments; only when the Congress adjourns "sine die," or, basically, for good. This might be when a Congress ends before the next begins, or during an extended adjournment during a seasonal break.

If the President vetoes the bill, a veto message is sent back to Congress. The message contains the President's objections to the bill. The two houses of Congress may decide to revote on the issue right away. Normally, it is known if enough members will vote to override the bill (two-thirds is needed). If such a majority exists, the revote is almost guaranteed. If no immediate revote is taken, the bill can be tabled for later vote or sent back to the committee to have further work done. If a vote is taken to override, and the vote fails, the bill dies.

The Bill Becomes Law

Officially, after the President signs the bill, or 10 days pass without a signature, or after a veto override, the bill is considered law and becomes at that moment. But in reality, it is, of course, more difficult than that. The law is transmitted to the Archivist of the United States who assigns the law a number and publishes the law on its own, as a pamphlet known as a slip law. The slip law contains a lot more than just the text of the law itself, such as where it is to be inserted in the United States Code, if at all; its legislative history; the committees through which it passed; and so on. In effect, the slip law is a historical document in itself. The law is also published in the United States Statutes at Large, a collection of all laws passed in any given Congress. Finally, if a law affects the U.S. Code, it is added to the Code, striking out sections or clauses that it removes, and adding the new ones that it created. The entire U.S. Code is upgraded every six years. Source: *U.S. Constitution*; pp 1–4, Article 1, Section 7

How a Bill Becomes Law

A. Legislation is Introduced

Any member can introduce a piece of legislation.

House—Legislation is handed to the clerk of the House or placed in the hopper.

Senate—Members must gain recognition of the presiding officer to announce the introduction of a bill during the morning hour. If any senator objects, the introduction of the bill is postponed until the next day.

- The bill is assigned a number. (e. g. HR 1 or S 1)
- The bill is labeled with the sponsor's name.
- The bill is sent to the Government Printing Office (GPO) and copies are made.
- Senate bills can be jointly sponsored.
- Members can cosponsor the piece of Legislation. (*Mount 2006:1*).

B. Committee Action

The bill is referred to the appropriate committee by the Speaker of the House or the presiding officer in the Senate. Most often, the actual referral decision is made by the House or Senate parliamentarian. Bills may be referred to more than one committee and it may be split so that parts are sent to different committees. The Speaker of the House may set time limits on committees. Bills are placed on the calendar of the committee to which they have been as-

signed. Failure to act on a bill is equivalent to killing it. Bills in the House can only be released from committee without a proper committee vote by a discharge petition signed by a majority of the House membership (218 members) (*Mount 2006:1*).

Committee Steps:

1. The government agency request comments about the bill's merit
2. The chairman can assign Bill to subcommittee.
3. Hearings may be held.
4. Subcommittees report their findings to the full committee.
5. Finally, there is a vote by the full committee when the bill is "ordered to be reported."
6. A committee will hold a "mark-up" session during which it will make revisions and additions. If substantial amendments are made, the committee can order the introduction of a "clean bill" which will include the proposed amendments. This new bill will have a new number and will be sent to the floor while the old bill is discarded. The chamber must approve, change or reject all committee amendments before conducting a final passage vote.
7. After the bill is reported, the committee staff prepares a written report explaining why they favor the bill and why they wish to see their amendments, if any, adopted. Committee members who oppose a bill sometimes write a dissenting opinion in the report. The report is sent back to the whole chamber and is placed on the calendar.
8. In the House, most bills go to the Rules Committee before reaching the floor. The committee adopts rules that will govern the procedures under which the bill will be considered by the House. A "closed rule" sets strict time limits on debate and forbids the introduction of amendments. These rules can have a major impact on whether the bill passes or not. The Rules Committee can be bypassed in three ways: 1) members can move rules to be suspended (requires 2/3 vote), 2) a discharge petition can be filed, or 3) the House can use a Calendar Wednesday procedure (*Mount 2006:2*).

C. Floor Action

1. Legislation is placed on the Calendar
House: Bills are placed on one of four House Calendars. They are usually placed on the calendars in the order of which they are reported yet they don't usually come to the floor in this order—some bills never reach the floor at all. The Speaker of the House and the Majority Leader decide what will reach the floor and when. (Legislation can also be brought to the floor by a discharge petition).

Senate: Legislation is placed on the Legislative Calendar. There is also an Executive calendar to deal with treaties and nominations. Scheduling of legislation is the job of the Majority Leader. Bills can be brought to the floor whenever a majority of the Senate chooses. (*Mount 2006:2*).

2. Debate

House: Debate is limited by the rules formulated in the Rules Committee. The Committee of the Whole debates and amends the bill but cannot technically pass it. The Sponsoring Committee guides the debate and time is divided equally between proponents and opponents. The Committee decides how much time to allot to each person or group. Amendments must be germane to the subject of a bill—no riders are allowed. The bill is reported back to the House (to itself) and is voted on. A quorum call is a vote to make sure that there are enough members present (218) to have a final vote. If there is no quorum, the House will adjourn or will send the “Sergeant at Arms” out to round up missing members.

Senate: debate is unlimited unless cloture is invoked. Members can speak as long as they want and amendments need not be germane—riders are often offered. Entire bills can therefore be offered as amendments to other bills. Unless cloture is invoked, Senators can use a filibuster to defeat a measure by “talking it to death.”

3. Vote—the bill is voted on. If passed, it is then sent to the other chamber unless that chamber already has a similar measure under consideration. If either chamber does not pass the bill then it dies. If the House and Senate pass the same bill then it is sent to the President. If the House and Senate pass different bills they are sent to Conference Committee. Most major legislation goes to a Conference Committee (*Mount 2006:3*).

D. Conference Committee

1. Members from each house form a conference committee and meet to work out the differences. The committee is usually made up of senior members who are appointed by the presiding officers of the committee that originally dealt with the bill. The representatives from each house work to maintain their version of the bill.
2. If the Conference Committee reaches a compromise, it prepares a written conference report, which is submitted to each chamber.
3. The conference report must be approved by both the House and the Senate. (*Mount 2006:3*).

E. The President

The bill is sent to the President for review.

A bill becomes law if signed by the President or if not signed within 10 days and Congress is in session.

1. If Congress adjourns before the 10 days and the President has not signed the bill then it does not become law (“Pocket Veto.”)
2. If the President vetoes the bill it is sent back to Congress with a note listing his/her reasons. The chamber that originated the legislation can attempt to override the veto by a vote of two-thirds of those present. If the veto of the bill is overridden in both chambers then it becomes law.

F. The Bill Becomes A Law

Once a bill is signed by the President or his veto is overridden by both houses the bill becomes a law and is assigned an official number. (*Mount 2006:3*).

House Legislative Calendars

The Union Calendar—This takes care of all bills that address money and may be considered by the House of Representatives. Generally, bills contained in the Union Calendar can be categorized as appropriations bills or bills raising revenue (*U.S. Constitution*).

The House Calendar—This calendar is made up a list of all the public bills that do not address money and may be considered by the House of Representatives.

The Corrections Calendar—A list of bills selected by the Speaker of the House in consultation with the Minority leader that will be considered in the House and debated for one hour. Generally, these bills are selected because they focus on changing laws, rules and regulations that are judged to be outdated or unnecessary. A 3/5 majority of those present and voting is required to pass bills on the Corrections Calendar (*U.S. Constitution*).

The Private Calendar—A list of all the private bills that are to be considered by the House. It is called on the first and third Tuesday of every month.

Terminology and Types of Legislation

Bills—A legislative proposal that if passed by both the House and the Senate and approved by the President becomes law. Each bill is assigned a bill number. HR denotes bills that originate in the House and S denotes bills that originate in the Senate.

Private Bill—A bill that is introduced on behalf of a specific individual or group that if it is enacted into law only affects the specific person or

organization the bill concerns. Often, private bills address immigration or naturalization issues.

Public Bill—A bill that affects the general public if enacted into law.

Simple Resolution—A type of legislation designated by House Representative or Senate Representative that is used primarily to express the sense of the chamber where it is introduced or passed. It only has the force of the chamber passing the resolution. A simple resolution is not signed by the President and cannot become Public Law.

Concurrent Resolutions—A type of legislation designated by H Con Res or S Con Res that is often used to express the sense of both chambers, to set annual budget or to fix adjournment dates. Concurrent resolutions are not signed by the President and therefore do not hold the weight of law.

Joint Resolutions—A type of legislation designated by H J Res or S J Res that is treated the same as a bill unless it proposes an amendment to the Constitution. In this case, 2/3 majority of those present and voting in both the House and the Senate and ? ratification of the states are required for the Constitutional amendment to be adopted.

Other Terms

Calendar Wednesday—A procedure in the House of Representatives during which each standing committee may bring up for consideration any bill that has been reported on the floor on or before the previous day. The procedure also limits debate for each subject matter to two hours.

Cloture—A motion generally used in the Senate to end a filibuster. Invoking cloture requires a vote of 3/5 of the full Senate. If cloture is invoked further debate is limited to 30 hours. This it is not a vote on the passage of the piece of legislation.

Committee of The Whole—A committee including all members of the House. It allows bills and resolutions to be considered without adhering to all the formal rules of a House session, such as needing a quorum of 218. All measures on the Union Calendar must be considered first by the Committee of the Whole.

Co-Sponsor—A member or members that add their name formally in support of another member's bill is called a co-sponsor. In the House a member can become a co-sponsor of a bill at any point up to the time the last authorized committee considers it. In the Senate a member can become a co-sponsor of a bill anytime before the vote on the bill takes place. However, a co-sponsor is not required and therefore, not every bill has a co-sponsor or co-sponsors.

Discharge Petition—A petition that if signed by a majority of the House's 218 members, requires a bill to come out of a committee and be moved to the floor of the House.

Filibuster—An informal term for extended debate or other procedures used to prevent a vote on a bill in the Senate through extended debate and talking.

Germane—Relevant to the bill or business either chamber is addressing. The House requires an amendment to meet a standard of relevance, being germane, unless a special rule has been passed.

Hopper—Box on House Clerk's desk where members deposit bills and resolutions to introduce them.

Morning Hour—A 90 minute period on Mondays and Tuesdays in the House of Representatives set aside for five minute speeches by members who have reserved a spot in advance on any topic.

Motion to Recommit—A motion that requests a bill be sent back to a committee for further consideration. Normally, the motion is accompanied by instructions concerning what the committee should change in the legislation or general instructions such as that the committee should hold further hearings.

Motion to Table—A motion that is not debatable and that can be made by any Senator or Representative on any pending question. Agreement to the motion is equivalent to defeating the question tabled.

Quorum—The number of Representatives or Senators that must be present before business can begin. In the House 218 members must be present for a quorum. In the Senate 51 members must be present. However, Senate can conduct daily business without a quorum unless it is challenged by a point of order.

Rider—An informal term for an amendment or provision that is not relevant to the legislation where it is attached.

Sponsor—The original member who introduces a bill.

Substitute Amendment—An amendment that would replace existing language of a bill or another amendment with its own.

Suspension of the Rules—A procedure in the House that limits debate on a bill to 40 minutes, bars amendments to the legislation and requires a 2/3 majority of those present and voting for the measure to be passed.

Veto—A power that allows the President, a Governor or a Mayor to refuse approval of a piece of legislation. Federally, a President returns a vetoed bill to the Congress, generally with a message. Congress can accept the veto or attempt to override the veto by a 2/3 majority of those present and voting in both the House and the Senate.

Source: Aristotle Inc, 2002–2006, *Project Vote Smart*

REVIEW QUESTIONS

1. Regardless of the differences that exist between Federal and State Criminal Justice Systems, there are certain similarities that exists, name and explain those similarities.
2. What is legislature? Why are the legislative branches of our government important?
3. Name the three important branches of the U.S. government. Are they the same as that of Nigeria?
4. Name and explain the U.S. Federal Crimes.
5. What do you mean by statue?
6. What is *Mala Prohibita*?
7. What is *Mala in se*?
8. What is Plain Meaning Rule?
9. What is a Bill?
10. How could a bill become law?
11. What is debate? How debates do get limitation and guidance?

Chapter Fifteen

Criminology and Criminal Justice in Practice

KEY TERMS

- | | |
|-----------------------------|----------------------------|
| 1. Classical School | 11. Sentencing |
| 2. Cesare Bonesara Beccaria | 12. History |
| 3. Positive School | 13. Criminal Behavior |
| 4. Criminology | 14. Social Control |
| 5. Criminal Justice | 15. Social Contract Theory |
| 6. Punishment | 16. Hedonistic |
| 7. Crime | 17. Psychology |
| 8. Criminal | 18. Utilitarianism |
| 9. Practice | 19. Deterrence |
| 10. Free Will | 20. Criminal Sanctions |

INTRODUCTION

Before we proceed further, it is necessary for us to look at Criminal Justice in Practice and the history of the classical school of criminology, and the positive school of criminology (see below) including the process and the guidelines in sentencing. Martin (1990) notes that Cesare Bonesara Marchese di Beccaria, is credited as the author of one of the most influential eighteenth century publications related to the reform of the criminal justice system. Even with the popularity of his essay, very little is known about Beccaria's personal life. Part of the reason for the absence of biographical material on Beccaria is that he was a very private individual who continually shied away from publicity and public appearances.

Those who knew Beccaria described him as quiet, reserved, and dedicated to the contemplative life. Beccaria was born in Milan, Italy on 15 March 1738, to aristocratic parents. For eight years, he attended the Jesuit College in Parma but did nothing to distinguish himself academically. Beccaria dabbled in a number of areas, showing a particular interest in mathematics but not formally pursuing the subject. In 1758, he graduated from the University of Pavia where he had studied law (Monachesi, 1973).

CLASSICAL SCHOOL OF CRIMINOLOGY IDEAS

Jeffrey (1990) advocates that classical school of criminology is based on the old thoughts of a few Italians, led by Beccaria, who believed that punishment could do away with crime. Classical means “old” so it is an old idea that does not even work in this era. Perey (1980) noted that criminal justice as social focus, emerged with the publication of Cesare Beccaria’s “Essay on Crimes and Punishment” in (1965). Beccaria was a utilitarian who believed that human beings were generally rational beings who sought pleasure and tried to avoid pain. John S. Mill denied, and argued instead that a right produces the greatest balance of happiness (pleasure) over unhappiness (pain). According to him, pleasure and pain are the only goods. Beccaria’s writings were in response to punishment during this time (see below), which was of an extreme nature. The punishments that he was referring to included, but was not limited to the following: torture brandings, mutilation, banishment, and death. His contribution to criminal justice through his writing was the first recognizable criminological approach to criminal behavior and society’s response emerged as what is recognized as the classical school of criminology (Dantzker, 1998:5). Classical school of criminology claims that crime could be controlled by punishing criminals in a way that would make potential criminals fearful of the consequences of committing the same or similar crime.

The main tenets of classical school as outlined by (Dantzker, 1998:5) were

1. Social contract-coined by Beccaria as an idea that an individual is bound to society only by his or her own consent and therefore society was responsible for him or her.
2. Freewill empowers individuals to make their own choices to act.
3. People seek pleasure and avoid pain
4. Punishment should be used as a deterrent to criminal behavior.
5. Identical punishment should be meted out for identical crime (Jeffrey, 1990)

The classical school insisted upon a clear-cut legal definition of the act punishable as criminal thereby fostering the idea of free will. In their opinion people commit crime because of free choice of right and wrong. The classical school of criminology maintained that strength and prominence until the 1930s, when it began to decline because of a more treatment rehabilitative approach fostered by the positive school of criminological thought.

THE CLASSICAL SCHOOL OF CRIMINOLOGY

Legal Reform and the Nature of the Nation-State

The classical legal school of criminology is based on the legal and political theories of sixteenth- and seventeenth-century philosophers. According to these legal reformers, the law under the revenge and retribution motive was harsh, arbitrary, and ineffective. These reformers saw the purpose of the law as social control and the betterment of humankind through effective social control, rather than justice and revenge [for the historical development of criminology [see Mannheim (1970), Rennie (1978), Vold and Bernard (1979), Radzinowicz (1966), Phillipson (1923), Hall (1945), Faust and Brantingham (1979), Jenkins (1984), and Jones (1986)].

Classicism considered law and legalism from three major philosophical components: social contract theory, hedonistic psychology, and utilitarianism. Thomas Hobbes and John Locke were the greatest political philosophers who espoused the Social Contract theory in their major works. Thomas Hobbes (1588–1679) was a physicalist/materialist who believed that matter, including mental activities, is made up of atoms in motion, a view close to that held today in neurology (see Chapter 11). In *The Leviathan*, Hobbes posited a state of nature in which self-preservation was the only law, and a “war of all against all” existed. In such a society, life was poor, nasty, brutish, and short. To escape from this state of nature, people created a society based on the politically organized society brought into existence through a social contract wherein individuals sacrificed certain personal rights and freedoms in exchange for protection by the state from murder, rape, and robbery by others. Thus, the state restricts certain human freedoms and liberties while at the same time guaranteeing other freedoms and liberties. The right of the state to the police power by which it can punish criminals is created by the mystical social contract by which each person consents to being governed in exchange for the right to leave the state of nature for the state of civil society. John Locke (1632–1704) was an early empiricist who taught that human knowledge comes from sensations and experience, not from innate ideas or reasons.

He influenced the development of empiricism, science, and associational psychology.

Locke, in his *Two Treatises on Civil Government*, also posited a state of nature, a state before the political state in which human beings were considered as equal and having natural inalienable rights to life, liberty, property, and the pursuit of happiness. To preserve and maintain these rights, humankind created the political state by means of a social contract. This basic purpose of the state and of the police power of the state is to protect life, liberty, and property for individual citizens. This Lockean notion was written into the American Declaration of Independence in the form of “Life, Liberty, and Pursuit of Happiness” (Sabine, 1963; Friedman, 1967; Jenkins, 1984; Jones, 1986).

Hedonistic psychology is based on the principles of pain and pleasure. This is a physicalist view based on the survival value of pain and pleasure in human adaptation to the environment. This philosophy sees humankind as composed of selfish, self-seeking, rational individuals seeking to maximize pleasure and minimize pain. Through such self-seeking behavior, the greatest happiness for the greatest number would take place. That is, if each person maximized his or her own self-interests, the greatest happiness for the greatest number would be achieved (Jeffery, 1990:65).

Utilitarianism is the third aspect of the legal school of criminology, based on the pleasure/pain principle as a means to maximize the greatest happiness for the greatest number. By placing emphasis on the collective good, individual rights can be sacrificed to the greater good of society, as seen in the principle of criminal law which allows one person to be punished in order that others would be deterred from committing crimes. This is in contrast to the Kantian idea as found in retributive justice that no person may be used as a means to an end in order to reform or deter another person from crime (Jenkins, 1984; Jones, 1986).

Cesare Beccaria (1738–1794)

The foundations of the classical legal school of criminology are to be found in the works of legal reformers, especially Beccaria and Bentham (Monachesi, 1970; Jenkins, 1984; Jones, 1986). In 1774, Beccaria, an Italian by birth, wrote a small book entitled *Dei Delittie Dele Pene* (An Essay on Crime and Punishment), which totally changed the justification for criminal law. Beccaria and his supporters opposed the harsh, cruel, and arbitrary nature of the criminal code of the times, which, as has been mentioned, was based on executions without regard for judicial process or human rights.

Beccaria accepted the basic tenets of the social contract theory as found in the works of Hobbes and Locke. Humans were selfish and motivated to

act out of self-interests. To protect selfish individuals from one another, humankind had to surrender freedoms to the state in return for protection from criminals and wrongdoers. The state had a right and a duty to punish criminals, but this must be done in a legal way. However, crime and punishment must be legally defined and not left to the arbitrariness of the judge. Crime cannot be defined *ex post facto*, that is, after the crime had been committed, but rather, the crime must be part of the judicial process before the behavior defined as criminal has occurred. This is referred to as the principle of legality, or *nullum crimen sine lege* (no crime without a law) and *nulla poena sine lege* (no punishment without a law). According to Beccaria, crimes must be defined in terms that are clear and precise. Punishment must be fixed in very specific terms, and based not on revenge but on deterrence; that is, the pain of punishment must just exceed the pleasure of the crime and no more in order to deter the potential criminal. "Let the punishment fit the crime" was the motto (as stated in Gilbert and Sullivan's opera *The Mikado*).

Beccaria would do away with capital punishment and cruelty, and in their place substitute public education and crime prevention. Punishment must be certain and swift, but not severe. There must be no more restriction of individual rights than is absolutely necessary for the protection of society.

Jeremy Bentham (1748–1832)

Bentham, a British political theorist, is the second cornerstone to legalistic criminology. Bentham has the unique distinction of having his body preserved in Westminster Abbey, and to this day each year on the anniversary of his death the body is wheeled out for public display (Geis, 1970; Jenkins, 1984; Jones, 1986). Crime, not the criminal, was the focus of Bentham's work. In his *An Introduction to the Principles of Moral and Legislation* (1789), Bentham started with the statement "nature has placed mankind under the governance of two sovereign masters, pain and pleasure." Since by nature humans pursue pleasure and avoid pain, the criminal law must Utilitarianism is the third aspect of the legal school of criminology, based on the pleasure/pain principle as a means to maximize the greatest happiness for the greatest number. This is the basis for utilitarian doctrines concerning political policy.

The purpose of law is social control and the prevention of crime, not the pursuit of revenge and justice. Legislators, not God or nature, are the source of positive law. The legislator, through a calculus of pleasure and pain, establishes how much punishment must be attached to criminal behavior to deter such behavior. Criminal law is justified on the basis of deterrence and a

reduction in the crime rate in the future. The classical school looked to the future and not the past in evaluating the purpose of criminal law.

Like Beccaria, Bentham was most interested in protecting the rights of the accused from abuses of state power, while at the same time keeping at a minimum the punishments used for a crime. He would restrict capital punishment to murder cases only.

Sir Samuel Romilly and William Paley

An illustration of the nature of the political debates that went on in the British parliament as a part of the legal reform movement can be found in the Romilly-Paley debates. Romilly was opposed to the death penalty, as were most of the legal reformers of the time. He argued in parliament that the number of offences for which capital punishment was to be used should be reduced to a minimum, while the certainty of execution must be retained for a few cases in order that capital punishment act as a general deterrent to crime. On the other hand, Paley argued that capital punishment should apply to many offenses, but only in a few cases should it be used as an example (Rennie, 1978:15; Radzinowicz, 1948:248 ff.; Phillipson, 1923).

Classicism, Free Will, and Moral Responsibility

Cesare Beccaria contends that criminal law posits the existence of free will, intent, and moral responsibility. The nature of human beings, according to this legal position, is based on rationalism and mind-body dualism. According to this view the body is physical and therefore subject to the scientific law of determinism, whereas the mind is nonphysical and is not subject to the scientific law of determinism (Jeffery, 1990:67). Both Beccaria and Bentham lived during and after the beginnings of positivism and the scientific revolution, that is, after the time of Copernicus, Galileo, Newton, Bacon, and Mill. Therefore, both of these men had knowledge of the emerging scientific revolution that was coming into existence at that time in history. In addition, they were influenced by the hedonistic psychology and utilitarianism of Hobbes and Locke, based on the belief of the power of pleasure and pain to determine human behavior. Legal scholars have used the tenets of the classical school to justify law as a deterrent to behavior. This school contains a quasi-scientific element in its approach to human nature, in contrast to the nonscientific approach on the part of other lawyers, who use legal theory on free will and moral responsibility.

There is a basic unresolved conflict between the doctrine of free will as found in the criminal law and social control through pleasure and pain as

found in the works of Beccaria and Bentham. The purpose of criminal law, according to the school of retribution and revenge, is to right a moral wrong and to establish a moral principle, whereas according to Beccaria and Bentham the purpose of criminal law is to punish some so that others will be deterred from criminal conduct in the future. Kant argued, for example, that no person could be punished in order that another person be deterred from crime. The joining of intentional wrongdoing and intentional punishment is the hallmark of the retributive school, but it is not the core of classical deterrence theory (Jenkins, 1984; Jones, 1986).

Although classicism and retribution have been merged as justifications of criminal law and punishment, they are very different in nature:

1. Classicism contains the beginnings of a scientific approach to human behavior, and it rejects revenge as a motive for criminal law and justice.
2. Classicism is a forward-looking, not a backward-looking response to human behavior. It uses law as an agent of social control and social reform, and it expects greater utility and greater happiness because of law.
3. Classicism contains elements of mercy, kindness, and the betterment of humankind through reform of the law and the goal of deterrence.

CLASSICAL CRIMINOLOGY THEORY TODAY

The 1970 saw a return to retributive criminology in rejection to the rehabilitation model and the law-and-order model of criminal justice (Sheliff, 1981; Glaser, 1979). This led to longer prison sentences, mandatory prison sentences, a return to a high rate of executions, and other harsh and arbitrary actions taken against criminals. Although this is often considered as classical criminology, it is much more a return to the retribution and just deserts positions.

SUMMARY OF CLASSICISM

1. Classical legal criminology emphasized crime, not the individual offender.
2. The classical school wanted to limit or eliminate the bloody aspects of criminal law as found in revenge and retribution. In its view, the purpose of law is to reduce the crime rate by means of deterrence.
3. The classical school wanted a legalistic approach to crime, based on the principle of legality, with legal definitions of crime and punishment. This meant no crime or punishment without a law; equality of all before the law; a presumption of innocence for the accused; a minimal use of criminal sanctions;

fair criminal procedures without duress, torture, or secret procedures; speedy trials; humane treatment of offenders, and other substantive and procedural safeguards for defendants against the abuse of power by the state.

The classical school is found today in legal procedures and legal definitions of crime taught to law students and criminal justice students in criminal law courses. Judges and lawyers use the same principles to practice in the courtroom. This is due process and the bill of rights. This, in other words, is the basis for the criminal justice model of crime control, the police-courts-prison system as defined by lawyers and legal procedures. The problem with the legal reforms made by the classical school is that the some legal niceties are attached to retributive system of justice. The defendant is given a fair trial, is provided with legal council, is protected from self-incrimination and torture, is given a speedy jury trial, and then is hanged. As the Irishman said, "First we give you justice and a fair trial, and then we hang you."

Western society has had a long tradition of punishing criminal offenders. Historically, offenders were banished, exiled, killed, or tortured. Corporal, or physical, punishments became common during the Middle Ages, replacing executions as the preferred penalty. Physical punishments such as flogging and mutilation, though severe, deterred rampant use of the death penalty. Eventually imprisonment and a variety of other sentencing alternatives replaced corporal punishments as criminal sanctions (Schmallegger, 2007). The philosophy behind sentencing is that crimes are frequently seen as deserving of punishment. We often hear it said that the criminal must "pay a debt to society" or that "criminals deserve to be punished." John Conrad puts it another way: "The punishment of the criminal is the collective reaction of the community to the wrong that has been done" (Conrad, 1991). The idea is that punishment maintains and defends the social order. By threatening potential law violators and by making the lives of violators uncomfortable, punishments reduce the likelihood of future or continued criminal behavior. There are seven major goals to sentencing: revenge, retribution, desert, deterrence, incapacitation, rehabilitation, and restoration (Schmallegger, 2007).

The American criminal justice system has many problems and loopholes that allow many criminals to avoid paying the full price of punishment for their crimes. One major problem faced today is prison overcrowding. This is a widespread problem and because of this, many criminals are allowed to plea bargain for less or in some cases no jail time. Often times the wrong person is convicted of a crime he or she did not commit. This is a problem with the criminal sentencing in America. The three-strike policy has not proven to

work or deter people from committing crimes. The whole system needs to be reviewed so that changes could be made.

It will be necessary to create and enforce new standards and policies in sentencing criminals. The statistical data from the jails to reveals an overwhelming number of prisons that are currently overcrowded. A study of the “three-strike” policy should reveal how many prisoners are in jail for violating this policy thereby proving this policy does not work and is a major cause of overcrowding. Furthermore, the number of people who have been falsely accused and released from prisons across the country calls for a better protection policy to be put in place.

At this point, let us study a few key terms which are cardinal to our study, thanks to Smykla Schmallegger (2007) who acts here as the expert on whom we rely:

Revenge

Revenge is both an emotion and as an act in response to victimization. Victims sometimes feel as though an injury or insult requires punishment in return. When they act on that feeling, they have taken revenge.

Retribution

Retribution involves the payment of a debt to both the victim and society and thus, atonement for a person’s offense. Because social order suffers when a crime occurs, society is also a victim. Hence, retribution, in a very fundamental way, expresses society’s disapproval of criminal behavior and demands the payment of a debt to society. It is not always easy to determine just how much punishment is enough to ensure full debt payment.

Desert

Also called “just deserts,” desert is the punishment deserved. A just deserts perspective on criminal sentencing holds that criminal offenders are morally blameworthy and are therefore deserving of punishment (Schmallegger, Smykla 2007). Andrew von Hirsch, who identified the rationales underlying criminal punishment, says that when someone “infringes the rights of others, he or she deserves blame and that is why the sanctioning authority is entitled to choose a response that expresses moral disapproval: namely, punishment” (Hirsch, 1976). Hence, from a desert point of view, justice requires that punishment be imposed on criminal law violators.

Deterrence

Deterrence is the discouragement or prevention of crimes similar to the one for which an offender is being sentenced. There are two forms of deterrence: specific and general. Specific deterrence is the deterrence of the individual being punished from committing additional crimes. General deterrence occurred when the punishment of an individual serves as an example to others who might be thinking of committing a crime, thereby dissuading them from their planned course of action.

Incapacitation

Incapacitation refers to the use of imprisonment or other means to reduce an offender's capability to commit future offenses. A number of studies have shown that incapacitating offenders through incarceration is cost-effective. Such studies conclude that imprisoning certain types of offender results in savings by eliminating the social costs of the crimes offenders would be likely to commit if they were not imprisoned. Those social costs include monetary loss, medical costs of physical injury, and time lost from work. In 1987, Edwin Zedlewski carried out a study attempting to quantify the net costs of incarceration. Zedlewski used a RAND Corporation survey of inmates in three states to estimate the number of crimes each inmate would commit if not imprisoned. In the survey, the average respondent reported committing anywhere from 187 to 287 crimes annually just before being incarcerated. To calculate the cost associated with each crime, Zedlewski divided the total criminal justice expenditures in the United States by the total number of crimes committed in the United States. From this, he concluded that the average crime costs \$2,300. Multiplying \$2,300 by the 187 crimes estimated to be committed annually by a felon, Zedlewski calculated that society saves \$430,100 per year for each felon who is incarcerated. Figuring that incarceration costs society about \$25,000 per prisoner per year, he concluded that prisons produce a cost benefit return to society of 17 to 1 (\$17 saved for every \$1 spent) leading him to strongly support increased incarceration (Schmallegger, Smykla 2007).

Rehabilitation

Rehabilitation is the changing of criminal lifestyles into law-abiding ones by "correcting" the behavior of offenders through treatment, education, and training.

Restoration

Restorative justice is based on the belief that criminal sentencing should involve restoration and justice for all involved in or affected by crime. Restorative justice seeks to restore the health of the community, repair the harm done, meet victims' needs, and require the offender to contribute to those repairs. Thus, the criminal act is condemned, offenders are held accountable, offenders and victims are involved as participants, and repentant offenders are encouraged to earn their way back into the good graces of society (Schmallegger, Smykla 2007).

POSITIVISM AND SCIENCE

Introduction

The second major school of criminology, to be contrasted to the legalistic or classical school, is the scientific or positive school of criminology. Scientific criminology developed out of the scientific movement of the eighteenth and nineteenth centuries, which involved primarily the work and research of biologists, psychologists, psychiatrists, geographers, urban planners, and sociologists (Jeffrey, 1990:78). Scientific criminology is most often related to teaching and research in a university setting, in contrast to classical criminology, which is most often found in the applied world of the police, courts, and correctional system.

The Positive School of Criminology

The development of the scientific method based on sensory experiences discussed herein is known as empiricism. Empiricism, knowledge through observation, led to systematic observations, prediction and control, and inductive methodology as basic to scientific methods and procedures. Jeffrey notes that Copernicus (1473–1543) put forth the theory in astronomy that the earth revolves around the sun rather than the sun revolving around the earth that had been the popular belief of the day. Galileo (1564–1642) followed Copernicus in the scientific approach to physics and astronomy and for his scientific beliefs, Galileo was condemned by the Catholic Church and forced to deny his theory. Other scientific scholars, according to Jeffrey, were condemned and executed at that time, or exiled for beliefs contrary to religious dogma. Jeffrey and other scholars of the day recorded the conflict between science and religion.

Isaac Newton (1642–1727) made critical contributions to the growth of the sciences of physics and astronomy. Bacon (1561–1626) viewed experience as the key to knowledge, and he placed great emphasis on inductive reasoning (going from observed facts to general theoretical statements), in contrast to rationalism and logic, which placed emphasis on deductive reasoning (going from general statements to facts). J. S. Mill (1806–1873) perfected the inductive methods of science, and along with Bentham, he was a major contributor to utilitarianism (Jones, 1986 and Jeffery, 1990).

Jeffery notes that these thinkers contributed to the establishment of modern mathematics, physics, chemistry, and biology. Charles Darwin (1809–1882) came along and totally changed our concepts of human nature and biology in his theory of evolution. Out of empiricism and science developed the philosophy of positivism. August Comte (1798–1857), the father of positivism and sociology, believed in the evolution of thought through theological and metaphysical states to the positive state where societies are governed by scientific principles (Jeffery, 1990). The betterment of humankind is dependent on the application of science to the solution of social problems. Comte thus established the tradition for the scientific study of human societies and social problems. Out of this scientific revolution emerged the scientific study of humankind and human nature. While Darwin made humankind a part of biology, Freud made humankind a part of psychology and psychic determinism (Jeffery, 1990). Karl Marx, on his part, made humankind a part of economic determinism. To Comte, humankind was a part of social determinism. The motto of the positivist was “human progress will be achieved through science.” The contributions of Darwin, Freud, Marx, Comte, and other behavioral and social scientists have helped human and animal existence, while the biological, psychological, and social foundations made the understanding of criminal behavior possible.

Positivism and Criminology

Whereas the classical school represented the work of legal scholars in their attempts to reform criminal law, the positivist school represented the work of scientists in their attempts to study, understand, and reform criminal law. The focus shifted from crime to criminals, or as the British legal and criminal logical historian, Sir Leon Radzinowicz (1966) stated, “The classical school exhorts men to study justice; the positive school exhorts justice to study men.” Jeffrey’s discussions of historical development of criminology make these reflections more precise and relevant to this study [see Mannheim (1970), Radzinowicz (1966), Rennie, (1978), Void and Bernard (1979), Faust and Brantingham (1979), Jones (1986), and Jenkins (1984)]. According to Jeffrey

(1990), the early history of criminology is to be found in the works of three Italian scholars, Lombroso, Garofalo, and Fern, sometimes referred to as the “Italian School of Criminology.” The application of the methods of empiricism and science to the study of criminals and not crime was the focus of positivistic or scientific criminology. As Radzinowicz (1962; 3–4) noted: “Virtually every element of value in contemporary criminological knowledge owes its formulation to the very remarkable school of Italian criminologists who took pride in describing themselves as positivists. Unfortunately, the main weakness of the positivists lies in their failure to grasp the bewildering complexity of crime.”

Cesare Lombroso (1835–1909)

Lombroso was born and educated in Italy. He was a biologist, a medical doctor, and an army physician. In his approach to criminal behavior, Lombroso was influenced by Comte, the positivists, by the German materialists, by Darwin on evolutionism and by Gall the phrenologists (Wolfgang, 1970; Rennie, 1978; Jones, 1986; Jenkins, 1984; Jeffrey, 1990:80)

Lombroso became interested in psychiatry and the study of abnormal behaviors. As an army physician, he had occasion to observe physical abnormalities among the soldiers he studied, including pellagra (a disorder of the central nervous system due to a dietary deficiency of niacin and protein) and cretinism (physical and mental stunting caused by a thyroid deficiency). He was also interested in disorders of the brain such as epilepsy (Jeffrey, 1990).

At that point in history, the Italian scholars were looking for physical causes of abnormal behavior in body build and brain abnormalities. A new physical anthropology was under way, based on measurement of the body and cranium of individual subjects, and biology served as a foundation for human behavior (Jeffrey, 1990). Lombroso took from Darwin’s evolutionary theory the idea of atavism: that is, a throwback to an earlier and more primitive state of development. Using the science of his time to measure the arms, legs, bodies, and skulls of criminals, Lombroso concluded that criminals differed from non-criminals in the presence of atavistic traits in criminal populations. In 1876, Lombroso published *L’Uomo Delinquente* (Criminal Man), in which he distinguished the following types of criminals: the criminal epileptic, the moral imbecile, the born criminal, the occasional criminal, and the criminal by reason of passion. Lombroso placed emphasis on epilepsy, lack of a moral sense, and left-handedness as traits of criminals, all of which are important in the understanding of the brain of criminals (Jeffrey, 1990). In his book *Crime: Its Causes and Remedies* (1906, 1912), Lombroso added such social variables

as poverty, migration, alcoholism, police corruption, criminal gangs, race, and urban growth to the list of variables that influenced crime rates.

Lombroso's work and ideas were critically received in some areas. Charles Goring (1870–1919), a British statistician, in his book *The English Convict* (1913) argued that statistics, not body measurements, should be used to study the criminal. Goring studied British criminals and compared them to a control group of non-criminals, and he concluded that criminals did not exhibit the atavistic traits that Lombroso had found. Nonetheless, criminals were inferior to non-criminals in both physical and mental characteristics (Driver, 1970; Jeffrey, 1990).

Lombroso has been criticized for his research methodology, especially his failure to use a noncriminal control group with which to compare his criminal population (Jeffrey, 1990). According to Wolfgang (1970:266; Jeffrey, 1990:81), Lombroso was aware of the importance of control groups, and G. O. W. Mueller "told Jeffrey that he had notes from a lecture given by Joe Lohman in a class in criminology at the University of Chicago in which Lohman referred to control groups in the study of skulls" (Jeffrey, 1990). Sociological criminologists attacked Lombroso, although as Thorsten Sellin pointed out, sociologists have also used sloppy research procedures (Wolfgang, 1970:265). Lindesmith and Levin stated that Lombroso's work was "in no way a contribution to criminology," a statement Wolfgang called an unwarranted denouncement of Lombroso. In their textbook on criminology, Sutherland and Cressey stated that "Lombroso delayed for fifty years for his work in progress at the time of its origin and in addition made no lasting contribution of its own" (Wolfgang, 1970:288). However and to Lombroso's credit, Wolfgang responded: "Lombroso illuminated the scientific study of criminal behavior with many provocative ideas and deserves a place of honor in his own field." (Jeffrey, 1990:81)

In fact, Lombroso established the scientific study of the individual offender, and his work had a great impact and wide influence on scholars such as Kretsehmer, Sheldon, Hooton, and the Gluecks, as well as many in the field of psychiatry. Foolowed him. His influence is still, to be found, especially in Italy, Germany, England, and South America. Drahms, MacDonald, Parsons, and Schlapp and Smith introduced his work into the United States in the early twentieth century. In 1992, the American Institute of Criminal Law and Criminology published Lombroso's *Crime: Its Causes and Remedies* in English. Unfortunately, the rejection of Lombroso extended to the 1978 meeting of the American Society of Criminology, where the presence of geneticists, neurologists, and psychiatrists was characterized as "neo-Lombrosian" foolishness (Jeffery, 1979:2–18). Recent developments in the biochemistry of the brain and in the brain sciences substantiate a great deal of Lombroso's

work in spirit if not in fact. It is interesting to note that as early as 1881 a book was published on the abnormalities found in the brains of criminals (Benedikt, 1881). Jeffrey stated that the evidence was ignored for over seventy years while criminologists searched for the social causes of criminality.

Raffaele Garofalo (1852–1934)

Born in Naples, Italy and trained in law, Garofalo was the second important member of the Italian positivist school. His contribution to positivistic criminology was that of spelling out the implications of a science of behavior for criminal law and for lawyers (Allen, 1970; Jones, 1986; Jenkins, 1984; Renne, 1978; Jeffrey, 1990). Garofalo published his major work *Criminology* in 1885 in which he defined crime, not in legal terms as the classical school had done, but in terms of the moral sense of the community as found in the sentiments of “pity and probity.” Thus, crime is defined in behavioral and social terms rather than in legal terms. The scientist defines the behavior to be studied in terms of scientific needs rather than in terms of legal definitions established in order to punish the criminal. Thus, the scientist escapes the unscientific definitions imposed on him by lawyers and legal codes (Jeffrey, 1990:8 1). The goal of criminology is to categorize behavior in such a way that social defense (the defense of society) measures can be established. As we shall see other textbooks that will be discussed, the legal versus the scientific definition of behavior is a major controversy in criminology even today.

Garofalo differed from Lombroso in his evaluation of the causes of criminal behavior. He found that the criminal is deficient in moral sensibilities, a hereditary condition that leads to criminality and antisocial behavior. Murderers lack in both pity and probity, and thieves are possibly a product of the social environment as well as moral degeneracy. Jeffrey made it clear that Garofalo added a curious twist to the idea of social defense, in that he thought the way to defend society against the criminal was through elimination of such unfit individuals, an idea he thought he found in Darwin’s work on evolution. He would eliminate criminals through executions and transportation. He was not an advocate of reform or deterrence, and he rejected the classical school’s view of free will and moral responsibility as aspects of criminal law. He also rejected the idea of just deserts or revenge, and in its stead, he used social defense. Garofalo rejected deterrence on the fact that each offender will respond to punishment in a different way and therefore no measure of punishment that fits the crime can be established.

According to Jeffrey (1990), Garofalo also differed from the classical school in his definition of individual rights. Beccaria and the classical school

had emphasized the doctrine of individual rights as opposed to the power of the state to punish. Garofalo placed social defense first, and he considered the right of the state to punish the criminal to override any innate rights the individual might have. In Garofalo, we find the criminal justice system turned over to the scientific community without legal restraints. Garofalo placed emphasis on science, not law or concepts of justice and that the state is of more importance, not the individual. This issue also emerged in the work of Enrico Ferri.

Enrico Ferri (1856–1929)

Enrico Ferri, the third member of the Italian school of criminology, was born in Italy and educated in criminal law and jurisprudence. In his early career, he was influenced by the positivists and by scientists such as Lombroso. While at the university, he opposed the legal notions of free will and moral responsibility (Scum, 1970; Jenkins, 1984; Jones, 1986; Rennie, 1978; Jeffrey, 1990). Ferri was a true positivist and a believer in the scientific method. He accepted an appointment at the University of Turin in order to work with Lombroso. However, believing that Lombroso was too narrow in his approach to criminal behavior, he expanded the discussion of criminal behavior to anthropological, physical, and social variables.

In Ferri's opinion, the goal of criminology was to produce a scientific explanation and classification of criminals. Hence, determinism replaced free will. Ferri completed the transformation of classical criminology by making the law subservient to scientific findings and principles (Jeffrey, 1990). In 1884, Ferri published *Criminal Sociology*, which went to a fifth edition and which replaced the classical school with the scientific school in every respect. In this book Ferri argued that classical criminology was based on the idea that

1. Criminals are the same as non-criminals.
2. Punishment will control the crime rate.
3. Humans have free will and freedom.

In contrast, the positive school was based on the idea that:

1. Criminals differ from non-criminals.
2. Crime rates depend on variables other than punishment.
3. Free will is an illusion in the light of scientific determinism (Jeffrey, 1990)

According to Ferri, the purpose of criminal law is to study and classify the criminal in order that treatment can be given. Therefore, the role of the judge

in the criminal trial is to see that the defendant is diagnosed, assigned the right classification, and sent to a hospital to be treated, rather than to be sent to a prison for punishment. The hospital should replace the prison (Jeffrey, 1990). Ferri attended international conferences on criminology from 1878 to 1898 in which biology, neurology, and science were discussed in relation to brain diseases found in criminal populations. Ferri was responsible for taking Lombroso's ideas and transforming them into a theory of treatment of criminals through science. Garofalo had denied the role of treatment for criminals when he argued for the elimination of criminals in the name of social defense. It is to Ferri that we owe one of the basic characteristics of scientific criminology, that is, the treatment of offenders. This is often known as the "medical model" or "rehabilitative ideal" approach to crime control, found in the juvenile court movement, probation and parole, and the indeterminate sentence, discussed above in this chapter.

One aspect of Ferri's work was critical to the development of scientific criminology in the twentieth century. He followed Garofalo in the rejection of legal definitions and legal procedures, and he supported the treatment of offender without legal limitations or legal definitions. The type or length of treatment was in the hands of therapists and not lawyers and judges, and therefore the defendant/patient came to be subject to the abuses of therapists rather than lawyers. This is a major problem for scientific criminology, as pointed out by Kittrie in his book *The Right to Be Different* (1971).

Ferri, like Garofalo, placed curative supremacy in the power of the state, not in the rights of individuals as Hobbes and Locke had done. State rights took precedence over individual rights. This tilt in the locus of power reflected in the fact that Ferri gave up socialism after World War I and turned to Mussolini and fascism (Hall, 1945:348; Jeffrey, 1990).

Scientific Criminology Today

There have been major developments in genetics, biology, neurology, and psychology during the 1950–1980 era, which have real implications for criminology (Jeffery, 1979, 1985; Fishman, 1981). These developments will be discussed in a later textbook devoted to the biological and psychological aspects of criminal behavior.

Jeffrey notes that the movement back to a retribution/justice model has delayed the use of new scientific findings to prevent and control criminal behavior, but hopefully in the future we will find better and more productive ways to integrate science and law than is now the case. Currently, there is the need of an integrated interdisciplinary approach to the crime problem, and

this includes the integration of criminal law and the behavioral sciences , which Jeffery has frequently discussed (Jeffrey,1990).

SUMMARY OF POSITIVISTIC CRIMINOLOGY

1. Positivism was an outgrowth of the use of science such as biology, psychobiology, and chemistry to study and understand human behavior. Positivism was and still is a scientific, as opposed to legalistic, approach to the crime problem. Positivism or determinism involves the behavioral sciences: biology, genetics, neurology, anthropology, psychology, psychiatry, sociology, economics, political science, and urban planning.
2. Positivism or determinism supports the doctrine of reforming the criminal, rather than the criminal law. Scientific methods lead the reformation of the offender, who are patients and not criminals. Many hospitals, people think, should replace prisons and electric chairs or lethal injections and the medical model replaces the punishment model or Criminal Justice model. (Jeffrey, 1990)
3. Positivism or determinism denied the legal approach to crime including the definitions of crimes and legal punishments. For this reason, there were no restrictions placed on the type or length of treatment as there had been on prison sentences. The classical school or rationalistic school insisted on a definite, fixed sentence, whereas, the positive school supports an indeterminate sentence of one day to life. As a result, the offender comes to be at the mercy of the therapist, as opposed to that of the state and lawyers. This is a major problem in twentieth century criminology, which deserves further investigation.

Sentencing Options and Types of Sentences

Sentencing options in wide use today are fines, probation, community service, incarceration, and the death penalty. A judge generally imposes a sentence. A jury or a group of judges can also exercise sentencing responsibility, or it may be mandated by statute. According to Smykla Schmallegger, who has provided an encyclopedic references in his study of sentencing, there are many different types of sentences but the main three are mandatory sentences which are those required by law under certain circumstances such as conviction of a specified crime or of a series of offenses of a specified type. The next is consecutive sentences, which are sentences served one after another. The final type is concurrent sentences, which are served together (Schmallegger, Smykla 2007).

Sentencing Models

A model of criminal sentencing is a strategy or system for imposing criminal sanctions. Sentencing models vary widely. Over the past one-hundred years, a shift has occurred from what might be called a judicial model of sentencing to an administrative model. Judges have far less discretion in sentencing decisions today than they previously did. The majority of sentences imposed in American courts today follow legislative and administrative guidelines.

Indeterminate Sentencing

In an indeterminate sentence, the judge specifies a maximum length and a minimum length, within limits set by statute, and a parole board determines the actual time of release. The parole board's determination depends on its judgment of whether the prisoner has been reformed, has been cured, or has simply served enough time. An example of an indeterminate sentence is one that renders a sentence within a period like "5 to 10 years in prison" (Schmallegger, Smykla 2007).

Determinate Sentencing

A determinate sentence specifies a fixed period of incarceration, which can be reduced for "good time" served. The theory behind determinate sentencing is that criminals will be off the streets for longer periods. The other advantage is that prisoners know when they will be released. Prison administrators generally favor determinate sentencing and good time credits because they aid in controlling prison populations.

Guideline Sentencing

Guideline sentences are sentences that meet the following guidelines. The appropriate sentence for an offender in a specific case is presumed to fall within a range authorized by guidelines adopted by a legislatively created sentencing body, usually a sentencing commission. The judges are expected to sentence within the range or provide written jurisdiction for departure; and the guidelines provide for review of the departure, usually by appeal to a higher court. Guideline sentencing may employ determinate or indeterminate sentencing structures.

Federal Sentencing Guidelines

Federal sentencing guidelines take into account a defendant's criminal history, the nature of the criminal conduct, and the particular circumstances

surrounding the offense. Congress has mandated that all federal trial judges must follow the guidelines in their sentencing decisions. Deviations from the guidelines are permitted only when a judge provides a written justification setting forth specific reasons as to why a sentence outside of the range specified by the guidelines was appropriate.

The Legal Environment and Sentencing Guidelines

A number of U.S. Supreme Court cases have focused on the authority that judges retain in deciding to depart from sentencing guidelines and on the application of sentencing enhancements. Most of these decisions have involved federal law, although some state-level cases have been especially significant. In 1994, in the case of *Nichols v. United States*, the Court held that “an uncounseled misdemeanor conviction,” because no prison term was imposed, is valid when used to enhance punishment at a subsequent conviction.

THREE-STRIKES MODELS-WASHINGTON AND CALIFORNIA

Washington State was the first to enact the “three-strikes and you’re out” policy and California soon followed with considerably broader version of the three-strike law. Although enacted within months of each other, the Washington and California laws differ in three important ways. First, in Washington all three strikes must be for felonies specifically listed in the legislation. Under the California law, only the first two convictions must be from the states’ list of strikeable crimes and any subsequent felony can count as the third strike. Second, the California law contains a two-strike provision, by which a person convicted of any felony after one prior conviction for a strikeable offense is to be sentenced to twice the term he or she would otherwise receive. There is no two-strike provision in the Washington law. Third, the sanctions for a third strike offender differ. The Washington statute requires a life term in prison without the possibility of parole for a person convicted for the third time of any of the most serious offenses listed in the law. In California a third striker has at least the possibility of being released after twenty-five years (Schmalleger, 2007).

Impact on Local Courts and Jails

The courts have been overwhelmed as defendants facing enhanced penalties demanded jury trials. They also added time to process cases through trials and the reluctance of courts to grant pretrial release to defendants facing long

prison terms has caused jail populations to explode as the number of jail admissions and the length of jail stays grew.

Impact on State Prison Systems

The impact of the Washington and California laws on state corrections departments has not been as severe as projected. Planners in Washington had expected that 40 to 75 persons would be sentenced under the three-strike provisions each year. The actual numbers have been much lower. During the first three years, the law was in effect, only 85 offenders, not the 120 to 225 projected, were admitted to the state prison system under the three-strike law.

Issues in Sentencing

The sentencing reforms are in place trying to make the process fairer. The issues related to fairness in sentencing are proportionality, equity, social debt, and truth in sentencing.

Proportionality

Proportionality is the sentencing principle that the severity of punishment should match the seriousness of the crime for which the sentence is imposed.

Equity

Equity is the sentencing principle that states that similar crimes and similar criminals should be treated alike.

Social Debt

Social debt is a principle that maintains that the severity of punishment should take into account the offender's prior criminal behavior.

Truth in Sentencing

This sentencing principle requires that an offender serve a substantial portion of the sentence and reduces the discrepancy between the sentence imposed and actual time spent in prison (All the above facts from Schmallegger, Smykla 2007).

CONCLUSION

The philosophy underlying criminal sentencing is that people must be held accountable for their actions and the harm they cause. Recent laws have increased penalties for criminal offenses, particularly violent crimes. There still has to be more work done in the criminal sentencing field. Too many times people commit a crime and do not get punished to the fullest extent. If someone commits a crime, he or she must be punished to deter him or her or anyone else from doing the same thing. It goes back to the old saying “you commit the crime; you are going to do the time”.

In 1990, Dr. C. Ray Jeffery, a professor of criminology at the Florida State University School of Criminology and Criminal Justice wrote a textbook titled *Criminology: An Interdisciplinary Approach*. Jeffery designed the textbook as a different approach to criminology based on a system approach, and an interdisciplinary approach to human behavior. His text contrasts criminology as a behavioral science with Criminal Justice as the application of political process to criminals. He argued that, “Criminology is based on a synthesis of biology, psychology, sociology, political science, geography, and other social sciences (See above). Jeffery defined criminology “as the scientific study of crime and criminals.” Sutherland and Cressey (1970: 3) defined criminology as the study of (1) the making of laws, (2) the breaking of laws and (3) the reaction to the breaking of laws. The breaking of laws defines the criminal, the study of whose behavior has been a major aspect of criminology. Jeffery notes that the making of laws and the reaction to the breaking of laws are the defining components of crime within a political process and that criminal law is basic to the definition of crime.

Walfgang and Ferracuti (1967) define criminology as the scientific study of crime, criminals and criminal behavior. Here, the emphasis is placed on the scientific method of the explanation of the phenomena generated by the interaction of the process of law making, law breaking, and the reactions to these processes. The nature of crime and criminals pushed Jeffery to contend that criminology must be an interdisciplinary science involving the biological sciences (biology, psychology, psychiatry, sociology, political economics, and anthropology) and the policy sciences (criminal law, public administration, philosophy, ethics and history). According to Jeffery, human behavior is the focus of criminology as an interdisciplinary behavioral science devoted to the scientific study and understanding of crime and criminals. Criminology is thus considered to be the scientific study of behavior (Jeffery, 1990: 2).

Jeffery notes that the term “Criminal Justice,” refers to the agencies of social control, which define and react to those behaviors falling within the purview of the Criminal Law. The Criminal Justice System, he noted, is com-

posed of the police-prosecutor-courts and the prison system. The personnel of the system are the police officers, lawyers, judges, probation and parole officers, and prison officials, as well as the executive branches of government.

Inciardi (1987: 5) took these issues further when he defined Criminal Justice as “the structure, functions, and decision processes of agencies that deal with the management and control of crime and criminal offenders—the police, courts, and corrections departments.” Criminal Justice is often confused with the Academic Discipline of Criminology and Police Sciences. Jeffery also notes that the Criminal Justice System can be viewed as the interaction of Science and Law. While operating within the framework of criminal law, the Criminal Justice employee might apply scientific principles from the behavioral sciences. A Judge might use a neurological examination in his or her evaluation of a defendant or a probation officer might use psychological theory in his/her evaluation of a probationer.

These individuals mentioned herein are generally not scientists in the narrow sense of the word as used by Wolfgang and Ferricuti as contributors to a body of scientific knowledge. A Criminal Justice practitioner may contribute to the advancement of scientific or biological knowledge as well as to the application of knowledge to practical problems.

What is Crime?

Jeffery (1990) noted that lawyers and criminologists define crime in different ways. Lawyers define crime in legal terms as the violation of a criminal law and a response from the criminal justice system. Without a law, there is no crime. Sociologists and criminologists define crime as the violation of a conduct code or social norm. The sociologist is interested in the process of social control and the ways in which legal norms are part of the social control system.

Who is the Criminal?

Jeffery noted that a lawyer defines criminal as one who has been convicted of a crime in a court of law. The legal process of arrest, prosecution, and conviction is essential in order that the label “criminal” be applied to an individual. The sociologist/criminologist defines the criminal as one who behaves in a given manner, whether or not an arrest and conviction result from the behavior. If one behaves a murderer or rapist, then one is a criminal, whether or not he or she is arrested, convicted, and sentenced to prison.

Jeffery (1990) emphasized that the issue is: Do we study people who have been convicted for murder, or those who behave as murderers even if not

convicted? He noted that the critical issue is whether we are interested in studying the behavior of those who commit certain antisocial acts, or the behavior of the police, lawyers, prosecutors, and judges. This is no small issue, since in many situations less than 1 percent of those committing crimes are ever arrested and/or convicted.

REVIEW QUESTIONS

1. Regardless of the differences that exist between Federal and State Criminal Justice Systems, there are certain similarities that exist. Name and explain those similarities.
2. What is legislature? Why are the legislature branches of our government important?
3. Name the three important branches of the U.S. government. Are they the same as those of Nigeria?
4. Name and explain the U.S. Federal Crimes.
5. What do you mean by statute?
6. What is *mala prohibita*?
7. What is *mala in se*?
8. What is plain meaning rule?
9. What is a bill?
10. How could a bill become law?
11. What is debate? How does debate get limitation, and does it get guided?
12. Discuss types of legislation that you know.

Chapter Sixteen

Conceptual Framework: Locating Crime and Punishment in the Human Enterprise

KEY TERMS

- | | |
|--------------------------------|------------------|
| 1. Objectivity | 11. Valuable |
| 2. Subjectivity | 12. Dimension |
| 3. Anatomy | 13. Treason |
| 4. Secondary Environment | 14. Treachery |
| 5. Anthropocentric | 15. Religion |
| 6. Human Kind | 16. Lazy |
| 7. Violence | 17. Unproductive |
| 8. Institutional Configuration | 18. Exclusively |
| 9. Belief | 19. Otiose |
| 10. Value | 20. Substantiate |

PHENOMENOLOGY OF OPPRESSION

The purpose of this chapter is to describe and demonstrate the components of oppression as argued by other theorists, and to relate them to the position of Fanon. Fanon's study of colonialism posits that colonialism is a subset of oppression. From Fanon's perspectives, severity of punishment changes in the Nigerian law during the colonial era were geared to the maintenance needs of the oppressor. Jones's model, the *Anatomy of Oppression* (1993), is an extension of Fanon's theory. Other advocates of oppression, such as Altbach and Kelly (1978), Weil (1958), Lapchick and Urdang (1982), Grygier (1954), Stoddard (1948), Ryrdal (1960), and Tillich (1960) incorporate materials for this description. The main objective here is to describe and demonstrate the

components of oppression as analyzed by the advocates of colonial oppression and to infer it from the analysis of the phenomenology of colonialism that follows. If the components of oppression match that of colonialism, then Fanon's colonial theory, which argues that colonialism are a subset of oppression, is credited.

Indeed, oppression of a people can be seen as a form of economic, social, and political (ESP) exploitation, a pervasive institutional system that is designed to maintain an allegedly superior group at the top of the ESP ladder with the superior accouterments of power and privileges (Jones, 1993:1). In order to account for the exploitative goal of the oppressor, the components of oppression will be described in detail. William R. Jones's *Phenomenology of Oppression* incorporates the generic theories of culture. Culture can mean different things to different people. The concept of culture is sometimes defined very narrowly to include arts only. At the opposite extreme, culture can mean everything that humans do or create, i.e., the totality of human products or materials, etc. Peter Berger (1961:33) noted that the fundamental purpose of culture is to ensure human survival and to enhance our well-being, to provide a firm structure for human life that is lacking biologically.

Richard Niebuhr (1962) defined culture as the artificial secondary environment which humans superimpose on nature. Jones (1993) argues that culture comprises language, habit, ideas, beliefs, customs, social organizations, inherited artifacts, technical processes, and values. Jones contends that culture is the totality of the environment that people encounter, and so culture, according to him, consists of the totality of individuals' products. From this angle of analysis of culture, severity of punishment changes in the criminal legal code and human culture that ensure human survival and well-being are cultures. Some of these products, according to Jones, are material, and others are not. Culture is anthropocentric in the sense that it is a human product and activity, created and intended for what is good, valuable, and necessary for human survival, and well-being. Culture is designed towards an end or ends (Jones, 1993:2). The world of culture, according to Jones, is a world of values. Whatever humankind makes, it is designed to serve a purpose, which can never be described with reference to ends of designers and users. From this angle of analysis of the concept of culture, the fundamental maintenance need is to preserve two categories of legal power: the institutional configuration or belief and value system. For instance, the severity of punishment changes in the Nigerian legal code during the colonial era was designed to serve a purpose, "the maintenance needs of oppression." It is included with other maintenance needs of oppression, i.e., anti-powerism, inequality of power, violence, infliction of ethnic suffering, and hypocrisy.

Based on the definition of culture, culture is a component of oppression and colonialism. The criminal justice system, especially the criminal legal code, religion, language, and education are all human products and activities that enhance the creator's survival and well-being. Specific changes in the Nigerian legal code during the colonial era that made treason and treachery the worst crimes were human activities and products that enhanced the survival and well-being of the colonial overlords in Nigeria. Oppression can be analyzed from two different perspectives that are germane to this discussion. On the one hand, oppression can be reduced to institutional structures that are its economic, social, and political (ESP) objective dimension. On the other hand, one can examine oppression in terms of the belief and value system that is its anchoring principle (Jones, 1993:2). This also comprises its subjective component. In its institutional dimension, the following examples are notable: During the colonial era of Nigeria (1861–1960), natives of that country were excluded from jury membership based on whether or not one could speak the English language (Elias, 1966:4). English tests were given to those who were selected for jury duties. It was an institutional arrangement to limit jury membership to those who could speak or write the English language with the intent of excluding Nigerians from the jury. There were also property qualifications for Lagos and Calabar voters during the colonial rule in Nigeria. Inhabitants of Lagos and Calabar had to have an income of £100 to £50 (British pound sterling) per annum to qualify as voters in the elections (Ezara, 1960:71). In addition, the colonialists in Nigeria believed that the natives were unproductive; hence, their wages were very low, thereby disqualifying them from jury duties, again. Zahar (1974) noted the subjective dimension of oppression thus:

The colonized is lazy, hence punitive measures are legitimate; he is unproductive, hence he has to be paid low wages; he is stupid, hence he must be protected in his own interest; he is savage and a slave to his instincts, hence police brutality and "stern justice" are necessary to control him (Zahar, 1974:22).

Oppression, according to Weil (1958:63) proceeds exclusively from objective conditions contrary to Fanon's model. The first of these objective conditions, according to Weil, is the existence of privileges, and "It is not men's laws or decrees which determine privileges nor yet titles to property; it is the very nature of things" (Weil, 1958:63). Kelly and Altbach (1978:43) contend that colonial education entails inequality in education on a national basis and at its highest level to substantiate this argument, colonial education in Nigeria suffered the same inequality. The natives of Nigeria were only trained as clerks and interpreters; there was no encouragement to go beyond these levels (Onu & Odii, 2003). The inner logic of oppression affirms a two-category

system. It divides the human family into at least two distinct groups, hierarchically arranged into alleged superior and inferior classes: for example, male-female; rich-poor; master-slave; etc. which are purely antagonistic:

The field of force of colonial situation is marked by two antagonistic policies, the colonizer and the colonized, in the case of Nigeria during the colonial era, it was categorized into “natives and non-natives” (Ade Ajayi, 1974).

The property and privileges of the colonized or natives are directly based on the exploitation and pauperization of the other (Zahar, 1974:18). This hierarchical arrangement of oppression is correlated with a gross imbalance of power, access to life-extending and life-enhancing resources and privileges. The alleged superior group will possess the unobscured surplus and the alleged inferior group, a grossly disproportionate deficit. To make the point clear in different terms: the alleged superior group will have the most of whatever the society defines as the best, and the least of the worst (Jones, 1993:3). In stark contrast, the alleged inferior group will have the least of the best and the most of the worst. During the colonial era, Nigeria’s natural resources, cash crops, and taxes were all appropriated in England. The colonizer overlooked and denied Nigerians both life-extending and life-enhancing resources and privileges. As already cited above, Greene (1965) documented the speech the first colonial governor-general of Nigeria made, while in Sokoto (a town in northern Nigeria) concerning indirect rule in both southern and northern Nigeria. He observed and documented thus:

The government will hold the right in land which the Fulani took by conquest from the people, but if government requires land, it will take it for any purpose. The government holds the right of taxation and will tell the emirs and chiefs what taxes they may levy and what part of them must be paid to the government. The government will have the right to minerals, but the people may dig for iron. Subject to the approval of the colonial high commissioner, and may take sand and other minerals subject to any excise by law.

Traders will not be taxed by chiefs or emirs, but by government. The coinage of the British will be accepted as legal tender, and a rate of exchange for countries fixed in consultation with chiefs and they will enforce it (1965:43–44).

Zahar (1974) noted that:

The metropolitan countries expropriate economic surplus from their satellites and appropriate it for their own development while the later stagnate in their underdevelopment, first because they lack access to their own surplus and second because they have to bear the brunt of the metropolis/satellite polarization and the exploitative contradictions which the close ties with their respective metro-

politan centers have introduced and perpetuated in the satellites' domestic economic structures (1974:11).

Kelly and Altbach (1978) noted that under classical colonialism, colonies were established for exploitation and trade rather than for settlement. "In most instances, the colonizer merely ruled and exploited; he did not seek to replace the colonized" (21). The colonial world is characterized by domination and exploitation (Zahar, 1974:35), and Adewoye (1977:18) noted that the administration of justice in a new colony of Nigeria necessitated the introduction of English criminal law. There was also a vast field of economic exploitation in which English law was an indispensable tool. The intervention of the colonial power brought about the disruption of traditional structures and caused the dependent countries to dovetail into the system of exploitation (Zahar, 1974:7).

The hierarchal division already mentioned and the ESP inequalities it expresses are institutionalized. The primary institutions, according to Jones, are constructed to maintain an unequal distribution of power, resources, and privileges. This is an inner design and the actual product of the oppressor. For example, on the annexation of Lagos-Nigeria in 1961, a small legislative council whose competence was confined to the colony of Lagos was established to assist and advise the governor (Ezara, 1960:22). This council, according to Ezara, was not by any standard representative, nor was the governor bound to accept its advice. At the time of its dissolution it consisted of the governor, six officials (British citizens), and four unofficial nominated members, two of which were Africans (Ezara, 1960:22). It was noted by Crowder (1978) that whenever Africans acquired higher education; it was through their own efforts. The denial of employment to highly educated colonized in the colonial administration was calculated to discourage education, and even when they were employed, they were paid the lowest wages compared to their European counterparts.

The social dealings of the oppressed, which are a reaction to the norms and institutions of the oppressor, reflect the alienation inherent in its economic conditions, in addition to the personal and sexual relations which are alienated (Zahar, 1974:48). Zahar noted only those who are capable of expressing themselves in good foreign language are feared and respected (1974:43). The civil service examination instituted by the colonizer always limited employment of the colonized, because only a handful of them could pass the examination. Wages paid to the natives determined their place of residence. In the city of Lagos, during the colonial era, the rents for houses in British areas of residence were raised beyond the means of an ordinary native. Settlement was segregated as the natives had to live in dirty areas infected with diseases.

The British policy of “indirect rule” created clear cut divisions from onset, institutionalizing the social distance and the purported difference existing between the colonial overlord and the colonized, at both the administrative and cultural levels (Zahar, 1974:44). Oppression became established only when improvements in production brought about division of labor sufficiently advanced for exchanging military command, and government to constitute distinct functions where the whites always come out as winners(Weil, 1958:21):

While the economy has been built on the backs of black labor, the oppressed are unable to share in the resulting wealth in South Africa; the average weekly wage for whites is \$140 per week, for colored is \$44, \$54 for Indians, and \$26 for African (Lapchick & Urdang, 1982:7).

This statistics, according to Lapchick and Urdang, exclude wages paid to farm laborers and domestic servants, which if included would cause the oppressed average wage to drop dramatically. In order for the oppressors to exploit, they must create a form of suffering for the oppressed, which is usually mal-distributed, negative, enormous, and non-catastrophic. Jones (1993:1) termed this sufferings ethnic suffering because it is limited in scope and impartially over the total human race. Rather it is concentrated in particular groups. These groups, according to him, bear a double dose of suffering. This suffering is also described as ontological, that is, suffering that is not part and parcel of our human condition of finitude. In fact, the situation results from their exploitation and from their deficit of power caused by human agents.

Ethnic suffering is a subclass of negative suffering. It describes a suffering that is without essential value for one’s well-being. Negative suffering leads one away from, rather than towards, the highest good (Jones, 1993). A third feature of ethnic suffering is its enormity, and here the reference is to several things. That is to say that where ethnic suffering is involved, the percentage of the group with the double portion of suffering is greater than that for other groups. Enormity also refers to the character of the suffering—specifically that which reduces the life expectations or increases what the society regards as things to be avoided. The non-catastrophic dimension of ethnic suffering is that it does not strike quickly and leave after a short and terrible siege. Instead, it extends over long historical eras. According to Jones, it strikes not only the parents, but the children, and their children, etc. Since catastrophic events do not visit the same group generation after generation, the factor of maldistribution is less acute. Poverty, created by the oppressor through unemployment, is negative suffering in that the oppressed could not buy any of the necessary goods to support themselves. The loss of the original language of the oppressed is one of the sufferings created by the oppressor. The op-

pressed who could not express himself in the language of the oppressor is regarded as primitive and stupid. The oppressed do not make policies; the oppressors do to protect themselves.

Zahar (1974:12) noted that the oppressed people were compelled to gear their production to the demands of a market economy, i.e., to cultivate products which they were no longer able to use for their own subsistence. For instance, Nigerians in the colonial era were forced to cultivate cash crops, such as cocoa, rubber, and palm products, instead of yams, potatoes, rice, beans, cassava, etc., which they could use for their subsistence (Ade Ajayi, 1974). Zahar noted that terror and exploitation dehumanizes, and the exploiter uses this dehumanization as a pretext to set up his exploitation (20). "The Christian missions play an important role in this respect; by condemning the customs and religions of the natives as heathen and inhuman, they bolster and uphold colonial racism ideologically which leads to the suffering of the oppressed (22). At the same time, the oppressors weaken the power of resistance of the indigenous population. Those converted to Christianity view their own culture and history as strange and become more receptive to colonial propaganda. Colonial racism conditions the oppressed into psychosomatic illness and abnormally high crime rates (Zahar, 1974:43).

Another trans-generational, negative, and enormous suffering created by the oppressors is discrimination. The oppressed are discriminated against in employment. However, when they are employed, they are paid lower wages. According to Zahar (1974), the creation of suffering is accelerated by the real sanctions and administrative measures, which draw their justification from the "reaction fiction": the colonized is unproductive; hence, he has to be paid low wages (23). The oppressor makes the policy, thereby creating the hierarchical arrangement of people into an alleged superior and inferior category, resulting in inequality of power and privilege. Those who are less powerful and less privileged suffer. Zahar also noted a disproportionately high crime rate in the colonized society, which he maintained could be ascribed to its pathological state in Durkheim's sense. "The economy and social bases of traditional society have been destroyed, and no attempts have been made to replace them with adequate new structures since the colonial economy is solely geared to the needs of the metropolis" (58). The colonized, according to Zahar, has been torn away from his old conditions of production and their normative framework, without, however, having been integrated into the colonial society (1974:58). These sorts of suffering created by the colonizers are indelible in the minds of the colonized for generations. For instance, premeditated murder and armed robbery are common in the colonized world because of the inequality of power, resources, and privileges created by the colonial administration.

Historically speaking, oppression is initiated through the violence of the oppressor. Fanon (1961) maintains that “there is original violence that initiates and establishes operation” inherent in the establishment of a relation of oppression. The oppressor invariably suffers historical amnesia regarding his original violence or that violence is transmuted into a more “benign” action through the oppressor’s power to legitimate. That is to say, through social control like commemorations, the oppressor can effectively transmute base acts, such as deeds of violence and oppression into meritorious actions that are celebrated (Jones, 1993:5). Zahar (1974) also noted that it was through violence that the colonial powers forced new structures onto the subjected countries. Indeed, “the contacts between the imperialist industrial powers and the agrarian countries of Asia, Africa, and Latin America were established and consolidated by soldiers;” who conquered and slowly moved from coast to further inland. Subsequently, vast areas were handed over to joint state companies in order to keep the costs of the colonial administration as low as possible (74). The role of British gunboats in developing British control and influence continued to be a large one during the 19th century in West Africa (Adewoye, 1977:13). Two years after Lagos became a colony, the settlement by 1863 had about 700-armed police. This was the Lagos constabulary, which the colonialists used against the Ijebu and Oyo kingdoms in the hinterland in 1893 and 1895 respectively. So violence initiated by small-scale patrols was mounted against diverse indigenous communities of the tribes of the Lower and Upper “Niger River.” It was through such violent expeditions and patrols that much of the inland, especially Igboland and other areas became conquered territory (Adewoye, 1977:13).

Grygier (1954:20) noted that concentration camps as an oppressive instrument represented the extreme forms of slavery. Insecurity and humiliation in the early years of the British settlement in 1861 were rampant (Elias, 1962). The early European traders traded with human beings; the people of Nigeria were insecure. Another component of oppression is to socialize the oppressed to adopt a philosophy of anti-powerism. Jones (1993:6) noted the differences between anti-powerism and powerism. According to Jones, anti-powerism regards power as essentially negative or evil, best expressed by Jacob Burkhardt. Burkhardt contends that power by its very nature is evil and not stable, no matter who wields it. For instance, the British power over Lagos colony in Nigeria was not the only one. The British extended their power to other West African countries, like Ghana, Cameroon, Vernando, Po, etc. Burkhardt concludes that power is unhappy in itself and is doomed to make others unhappy (Jones, 1993:6). On the other hand, powerism expresses a quite different understanding about the role, status, and values of power in human affairs. From this perspective, power is neutral, neither evil nor good;

rather, its quality depends upon who wields it and or for what purposes. Advocates of this position advance power as a preeminent interpretative category for all aspects of human affairs as well as the national and supernatural world. So, they consider the following as appropriate description of power:

In any encounter of man with man, power is active, every encounter, whether friendly or hostile, whether benevolent or indifferent, is in some way a struggle of power with power (Jones, 1993:6),

or the equally comprehensive scope of power that is affirmed by Romano Guardini: "Every act, every condition, indeed, even the simple fact of existing is directly or indirectly linked to the conscious exercise of power" (Jones, 1993:6).

Part of the mechanism of oppression is to socialize the oppressed to adopt a philosophy of anti-powerism, though the oppressor lives by the opposite philosophy of powerism. The consequence of this maneuver, according to Jones, is to keep intact the oppressor's massive surplus of power. The underclass can be kept "in its place" to the degree that it adopts the inner logic of anti-powerism. Based on anti-powerism's characterization of power as evil, the oppressed are indeed in the best place by virtue of their deficit of power (Jones, 1993:6). The hierarchical distribution of power, privileges, and resources by the oppressor has kept the oppressed in the deficit of power, privileges, and resources. Changes in the Nigerian law and the resultant severity of punishment during the colonial era did keep intact the oppressor's massive surplus of power, privileges and resources for their maintenance needs. Women in the northern region of Nigeria were denied the right to vote or to be voted for during the colonial era. Women in that region accepted the right not to vote or to be voted for as good and remained in the deficit of power and privileges until 1960, when Nigeria gained its independence (Ezara, 1960:215). Also during the colonial era in Nigeria, there were regional universal adult suffrage laws in the western region of Nigeria. Elections were by tax suffrage in which only adult males, who paid income tax, were eligible to vote or to be voted for. Those who could not afford to pay income tax (which indeed was many) were in the deficit of power and privileges.

One of the evidences of anti-powerism in Nigeria during the colonial era was the trial of some prominent Nigerians (chiefs) who resisted British penetration into the River Niger Coast Protectorate at the consular courts. One of these chiefs was Nana Olomu, a great Itsekiri chief and middleman trader in the Niger delta who in the 1880s collaborated with the British, but was later at loggerheads with them. Nana was accused of fighting with the British forces, but his argument that he was acting in self-defense was not contradicted with any convincing evidence (Adewoye, 1977:82). "In the face of

British determination to control effectively the Niger delta and to exploit fully its wealth and resources, it was clear that a powerful chief like Nana could not survive for long” (Adewoye, 1977:82). The severity of the penalties imposed on Nana was significant. He was found guilty on all counts, and sentenced to lifelong exile besides forfeiting all his goods and chattels, and all his real and personal property to the colonial government. He was deposed as a chief; nobody talked about him again until after the colonial era. Of the seven other chiefs who were tried with Nana on the same charges, three were acquitted because they had no hands in the fight, and two were deported from their areas (Benin district) for two years. They lost their chieftain status. The remaining two chiefs were sentenced to penal servitude for life and forfeiture of goods and privileges (Adewoye, 1977:84). The idea behind Nana’s trial and punishment was to deprive him of his powerful stance for “anti-powerism” and to secure the Niger delta for the British alone. His presence was seen as a serious obstacle to the establishment of British rule in Nigeria.

TOWARDS A PHENOMENOLOGY OF COLONIALISM

Introduction

This section of the text will describe the phenomenology of colonialism and its components, and relate it to Fanon’s colonial model described in chapter 4. The interpretative apparatus to be used here is colonialism and neoracism. This study uses Fanon’s colonial model to argue that colonialism is a subset of oppression. Jones’s model, the *Anatomy of Oppression* (1993), and other advocates of oppression/colonial model, such as Stoddard (1971), Myrdal (1960), Burkhardt (1943), Carmichael and Hamilton (1992), Memmi (1965), and Sartre (1968) provide materials for this description. In the generic terms, colonialism can be seen as a form of economic, social and political (ESP) exploitation of a people. Colonialism is not a type of individual relations, but the domination and the exploitation of a nation after military conquest (Fanon, 1964).

Colonialism is a pervasive institutional system that is designed to maintain an alleged superior group at the top of the ESP ladder, with the superior accouterments of power and privileges, and access to society’s resources (Jones, 1993:1). In order for the colonizer to reach his goal of exploitation, he has but two choices. “Binary logic” (Jones, 1993) either to continue with the colonized’s traditional structures (“quietism”), or to drop the traditional structure as primitive and adopt that of the metropolis (“Protest”) (Jones, 1993). An “indirect rule” policy adopted by the British in her West African colonies is a case in point, where the already existing traditional power of the chiefs and

emirs of the Moslem areas were retained. As already cited above, these chiefs and emirs were agents of the colonial power for carrying out its more unpopular measures, such as collecting taxes and recruiting for labor.

In theory these local chiefs and emirs rule under the guidance of the local administrator; in practice they are the scapegoats who are made responsible for the collection of money and men. While they enjoy the administrator's favor they have certain privileges, usually good houses and land and in a few cases subsidies; but unless they are completely subservient they risk dismissal, prison and exile" (Crowder, 1978:203).

The main objective of "indirect rule" policy was to collect taxes from the people of the interior, which the colonial powers could not reach by direct contact. Again, they were allowed to try cases of murder for which the death sentence, subject to confirmation by the colonial governor, could be passed (Crowder, 1978:199). The policy also helped to minimize the colonial expenditure by the use of already existing structures without wages than minor privileges such as allowances and exemption from paying income taxes.

Hierarchical structure existed in the French and British colonies in West Africa in the area of religion. The Christian missions that came with the colonialists put their own religion (Christianity) in the forefront while condemning the traditional religion as heathen and primitive. Thus, elements of the indigenous culture were changed, abandoned, degraded or left intact, depending upon such culture's relation to the colonial system and its effective operation. Zahar (1974:22) documented thus:

The Christian missions play an important role in this respect; by condemning the customs and religions of the natives as heathen and inhuman, they bolster and uphold colonial racism ideologically. At the same time they weaken the power of resistance of the indigenous population. Those converted to Christianity view their own culture and history as strange and become more receptive to colonial propaganda.

In the colonial system, the governor was the chief executive officer followed by his assessors: commissioners, consulates, chief inspectors of the police, army commandants, judges, and other assessors in the legal system. With this hierarchal arrangement of the colonial system, the privileges and resources of the colonized are geared to serve the metropolis for the colonizers' survival and well-being, i.e., the maintenance needs. Greene (1965) observed and documented the speech of the first governor-general of Nigeria at Sokoto:

It is forbidden to import firearms (except flintlocks), and there are other minor matters which the British resident will explain. The government holds the right

of taxation and will tell the emirs and chiefs what taxes they may levy and what part of them must be paid to the government. The government will have the right to all minerals, but the people may dig for iron subject to the approval of the high commissioner and may take salt and other minerals subject to any excise by law (1965:43–44).

Ade Ajayi (1974) noted thus: “the colonial policies and administrative structures were only means to an end” (232). When colonial propaganda about humanitarian intentions and burden of empire is discounted, all colonial regimes will be found to have shared a common goal in the exploitation of economic resources of the areas they dominated to the best of their abilities and with the least possible cost to the metropolitan countries. The colonizer, thus, produces and perpetuates the misery which in his view increasingly makes the oppressed the kind of creature that deserves such a fate (Zahar, 1974:20). He uses “terror and exploitation” to dehumanize “as a pretext to step up exploitation” (Zahar, 1974:20). The colonizers defend their economic status against the natives, however relative this superiority might be.

Colonialization can be reduced to an institutional structure that is its ESP, its objective dimension. The franchise property qualification for Lagos and Calabar in Nigeria, an amendment to Arthur Richard’s constitution of 1946, is a case in point. During the colonial rule in Nigeria, qualification for voters was reduced from £100 to £50 British pounds sterling per annum (Ezara, 1960:64). Also during the colonization of Nigeria, membership in the jury was limited to those who could read and write the English language. One can also examine colonialization in terms of the belief and value system, which is its anchoring principle. For instance, there was a belief by the colonizer that the natives of Nigeria were “primitive,” hence; they must be protected by the metropolitan countries. Hence, the colonialists used delay tactics in granting independence to Nigeria, despite the efforts of nationalist movements and the delegations to London to protest for national independence. The colonial secretary turned the request down in many occasions stating that Nigeria was not matured enough to be independent (Ezara, 1960:233).

Many of the subjective belief and value system characteristics attributed to the native excluded him from all social institutions, cut off from his own history, deprived of his own language and of all possibilities of untrammelled self-expression (Zahar, 1974:23). For instance, women in Nigeria particularly in northern region were denied the right to vote in obeisance to northern Moslem susceptibilities (Ezara, 1960:235). Under the 1922 colonial constitution of Nigeria, there was a legislative council for the colony and protectorate of Nigeria consisting of 46 members of whom 27 including the governor were officials and 19 were unofficial (Ezara, 1960:27). Thus, like its predecessors, the council had an official and an unofficial non-Nigerian majority. Like the

constitution of most crown colonies, the Clifford constitution of 1922, in addition to its establishment of the legislative council, also established an executive council—an advisory body to the governor. The Royal Instructions of 1922 providing that certain principal officials of the government should be ex-officio members in it (Ezara, 1960:28) regulated its composition. These principal officials were the Chief Secretary, the Lieutenant governors of the protectorate of Nigeria, the administration of the colony, the Attorney General, the Commandant of the Nigerian Regiment, the Director of Medical and Sanitary Services, the Treasurer, the Director of Marine, the Controller of Customs, and the Secretary for Native Affairs. There was also provision for the nomination of other official members and extraordinary members by the governor with the consent of the Secretary of State. These later nominations were to be made by the governor when he felt the need for specialized advice (Ezara, 1960:28). There were no principal officials or head of departments of Nigerian extraction; neither did they have any Nigerian official or unofficial representative (Ezara, 1960:29).

In terms of objective dimension, colonialism exhibits a gross imbalance of power. This hierarchal division of the oppressive system, as noted by Jones and other advocates of oppression, such as Grygier (1954), Weil (1958), Kelly and Altbach (1978), etc. and the ESP inequalities it expresses are institutionalized. These primary institutions are constructed to maintain an unequal distribution of power, resources, and privileges (Jones, 1993:3). The British policy of “indirect rule,” created a clear cut division from the onset, institutionalizing the social distance and the purported difference existing between the colonial overlord and the colonized, both on the administrative and the cultural level. During the 19th century when the Europeans controlled only small coastal enclaves, the usual approach in governing African subjects was assimilation, with the metropolitan model as the framework of reference (Ade Ajayi, 1974:5). In short, the colonial regimes, due to the hierarchal arrangement of people into the alleged superior and inferior classes, pursued only one-sided laissez-faire policy (Crowder, 1978:249). Where the interest of European firms was concerned, the administrations placed their resources at the firms’ disposal at the expense of Nigerians. Where the interest of Nigerians was concerned, the administrations were indifferent and left the field free for the privileged Europeans to compete unfairly with the Africans (Ade Ajayi, 1974:17). The French in their colonies had some notable success in combating major diseases, but the Portuguese and British in their colonies concentrated a disproportionate amount of available resources on safeguarding the health of European officials and paid only limited attention to the health of the colonized farmers (Crowder, 1978:249). In Nigerian, Nigerians bore the cost of colonial administration through public works and services

while large European combines enjoyed these services and drained the wealth. This meant that colonial development in this period consisted of little more than increasing the exploitation of the resources for the colonial masters.

Another institutionalized inequality during the colonial era was price-fixing. The foreign firms collapsed concerning the prices both of imports and of exports through agreements not to compete in one another's major spheres of interest and other monopolistic and discriminatory practices. Nigerian executives were effectively eliminated from the import/export trade. As a result, consumers did not enjoy the benefit of a competitive market in relation to either the price of export or the price of imported goods bought. Similarly, when labor was required, the foreign firms, instead of paying a competitive price, agreed among themselves to fix a low wage. Sometimes the political officer enforced this on the natives through recruitment of contract obligatory labor (Crowder, 1978:245).

The suffering of the colonized person was reflected in the loss of his original culture. A native who did not attend colonial school could not read newspapers, magazines, business advertisements, sign posts, etc.; he is almost lost in his own environment. The colonized who has no opportunity of learning the foreign language, i.e., the language of the colonizer, is a stranger in his own country. As a rule, it can be said that the relation of the colonized towards the language of the colonial dominator is ambivalent. Language became an instrument of domination tied to a class (45). For instance, in the French colonies in West Africa, children speak French from the day they enter school (Crowder, 1978:205). No concession is made to teach in the vernacular, so denial of the original language of the colonized is an instrument in transforming the native Africans into "white Negroes" (Zahar, 1974:41). In Nigeria, there are many high school leaders who have the opportunity to attend institutions of higher learning, but because they did not earn grades of "C" or better in their West African school certificate examination, they are automatically denied university admissions forever, unless they retake the examination, including all the subjects, not just the English language. This sometimes leads to frustration and eventually to criminal activity: robbery, theft, burglary, etc. Lack of freedom, isolation, and insecurity may all be regarded as sources of frustration. Indeed, they are usually representative of one particular kind of frustration—that caused by oppression (Grygier, 1954:24). Hunger, genetic disease, economic crises, unemployment or overwork without pay, recruitment and obligatory labor as in British West African colonies (Crowder, 1978:245) each cause different kinds of frustration, and thus produce different reactions in the people who suffer from them (Grygier, 1954:24). Some of these frustrations caused by denial of jobs, hunger, dis-

eases, and economic crises may lead to revival of spiritualism and personalism. Grygier mentioned at least two kinds of suffering: a dark suffering leading to perdition (loss of soul) and an illuminated suffering leading to salvation (Grygier, 1954:24).

Many politicians and writers from countries that formerly were or still are colonies find themselves confronted with the dilemma of being unable to make themselves generally understood except in the language of the colonizers (Zahar, 1974:46). This dilemma is due to the great variety of local languages and dialects, often the result of the arbitrary delimitation of territories during the colonial era. For instance, Nigeria has 250 languages due to this delimitation of territories during the colonial era, for economic reasons. This delimitation of territories has caused a lot of economic, social and political conflicts between different tribes and many times the conflicts lead to civil wars causing bloodshed and loss of human lives.

Another suffering created by the colonizer is the loss of culture and religion. The colonized is excluded from his original institutions, cut off from his own history and on many occasions rejects his own name. Most Nigerians dress like the Europeans in suits and neckties instead of the traditional gown "Danchiky." Most Nigerians, Africans in general, reject their own traditional names such as Okoro, Eze, etc., assume names such as Peter, James, Emmanuel, etc. Christian missions play an important role in this respect by asking the colonized to be baptized in order to get their sins forgiven and on that, they ask the new converts to accept an English or Biblical name of their choice. The Christian missions, by condemning the customs and religions of the natives as heathen and inhuman, bolster and uphold colonial racism ideologically (Zahar, 1974:22). At the same time, they weaken the power of resistance of the indigenous population. Those converted to Christianity view their own culture and history as strange and become more receptive to colonial propaganda (Zahar, 1974:22).

The racial stereotype of the colonized designed by the colonizer is eventually adopted by the former. In social psychology, noted Zahar, this process, which in many cases even leads to self-hatred on the part of the victim of prejudice, is seen as one of many possible reactions of an out-group (the colonized people) to the prejudices of an in-group (their colonial overlords). Usually, the out-group, which becomes the object of prejudice, is a minority (Zahar, 1974:23). In case of colonization, the repression is directed against the great majority of the population. The adoption of the racial stereotype by the colonized themselves is a typical example of self-fulfilling prophecy. Members of the out-group surrender to the constant pressure of discrimination, both institutionalized and personal, and end up developing the features ascribed to them by the racial stereotype, confirming the prejudices of the

in-group (Zahar, 1974:23). What began as a figment of the imagination eventually becomes a reality.

Colonization is initiated through the violence of the colonizer. An original violence by the colonizer establishes the economic, social, and political inequalities and oppression that comprise colonization. From about 1818, the British placed along the West African coast a regular naval force to protect British commerce and generally to enhance British influence among the indigenous coastal communities. Off the coast of Nigeria, noted Adewoye, was the island of Fernando Po, a strategic and important naval base, especially since the 1930s. Here was the seat of the British consul, first appointed in 1849, and here was the base of operation of many a naval expedition against coastal and riverain townships along the Niger delta (Adewoye, 1977:13). Throughout the 19th century in West Africa, the role of British gunboats in developing British control and influence continued to be a significant one. In May 1906, the various British military units were consolidated into the Southern Nigeria Regiment of the West African Frontier Force with 61 officers, 34 British non-commissioned officers and 1,883 privates. Coercion certainly played a crucial role in the conquest and control of Nigeria by the British. Adewoye (1977) noted that between 1902 and 1906, no less than 23 punitive "expeditions" besides numerous small-scale patrols were mounted against diverse indigenous communities, especially east of the Niger River. It was through such violent actions and patrols that much of Ibo-speaking people and other areas east of the Niger River became conquered territory (Adewoye, 1977:13).

Zahar (1974) noted that it was through violence that the colonial powers forced new structures onto the subjected countries (74). He contended that the contacts between the imperialist industrial powers and the agrarian countries of Asia, Africa, and Latin America were established and consolidated by soldiers; those countries, he noted, were conquered and slowly occupied by the army moving from the coast to further inland (Zahar, 1974:74). In the description of the colonial world, emphasis is always placed on its violent character," the dividing line, the frontiers are shown by barracks and police stations. In marked contrast to Europe, where capitalist norms have been interiorized in a long historical process, the colonies are a place where contact with the colonized is maintained by police officers and soldiers (Zahar, 1974:25).

Locating Crime and Punishment in the Human Enterprise

As already seen, maintenance needs constitute the bedrock for preservation of power by the colonialists. This preservation of power can be achieved by a

belief and value system or by institutionalized structures. Another purpose of this is to explain the “why” and the “how” of changes in the law and the severity of punishment, and the correlative shift in the definition and rank ordering of criminal actions as Nigeria progressed from precolonial, colonial, to postcolonial status. In the precolonial era, witchcraft was the crime for which the most severe punishment, the death penalty, was inflicted on offenders (Nwogo, Nwelom, Odii, & Onu, 2004). In the colonial period, treason and treachery assumed first rank as the worst crime (*Nigerian Criminal Code*, ch. 42, 1958). In the present postcolonial context, premeditated murder and armed robbery are punished by death (*Nigerian Penal Code*, Ch. 89, 1969). The change expresses a particular goal, a specific labeling of human actions by whoever has the controlling power in the society to define and label what is and what is not criminal.

Sociologists define crime as the violation of a conduct code or social norm (Jeffery, 1990). Without law or rules from those in authority, there is no such thing as crime or legal punishment. Lawyers, judges and other legal professionals define crime as the violation of a criminal law and a response from the criminal justice system. Crime and legal punishment are legal concepts created by those in power in the society to protect themselves. Through this labeling process, the “haves” tended to exploit and oppress the “have nots” through economic, political and legal mechanisms (Lynch & Groves, 1989:5). Gwynn Nettler (1984:16) argues that “crime is a word not a deed,” that is to say that crime is a label or a definition and when this label or definition is assigned to a behavior then the behavior becomes a crime. For instance, treason and treachery were not serious crimes in pre-colonial Nigeria (Onu, 2004). It was only during the colonial era that the behavior became criminal; refusal to take oath becomes witchcraft crime (Odii, 2003); killing becomes a crime when those in power do not authorize it. This can be reduced to an equation: behavior + authority label = crime.

Sometimes crime is arbitrary, that is, it reflects the subjective values and interests of those in a position to shape or influence the criminal law. For instance, the colonizers in Nigeria had the interest of maintaining their needs and as a result, they labeled treason and treachery as the worst crimes punishable with death. Crime is human activity for survival and the well-being of those who are exploited. Punishment is also human activity to control the less powerful, the oppressed. Those who punish criminals, for instance, the colonizers, do so for their own maintenance needs. Crime is a human construct and what we perceive as the social reality of crime is always being created by the controlling powers in society. Labeling someone as criminal with the correlative punishment during the colonial era of Nigeria was oppression of a people and was geared to maintenance needs. The decisions made by the

colonial judges were partial in favor of the British citizens residing in Nigeria. In the criminal justice system during the colonial era, the policy makers were British citizens who made decisions to favor their own people. The system was hierarchically arranged into alleged inferior and superior classes. Natives of Nigeria were the inferior classes who were labeled criminals and could receive the worst punishment, the death penalty, in cases of treason or treachery. All these changes in the criminal legal code of Nigeria during the colonial era were to maintain the colonial power.

REVIEW QUESTIONS

1. What does Jones mean by the “Anatomy” of oppression?
2. List the main advocates of colonial theory as in the above chapter.
3. What do you understand by the term “Phenomenology” of oppression? Explain in detail.
4. What is culture? Do you believe in Richard Niebuhr definition of culture?
5. Explain “the maintenance needs of oppression with examples.

Summary and Conclusions

This research started with the aim of studying the changes that took place in the criminal codes of Nigeria and the severe legal punishments that followed from the perspective of Franz Fanon's colonial model. The specific objects of investigation were the changes in the rank order of severity of punishment, and the changes in the definition of crime in the three eras under investigation- the precolonial, the colonial and the postcolonial eras. The specific changes in the Nigerian legal codes and the severity of punishments that followed reflected a clear affinity with Fanon's colonial model and his two revolutionary theories. In alignment with Fanon's framework, these changes were geared to the maintenance needs of the colonialists. The concepts of colonial oppression and its maintenance needs are better understood in the context of biological organisms, such as the human animal that needs food, water, air, and shelter to survive; and in the context of social organisms such as the institutional oppression and colonialism. The concept of the maintenance needs of oppression (MNOO) relates to the specific set of beliefs and values and institutional configuration that institutional oppression requires to continue its existence, e.g., anti-powerism, inequality of power, violence, infliction of suffering, hypocrisy, etc. All these variables are contained in Frantz Fanon's colonial theory, William R. Jones's anatomy of oppression, and the phenomenology of oppression espoused by other advocates of colonial oppression discussed in chapter 5.

With reference to the changes in the rank order of crimes discussed in chapter 9, witchcraft was the crime for which the most severe punishment, the death penalty, was inflicted on offenders in the pre-colonial era of Nigeria. This ranking was in direct response to and reflection of the religio-social dimension of the indigenous society and the power of diviners, juju priests, and

witch doctors. Getting rid of witchcraft criminals by death enhanced the cohesiveness of the society, thus assuring the survival of the indigenous people.

However, the codes were soon to undergo a transmutation with the coming of colonialism, whereby there was a radical shift from the spiritual to the physical domains. In the colonial era, treason and treachery assumed first rank as the worst crimes, punishable with death (see chapter 10). Treason and treachery constitute political crimes, crimes against the government's survival and well-being. A threat to the colonial government meant that it might not continue its existence, so it was important for them to prescribe the death penalty against the offenses of treason and treachery as a way of maintaining their needs in Nigeria.

In the present postcolonial context, another change occurred whereby premeditated murder and armed robbery replaced treason as crimes punished by death. Armed robbery and premeditated murder are crimes against persons and property and are therefore injurious to the survival of the indigenous people of Nigeria. The colonial administration accounted for the particular character of these shifts in the definition and rank ordering of crimes and severity of punishment in the colonial era in order to guarantee their maintenance needs. One argument is that treason and treachery were not serious crimes either in the pre-colonial era or in the postcolonial era. Tables 12.2 and 12.3 above clearly reveal these transmutations in crime ranking: Witchcraft, a crime in the pre-colonial era, did not exist as a crime in the colonial era of Nigeria (see Table 12.2). Treason and treachery are not considered serious crimes that merit the death penalty in the postcolonial era (see Table 12.3). Premeditated murder, armed robbery, abetment of suicide, and trial by ordeal are serious crimes in postcolonial Nigeria and merit the death penalty, but these crimes did not exist as serious crimes in the colonial era (see Table 12.2). Attempted murder, manslaughter, aiding suicide, and robbery were assigned life imprisonment in the colonial era, but not the death penalty (see Table 12.3).

In addition to these changes in the law and correlative shifts in the definition of criminal actions in the colonial era, other punishments, e.g., deportation, penal servitude for life, and forfeiture of property were inflicted on the chiefs and kings of Nigeria who obstructed the penetration of the British into the hinterland of the oil rivers during the colonial era. For instance, Chief Nana Olomu, a great Itsekiri chief and middleman trader in the Niger delta, resisted British penetration into the River Niger Coast protectorate. He was found guilty on all counts and sentenced to lifelong exile beside forfeiting all his goods and chattels, and all his real and personal property to the colonial government (Adewoye, 1977:82). Such severe punishments were geared to the maintenance needs of oppression. Deportation as a punishment was not

written down in the colonial criminal code (see Table 10.2). This reveals the hypocrisy inherent in the administration of the colonial government and the maintenance needs argument.

In chapter 5, addressed the strength of the methodology used to study the severity of punishment changes in Nigerian law, with particular attention being paid to an application of Fanon's Colonial Model as reflected in an in-depth interview, a descriptive analysis of the phenomenology of oppression/colonialism, and Jones's anatomy of oppression. One concern of this study was the testing of Fanon's theory, which asserts that colonialism is a subset of oppression. Consequently, the severity of punishment changes in Nigerian law during the colonial era were born out of the maintenance needs of oppression. This conclusion was drawn from the analysis of a case-study approach, which allowed for an in-depth examination of relevant phenomena and a generalization of the findings. Fanon's model fitted very appropriately with generic societal structures, not just the criminal justice system as it affected the Nigerian laws. Severity of punishment changes in Nigerian law were analyzed as a subset of a larger societal unit—that is, as variables of societal factors that transcended the legal system. The transcultural validity and explanatory preeminence of Fanon's theory are affirmed; its generalizability is also affirmed. The case studied is representative of a colonized population; it is an excellent example of colonial oppression policies. A good number of government documents, professional journals, debates, video tapes, and classroom lectures and textbooks on colonial oppression provided ample material for examination of the arguments that colonialism is a subset of oppression and that it is geared to the maintenance needs of the oppressors.

In-depth interviews were conducted to augment the materials used in this study and Fanon's colonial model was appropriate for this study. There was also a comparative analysis and an examination of the phenomenology of oppression, the phenomenology of colonialism, and the application of the colonial model, i.e., the actual colonial oppression in Nigeria, to determine whether there were similarities among them in terms of oppressiveness and the maintenance needs argument.

Content analysis was the best methodological approach to this topic. Chapter 3, in fact, justifies this approach because of inferences about the context in which the data is found (Krippendorff, 1980). In-depth interviews, descriptions of the court and police systems, changes in the criminal legal code, rank ordering of the severity of punishment, an analysis of the phenomenology of oppression, the phenomenology of colonialism, and the application of the colonial model to a concrete case in Nigeria were inferred from Fanon's colonial model described in chapter 5.

The intent of the study was descriptive, i.e., to look for trends and general patterns, as well as to test out operational definitions of criteria for the maintenance needs of oppression. Multiple examples of the components of oppression and neoracism were described to illustrate the analysis, and to give a detailed description of Fanon's theory in general and his concepts in particular and the manner in which they were used. Although other theorists might question the validity and reliability of Fanon's theory of colonial oppression and its maintenance needs, Fanon's theory is content valid. For instance, his concept of alienation includes the powerlessness, normlessness, social isolation, and self-estrangement that characterize the colonized individual. His measurement of colonial oppression includes institutional structures, belief and value systems, the division of the human family into two distinct groups—hierarchically arranged into allegedly superior and inferior classes—imbalance of power, ESP inequalities, infliction of suffering, violence, anti-powerism, and hypocrisy, all of which characterize the colonial system.

Fanon's theory is reliable in that it was formulated using internal materials to explain geopolitical realities. If Fanon's theory and his hypothesis were tested in colonized countries other than Algeria, where his theory was spawned, it would yield the same results. For instance, the results of the interviews conducted in Nigeria revealed that the respondents did not depart from information gathered from ethnographic and historical studies of colonial polices in Algeria. The use of the Nigerian legal codes for the colonial and postcolonial eras dictated the changes that actually occurred and the severity of punishment that followed. Colonial oppression and its maintenance needs were also reflected in what Fanon observed and documented in the Algerian colonial system. Interviewees confirmed the validity of the rank ordering of punishment severity in Nigeria for the three eras under study. Lawyers and judges who were interviewed were a special professional group that utilized "case law" information transmitted to the chiefs, elders, and councilors. A content analysis of the criminal code of Nigeria for the colonial and postcolonial periods identified the differences which constituted the changes in question.

In general, the methodology used here to describe Fanon's colonial model worked well. It allowed an examination of Fanon's arguments in their proper context, including Fanon's actual observation of colonial oppression by Fanon in Algeria, i.e., the actual colonialist involvement in the oppression of a people, the problem addressed, the solution offered by Fanon—revolutionary violence and its outcome—i.e., the actual gaining of independence. The application of the method used was very time-consuming. That is, it took a long time to collect the data, to conduct in-depth interviews, and to analyze the data to achieve the conclusion reported. Despite the time constraints, this

method worked well for examining severity of punishment changes in Nigerian law, using Fanon's framework to determine colonial oppression and its maintenance needs.

Future research using this methodology should include multiple investigators other than victims of colonial oppression to assess the validity of Fanon's colonial theory. Criminal legal codes of the colonial era in countries other than Nigeria should be examined to show whether the changes in the laws were followed by changes in the severity of punishment and also the type of crimes that resulted in such severe punishment. That is, an examination needs to be made of severity of punishment changes in the law in larger populations of the colonized world to verify whether this application of Fanon's theory is generalizable. Other related studies are needed to determine the oppressiveness of the colonial model and its maintenance needs as dictated by this research.

Detailed descriptive analysis of court and police systems, changes in the rank order of punishment severity revealed and edified the concept of colonial oppression and its maintenance needs that accounted for changes in the rank order of seriousness of crime. The application of the colonial model, i.e., the actual colonial oppression and neoracism, supported by Fanon's colonial model and described in Chapter 5, fitted very well into the framework of colonial oppression and its maintenance needs. However, not much work has been done by researchers to account for these concepts. Various theories have been advanced to account for changes in legal systems in general and criminal codes in particular. To explain particular features of a criminal justice system, e.g., changes in criminal punishment in the criminal code during the colonial era, Fanon's colonial theory is assigned higher interpretative value because of its transcultural validity and explanatory preeminence. Some philosophical researchers might debate the appropriateness of applying a particular theory of colonialism in a specific case; few will agree that one theory of colonialism is applicable to all policies of colonial administration. Staples (1975) applied the colonial model to internal colonialism in the United States. Among other advocates of the colonial model, Memmi (1965), and Sartre (1968) used Fanon's framework to transcend all situations, but their theories would be very difficult to implement and would probably be situation-specific.

This research indeed helped to clarify the explanatory scope and potential of colonial models in general and Fanon's model of colonial oppression and its maintenance needs in particular. This research provided the possibility for comparative studies with other generic models, such as the theoretical models of Durkheim, Weber, and Marx, as well as cross-cultural studies on the dimensions of human culture. This research also provided answers to the question: Does colonization represent a unique and discrete subset of oppression that is different from racism, sexism, and anti-Semitism?

More importantly, this investigation will help to fill a glaring gap in the literature on changes in the law and the severity of punishment that followed, especially in the pre-colonial Nigerian culture. Students of the Nigerian legal system and policy makers and other postcolonial African nations will utilize this research. The policy makers of these countries will understand which parts of the colonial system, e.g., the legal system inherited from the colonial masters, should be dismantled, revised, or remain intact. Likewise, this research will help in making decisions about which parts of the pre-colonial legal system, e.g., trial by ordeal might be dropped or resurrected for contemporary use. In addition, this research will be added into the criminological journals along with that of Durkheim, Weber, and Marx. And it will also help in reforming criminological curricula, in particular core areas of the so-called third-world countries.

As already stated, Fanon's colonial theory posits that colonialism is a subset of oppression and that it is geared to the maintenance needs of oppression. Fanon explored local traditions and their relationships to colonization, and internal data of the colonial system to explain internal changes in the colonial administration. Also, Fanon's practical experience with the victims of colonial oppression in Algeria, North Africa, gave him the opportunity to examine the main changes in colonial administration and to conclude that the changes in the Algerian legal code expressed maintenance needs, specifically labeling human actions for the survival and well-being of the colonial government.

Most of Fanon's professional publications were derived from his clinical notes, e. g. , his article on the phenomena of colonialist alienation. Fanon contended that the colonial system is built on a particular belief and value system, i.e., the hierarchical arrangement of people into allegedly superior and inferior classes—in-group, out-group, natives and nonnatives—and that the hierarchical arrangement is correlated with a gross imbalance of power and unequal access to life-extending and life-enhancing resources and privileges. The allegedly superior group—the colonialists—Fanon noted, will always possess the unobscured surplus and the allegedly inferior group will always suffer a grossly disproportionate deficit. In the colonies, Fanon noted, the hierarchical division and the ESP inequalities expressed are constructed and institutionalized with the primary aim of maintaining an unequal distribution of power resources and privileges. Consequently, colonial oppression is initiated through the violence of the oppressor and that the second phase of the violence is the revolutionary violence by the oppressed to achieve independence. Unfortunately, colonial oppression also inflicts suffering on the oppressed through the loss of indigenous languages and style of dressing. Poverty inevitably results from exploitation. These sufferings, Jones argued (1993:3),

are maldistributed, negative, enormous, and non-catastrophic. Colonial administration hoodwinks the colonized into believing in anti-powerism, (i.e., to believe that power is essentially negative or evil) in order to prevent a threat to the balance of power within the colony and to prevent threats to the colonial government. This was the reason that the colonial government labeled treason and treachery as the most serious crimes in the colonized era of Nigeria. The colonialists use exploitative techniques to initiate and propagate the phenomenology of oppression and the phenomenology of colonialism. Jones's anatomy of oppression and the actual colonial oppression in Nigeria during the colonial era support Fanon's argument of colonial oppression and its maintenance needs.

Finally, Fanon's colonial theory supports the hypothesis here that changes in Nigerian law and the severity of punishment that followed during the colonial era constituted oppression of the people of Nigeria. Secondly, these oppressive measures were geared to the maintenance needs of the colonialists—the British—in Nigeria. Contrary to the arguments raised by the colonialist, the changes did not function for the welfare or for the development of the so-called third world or colonized countries at all.

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Internet Resources for Student Homework

A Brief History of the Fraternal Order of Police: <http://www.grandlodgefop.org/history>
FBI History: <http://www.fbi.gov/fbhistory.htm>
History of British Metropolitan Police: <http://www.met.police.uk/history>
History of Law Enforcement Intelligence (pdf): <http://www.cops.usdoj.gov/mime/open.pdf?Item=1394>
History of U.S. Military Police: <http://www.wood.army.mil/usamps/history>
Important Dates in Police History: <http://www.nleomf.com/TheMemorial/Facts/impdates.htm>
Internet Resource Links for JUS 205: <http://faculty.ncwc.edu/toconnor/205/205links.htm>
New Insights into J. Edgar Hoover's Role: <http://www.cia.gov/csi/studies/vol48no1/article05.html>
Other Important Dates in Police History: <http://www.okla-chiefs.org/PoliceHistory.dwt>
Role of Community Policing in Post 9/11 Era (pdf): <http://www.shsu.edu/cjcenter/trcpi/articles/oc.pdf>
The Evolution of American Policing: <http://www.aphf.org/hist.html>

Appendix A

Commonwealth Countries: Prison Reforms/Addresses

1. BANGLADESH

Ministry Responsible: Home Ministry

Head of Prison Administration: Liaqat Ali Siddiqui, Inspector General of Prisons

Contact Address: Nazimuddin Road Dhaka 1100 Bangladesh

2. BRUNEI

Ministry Responsible: Ministry of Home Affairs

Prison Administration: Brunei Prisons Department Head of Prison

Administration: Pehin Dato Hs.A.Latiff, Director of Prisons

Contact Address: Prisons Headquarters, Jerudong, Bandar Seri Begawan, BG3122, Brunei Darussalam

Tel: +673 2 662778

Fax: +673 2 660380

Email: info@prisons.gov.bn

3. MALAYSIA

Ministry Responsible : Ministry of Home Affairs

Prison Administration : Prison Department

Head of Prison Administration : Dato' Mustafa bin Osman, Director General of Prisons

Contact Address : Prison Headquarters, Bukit Wira, 43000 Kajang, Selangor Darul Ehsan, Malaysia
Tel: +60 3 8732 8000
Fax: +60 3 8734 8084 or 8736 8545
Email: mustafa@prison.gov.my
Website: www.prison.gov.my

4. MALDIVES

Ministry Responsible: Ministry of Justice Head of Prison Administration:
Ali Hussain Didi, Director General

5. SINGAPORE

Ministry Responsible: Ministry of Home Affairs
Prison Administration: Singapore Prisons Department
Head of Prison Administration: Chua Chin Kiat, Director of Prisons
Contact Address: 407 Upper Changi Road North 20km, Singapore 507658
Tel : +65 6546 9248
Fax : +65 6542 0425
Website : www.mha.gov.sg/sps

6. SRI LANKA

Ministry Responsible: Ministry of Justice
Prison Administration: Department of Prisons
Head of Prison Administration: Rummy Marzook, Commissioner General
Contact Address: 150 Baseline Road, Colombo, Sri Lanka
Tel: +94 1 691976
Fax: +94 1 695206

7. BOTSWANA

Ministry Responsible: Ministry of Labor and Home Affairs
Prison Administration: Department of Prisons and Rehabilitation/Botswana Prisons Service
Head of Prison Administration: Herman Kau, Commissioner of Prisons

Contact Address: Prison Service Headquarters, Private Bag X 02, Gaborone,
Botswana
Tel: +267 357 881 or +267 361 1700
Fax: +267 375 398

8. CAMEROON

Ministry Responsible: Ministere de l'Administration Territoriale
Prison Administration: Administration Penitentiaire
Head of Prison Administration: Jean-Marie Pongmoni, Directeur
Contact Address: Yaounde, Cameroon
Tel: +237 222 05 51
Fax: +237 222 05 51

9. GAMBIA

Ministry Responsible: Ministry of the Interior
Prison Administration: Gambia Prisons Service
Head of Prison Administration: David C. Colley, Commissioner of Prisons
Contact Address: Central Prison, Mile Two, Banjul, Gambia
Tel: +220 22 72 09
Fax: +220 20 10 69

10. GHANA

Ministry Responsible: Ministry of the Interior
Prison Administration: Ghana Prisons Service
Head of Prison Administration: William Kwadwo Asiedu, Acting Director-
General of Prisons
Contact Address: Prisons Headquarters, PO Box 129, Accra, Ghana
Tel: +233 21 668841
Fax: +233 21 660020
Email: prisons@ghana.com

11. KENYA

Ministry Responsible: Ministry of Home Affairs, Heritage and Sports
Prison Administration: Kenya Prisons Service

Head of Prison Administration: Abraham M. Kamakil, Commissioner of Prisons

Contact Address: P.O Box 30175, Nairobi, Kenya

Tel: +254 2 722 668

Fax: +254 2 727 329 or +254 2 714 716

12. LESOTHO

Ministry Responsible: Ministry of Justice and Human Rights

Prison Administration: Lesotho Prison Service

Head of Prison Administration: Canisius L. Siimane, Director of Prisons

Contact Address: PO Box 41, Maseru, Lesotho

Tel: +266 325 008

Fax: +266 325008

13. MALAWI

Ministry Responsible: Ministry of Home Affairs and Internal Security

Prison Administration: Malawi Prison Service

Head of Prison Administration: Winston Manyera, Chief Commissioner of Prisons

Contact Address: National Prison Headquarters, PO Box 28, Zomba, Malawi

Tel: +265 (1) 770 141 or 524 722 or 525 755

Fax: +265 (1) 523 122 or 523 123 or 525 123

Email: prisons@sdpn.org.mw

14. MAURITIUS

Ministry Responsible : Ministry of Social Security, National Solidarity and Reform Institutions

Prison Administration : Mauritius Prisons Service

Head of Prison Administration : Ramkrishna Brojmohun, Commissioner of Prisons

Contact Address : Beau Bassin, Mauritius

Tel : +230 454 3361

Fax : +230 454 9778

Email : pris@mail.gov.mu, pr338@bow.intnet.mu or ram290@intnet.mu

Website: <http://ncb.intnet.mu/agojus/prison/index.htm>

15. MOZAMBIQUE

Ministry Responsible : Ministry of Home Affairs (maximum security prisons), and Ministry of Justice
Prison Administration : Prison Department (MoHA), National Directorate of Prisons (MoJ)
Head of Prison Administration : Fernando Sumana (MoHA), Dr. Massai (MoJ)
Contact Address : P.O. Box 290, Maputo, Mozambique
Tel : +258 1 49 22 05 or 49 23 28
Fax : +258 1 42 83 25

16. NAMIBIA

Ministry Responsible : Ministry of Prisons and Correctional Services
Prison Administration : Namibia Prisons Service
Head of Prison Administration : Evaristus Shikongo, Commissioner of Prisons
Contact Address : Private Bag 13281, Windhoek, Namibia
Tel : +264 61 284 6219
Fax : +264 61 233 789

17. NIGERIA

Ministry Responsible : Ministry of Internal Affairs
Prison Administration : Nigerian Prisons Service
Head of Prison Administration : Okwara U. Kalu, Acting Controller of Prisons
Contact Address : National Headquarters, PMB 16, Federal Secretariat Area 1 Garki, Abuja, Nigeria
Tel : +234 9 234 1709
Fax : +234 9 234 4634

18. SEYCHELLES

Ministry Responsible : Ministry of Social Affairs and Manpower Development
Prison Administration : Prison Division

Head of Prison Administration : Raymond Bonte, Superintendent of Prisons
Contact Address : Long Island, PO Box 274, Victoria, Seychelles
Fax: +248 32 16 87

19. SIERA LEONE

Head of Prison Administration : F.S.Conteh Director of Prisons
Contact Address : Prison Headquarters, New England, Freetown,
Sierra Leone
Tel : +232 22 240637

20. SOUTH AFRICA

Ministry Responsible : Ministry of Correctional Services
Prison Administration : Department of Correctional Services
Head of Prison Administration : Mr. Linda Morris Mti, Commissioner of
Correctional Services
Contact Address : Private Bag X136, Pretoria 0001, South Africa
Tel : +27 12 307 2249 or 307 2274 or 307 2248
Fax : +27 12 307 2000 or 325 4824 or 321 2460
Website : www-dcs.pwv.gov.za

21. SWAZILAND

Ministry Responsible : Ministry of Justice and Constitutional Development
Prison Administration : Swaziland Correctional Services
Head of Prison Administration : M.H. Simelane, Commissioner of
Correctional Services
Contact Address : Headquarters, PO Box 166, Mbabane, Swaziland
Tel: +268 404 2476 or 2477 or 2478 or 9086 or 9087
Fax: +268 404 3357

22. TANZANIA

Ministry Responsible : Ministry of Home Affairs
Prison Administration : Tanzania Prisons Service

Head of Prison Administration : Nicas P. Banzi, Principal Commissioner of Prisons

Contact Address : Prison Headquarters, P.O. Box 9190, Dar es Salaam, Tanzania

Tel : +255 22 (2)110 314 or 116 585

Fax : +255 22 (2)113 737

Email : Prisons@Raha.com

23. UGANDA

Ministry Responsible : Ministry of Internal Affairs (central government prisons), Ministry of Local Government (Local government prisons)

Prison Administration : Uganda Prisons Service

Head of Prison Administration : Joseph Etima (central government prisons)

Contact Address : Prisons Headquarters, PO Box 7182, Kampala, Uganda

Tel : +256 41 342136

Fax : +256 41 343330

Email : prisons@starcom.co.ug

24. ZAMBIA

Ministry Responsible : Ministry of Home Affairs

Prison Administration : Zambia Prisons

Head of Prison Administration : Jethro Kmumbuya, Commissioner of Prisons

Contact Address : PO Box 80926, Kabwe, Zambia

Tel : +260 5 223916 or 224113

Fax : +260 5 223916

Email : prisons@zamnet.zm

25. CYPRUS

Ministry Responsible : Ministry of Justice and Public Order

Prison Administration : Prisons Department

Head of Prison Administration : Panicos Kyriacou, Director

Contact Address : 2 Norman Street, 1702 Nicosia, Republic of Cyprus

Tel : +357 22 80 59 31 or 51 83 56

Fax : +357 22 51 83 56

26. GIBRALTAR

Ministry Responsible : Department of Social Services
Prison Administration : Gibraltar Prison Service
Head of Prison Administration : Alex Enriles, Superintendent of Prison
Contact Address : H.M. Prison, Tarik Road, Gibraltar
Tel : +350 77249
Fax : +350 41476

27. ISLE OF MAN

Ministry Responsible : Department of Home Affairs
Prison Administration : Isle of Man Prison Service
Head of Prison Administration : Rosie Crosby, Governor
Contact Address : H.M. Prison Douglas, 99 Victoria Road, Douglas, Isle of
Man IM2 4RD
Tel : +44 1624 621306
Fax : +44 1624 628119

28. MALTA

Ministry Responsible : Ministry for Home Affairs
Prison Administration : Department of Correctional Services
Head of Prison Administration : Neville Aquilina, Director
Contact Address : Corradino Correctional Facility, Valletta Road, Paola,
Malta CMR 02
Tel : +356 216 66437
Fax : +356 697 599

29. BERMUDA

Prison Administration : Department of Corrections
Head of Prison Administration : J.E. Prescod, Commissioner of Corrections
Contact Address : Prison Headquarters, PO Box HM264, Hamilton HM AX,
Bermuda
Tel : +1 441 295 4975
Fax : +1 441 295 7718

30. CANADA

Ministry Responsible : Ministry of the Solicitor General
Prison Administration : Correctional Service of Canada (CSC), provincial
and territorial correctional services
Head of Prison Administration : Lucie McClung, Commissioner
Contact Address : 340 Laurier Avenue West, Ottawa, Ontario, Canada K1A
0PQ (CSC), provincial and territorial correctional services
Tel : +1 613 9955364
Fax : +1 613 9470091
Website: www.csc-scc.gc.ca

31. BELIZE

Ministry Responsible : Ministry of National Security
Prison Administration : Department of Corrections
Head of Prison Administration : Superintendent of Prisons
Contact Address : Hattieville Boom Rd, Belize District, PO Box 88, Belize
Tel : +501 2 44675
Fax : +501 2 56188

32. AUSTRALIA

Ministry Responsible : Ministry of Justice and Customs
Contact: Ms Jackie Campbell, A/Policy Officer
Prison Service Tasmania
Email : Jackie.Campbell@justice.tas.gov.au
Tel : (03) 6216 8062
Fax : (03) 6216 8022

33. COOK ISLANDS (NEW ZEALAND)

Ministry Responsible : Ministry of Justice
Prison Administration : Cook Islands Prison Service
Head of Prison Administration : T.Henry Wichman, Superintendent
Contact Address : P.O.Box 2174, Aroranga, Rarotonga, Cook Islands
Tel : +682 29457
Fax : +682 28610

34. FIJI

Ministry Responsible : Ministry of Justice
Prison Administration : Fiji Prisons Service
Head of Prison Administration : Aisea Taoka, Commissioner
Contact Address : P.O.Box 114, Suva, Fiji
Tel : +679 303920
Fax : +679 302523

35. KIRIBATI

Ministry Responsible : Office of the President
Prison Administration : Kiribati Prison Service
Head of Prison Administration : Tuara Ioane Commissioner of Prisons
Contact Address : P.O.Box 497, Betio, Tarawa, Republic of Kiribati
Tel : +686 26186
Fax : +686 26370

36. NAURU

Head of Prison Administration : Junior Bernard Dowiyogo, Director of Police

37. PAPUA NEW GUINEA

Ministry Responsible : Papua New Guinea Correctional Services
Prison Administration : Papua New Guinea Correctional Services
Head of Prison Administration : Richard Sikani, Commissioner
Contact Address : P.O.Box 6889, Boroko, Papua New Guinea
Tel : +675 323 5500 or 323 0478
Fax : +675 323 1249 or 323 0407

38. SOLOMON ISLANDS

Prison Administration : Solomon Islands Prison Service
Head of Prison Administration : Controller of Prisons
Contact Address : P.O.Box G36, Honiara, Guadalcanal, Solomon Islands
Tel : +677 21920
Fax : +677 20858

39. TONGA

Ministry Responsible : Ministry of Police, Prisons and Fire Services

Prison Administration : Tonga Prisons

Head of Prison Administration : Moleni F. Taufa, Superintendent

Contact Address : P.O. Box 828, Nuku' Alofa, Tonga

Tel : +676 32269

Fax : +676 32145

40. TUVALU

Prison Administration : Police and Prisons Department

Contact Address : Police Headquarters, National Co-ordination Centre, Box
33, Funafuti, Tuvalu

Tel : +688 20728

Fax : +688 20728

41. VANUATU

Prison Administration : Vanuatu Prison Services

Head of Prison Administration : Superintendent of Prisons

Contact Address : Police Department, PMB 014 Joint Command
Headquarters, Vansec House, Port Vila, Republic of Vanuatu

Fax : +678 22075

42. ANTIGUA AND BARBUDA

Ministry Responsible : Ministry of Justice and Legal Affairs

Head of Prison Administration : Superintendent of Prisons

Contact Address : Her Majesty's Prison, Coronation Road, PO Box 1018, St
John's, Antigua

Tel : +1 268 462 0503

43. BAHAMAS

Ministry Responsible : Ministry of National Security

Prison Administration : The Bahamas Prison Service

Head of Prison Administration : Edwin C. Culmer, Acting Superintendent of Prisons

Contact Address : Her Majesty's Prison, Fox Hill, PO Box N-504, Nassau, Bahamas

Tel : +1 242 364 4573

Fax : +1 242 324 4941

44. BARBADOS

Ministry Responsible : Ministry of Home Affairs

Head of Prison Administration : John A. Nurse, Superintendent

Contact Address : Her Majesty's Prison, Glendairy, Station Hill, St Michael, Barbados

Tel : +1 246 429 3178

Fax : +1 246 435 2450

45. CAYMAN ISLANDS

Ministry Responsible : Portfolio of Internal and External Affairs

Prison Administration : Cayman Islands Prison Service

Head of Prison Administration : John Forster, Director of Prisons

Contact Address : Office of the Prison Director, PO Box 1807, George Town, Grand Cayman, Cayman Islands, British West Indies

Tel : +1 345 947 3000

Fax : +1 345 947 3014

46. DOMINICA

Ministry Responsible : Prime Minister's Office

Prison Administration : Dominica Prison Service

Head of Prison Administration : Algernon A. Charter, Superintendent of Prisons

Contact Address : Her Majesty's Prison, Stockfarm, Roseau, Dominica

Tel : +1 767 448 6738

Fax : +1 767 448 6738

47. GRENADA

Ministry Responsible : Prime Minister's Office

Head of Prison Administration : Lincoln Telesford, Superintendent of Prisons

Contact Address : Her Majesty's Prison, Richmond Hill, St George's,
Grenada
Tel : +1 473 440 7038
Fax : +1 473 440 7425

48. JAMAICA

Ministry Responsible : Ministry of National Security and Justice
Prison Administration : Department of Correctional Services
Head of Prison Administration : Richard Reese, Commissioner of
Correctional Services
Contact Address : PO Box 486, 5-7 King Street, Kingston, Jamaica
Tel : +1 876 922 0021/2 or +1 876 967 2781/3
Fax : +1 876 967 2268
Email : corrections@cwjamaica.com

49. ST. LUCIA

Head of Prison Administration : Superintendent of Prisons

50. ST. VINCENT AND THE GRENADINES

Ministry Responsible : Ministry of National Security, the Public Service,
Seaport and Airport Development
Prison Administration : Prison Service of St Vincent and the Grenadines
Head of Prison Administration : Eric Rodrigues, Superintendant of Prisons
Contact Address : P.O. Box 907, St. Vincent and the Grenadines
Tel : +1 784 456 1836

51. TRINIDAD AND TOBAGO

Ministry Responsible : Ministry of National Security and Justice
Prison Administration : Trinidad and Tobago Prison Service
Head of Prison Administration : Leo Abraham, Commissioner of Prisons
Contact Address : Administrative Offices, 8 New Street, Port of Spain, Trinidad
Tel : +1 868 623 3651
Fax : +1 868 623 1832

52. SAMOA (FORMERLY WESTERN SAMOA)

Ministry Responsible: Ministry of Police, Prison and Fire Service
Prison Administration: Police and Prisons Department
Head of Prison Administration: Commissioner
Contact Address: P.O.Box 53, Apia, Samoa
Tel : +685 22222
Fax : +685 20 848

**53. UNITED KINGDOM: ENGLAND, WALES, SCOTLAND
AND NORTHERN IRELAND****England and Wales**

Ministry Responsible: Home Office
Prison Administration: HM Prison Service
Head of Prison Administration: Phil Wheatley, Director General
Contact Address: Cleland House, Page Street, London SW1P 4LN, England
Tel : +44 207 217 6000
Fax : +44 207 217 6961
Website : www.hmprisonservice.gov.uk

Scotland

Ministry Responsible: Scottish Executive
Prison Administration: Scottish Prison Service
Head of Prison Administration: Tony Cameron, Chief Executive
Contact Address: Calton House, 5 Redheughs Rigg, GB-Edinburgh EH12
9HW
Tel : +44 131 244 8522
Fax : +44 131 244 8738
Website : www.sps.gov.uk

Northern Ireland

Ministry Responsible: Northern Ireland Office
Prison Administration: Northern Ireland Prison Service
Head of Prison Administration: Peter Russell, Director General

Contact Address: Dundonald House, Upper Newtonards Road, GB-Belfast
BT4 3SU

Tel : +44 028 9052 5219 or 0700

Fax : +44 028 9052 5375

Website: www.niprisonservice.gov.uk

Appendix B

Federal Government Agencies

Below is a list of website addresses of some important government agencies: Bureau of Public Enterprises (BPE)—An organization responsible for the privatization and commercialization of enterprises. A list of privatized companies can be accessed on their site (<http://www.bpeng.org>).

Corporate Affairs Commission (CAC)—The Commission was established by the Companies and Allied Matters Act, Cap. 59 LFN 1990, to regulate the formation, management and winding up of companies in Nigeria. Information on the regulations and requirements and official contacts are available here: <http://www.cac.gov.ng>

Independent National Election Commission (INEC)—The Commission was established according to the provisions of the Nigerian Constitution to conduct, organize and monitor elections (among other duties) in the country (<http://www.inecnigeria.org>)

National Planning Commission—It is one of the agencies of government responsible for economic planning. The Commission is regulated by the National Planning Commission Act No. 71 of 1993 (<http://www.nigerianeconomy.com>).

Central Bank of Nigeria—The Central Bank of Nigeria is the apex bank in Nigeria. It was first established by the Central Bank Act of 1958 which was amended many times before it was repealed and replaced by the Central Bank of Nigeria Act No. 24 of 1991. The 1991 Act has subsequently been amended by the Amendment Acts No. 79 of 1993 and No. 3 of 1997. The bank has overall control of the monetary and financial sector policies of the Federal Government. There is a list of the official contacts of the bank available on this site: <http://www.cenbank.org>

Economic and Financial Crimes Commission—This Commission was originally set up by the Economic and Financial Crimes Commission (Establishment) Act of 2003. This Act has been replaced by a new Act enacted in 2004. The Commission is one of the institutions set up by the present administration to reform the economic sector in Nigeria. It serves as the Financial Intelligence Unit to combat money laundering and other economic and financial crimes. A list of official contacts is also available on this site: <http://www.efccnigeria.org>.

Appendix C

Primary Sources of Nigerian Legal System

Dina et al. (2005) comments that there are many law reports that have been published over the years. There is no government organ solely responsible for law reporting. However, individual law reports published on a commercial basis are thriving, even though the life-span of some of these publications is epileptic because of the high cost of production. The following is a list of law reports that have been published over the years:

1. *Nigeria Law Report*
2. *All Nigeria Law Reports*
3. *Nigerian Monthly Law Reports*
4. *Law Reports of Nigeria*
5. *Federation of Nigeria Law Reports* (Published by Evans Brothers (Nigerian Publishers) Limited)
6. *Selected Judgments of the West African Court of Appeal (WACA)*
7. *Western Region of Nigeria Law Reports*
8. *Eastern Region of Nigeria Law Reports*
9. *Northern Region of Nigeria Law Reports*
10. *Sharia Law reports of Nigeria*
11. *Customary law in Nigeria through the cases*
12. *Quarterly Law Reports of Nigeria* (Published by University Press Ltd., Ibadan)
13. *Nigerian Weekly Law Reports* (Published by Nigerian Law Publications Ltd, Lewis Street, Lagos)
14. *Nigerian Constitutional Law Reports* (Published by Nigerian Law Publications Ltd, Lagos)

15. *Supreme Court of Nigeria Judgments* (Published by Liberty Publishers, Kaduna)
16. *Nigerian Supreme Court Cases* (Published by Deji Sasegbon & Co., 203 Ikorodu Road, Lagos)
17. *Supreme Court Reports* (Published by Law Breed & Co Ltd)
18. *Nigerian Commercial Law Cases*
19. *Nigerian Revenue Law Reports*
20. *Failed Banks Tribunal of Nigeria Law Reports* (Published by the Nigeria
21. Deposit Insurance Corporation, Plot 447/448 Central District, Airport Road, Garki- Abuja)
22. *Weekly Reports of Nigeria* (Published by Legal Text Publishing Co. Ltd, Ikeja, Lagos)
23. *Supreme Court Monthly* (Published by St. Paul's Publishing House 221, Obafemi Awolowo Way, Oke Ado, Ibadan)
24. *Monthly Judgments of the Supreme Court of Nigeria* (Published by Florence & Lambert (Nig) Limited, 202/204 Ikorodu Road, Palmgrove, Lagos)
25. *Federation Weekly Law Reports* (Published by New Century Law Publishers Limited, 2 Obanle Aro Avenue, Ilupeju, Lagos)
26. *All Federation Weekly Law Reports Nigerian Supreme Court Quarterly Law Reports* (Published by Funmi Quadri & Co., 91, Iwo Road, P. O. Box 1171, Gate, Ibadan)
27. *Federal Reporter* (Published by Funmi Quadri & Co., 91, Iwo Road, P.O.Box 1171, Gate, Ibadan)
28. *Election Petition Reports* (Published by Funmi Quadri & Co., 91, Iwo Road, P.O.Box 1171, Gate, Ibadan)

Some Nigerian daily newspapers have a comprehensive section for law reporting and other legal matters (especially unreported judgments) as listed below:

1. *The Guardian* (Tuesdays)
2. *This Day* (Tuesdays)
3. *The Vanguard* (Fridays)

Appendix D

Secondary Sources

Members of Nigerian academia, the bench, and the bar have written a lot of legal textbooks. This list is exhaustive but we will attempt to mention a few of them.

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Appendix E

Journals and Legal Publishers

Nigerian Law Journal (Journal of the Nigerian Association of Law Teachers)

Nigerian Law and Practice Journal (Journal of the Nigerian Law School)

Nigerian Current Law Review (Journal of the Nigerian Institute for Advanced Legal Studies)

Ahmadu Bello University Law Journal

Obafemi Awolowo University Law Journal

The Nigerian Journal of Contemporary Law (Journal of the Faculty of Law, University of Lagos)

Ibadan University Law Review

The Calabar Law Journal (Journal of the Faculty of Law, University of Calabar, Nigeria)

The Commercial and Industrial Law Review

Nigerian Bar Journal (Journal of the Nigerian Bar Association)

Ibadan Bar Journal (Journal of the Nigerian Bar Association, Ibadan Branch)

Nigerian Journal of Education Law

The Journal of Private and Property Law (Journal of the Department of Private & Property Law, University of Lagos)

The Journal of Business and Private Law (Journal of the Department of Business and Private Law, University of Ibadan)

LEGAL PUBLISHERS

The following are prominent legal publishers in Nigeria:

1. MIJ Professional Publishers
2. Nigerian Institute of Advance Legal Studies

3. Nigerian Law Publications
4. Spectrum Books Ltd

Nigerian Police Force—The body responsible for national security. Its history dates back to the colonial era. A list of contacts can be found on: <http://www.nigeriapolice.org>

Appendix F

A Diary of Coups

<i>Date</i>	<i>Leader—Outcome</i>	<i>Beneficiaries</i>	<i>Victims (Killed)</i>
Jan. 15, 1966	Nzeogwu—successful	Gen. Aguiyi Ironsi	Abubakar Balewa, Ahmadu Bello, Samuel Akintola, Gen. Ademule Mamalari, Okoti
Edoh July 29, 1966	Lt. Col. Murtala Muhammed— Successful	Lt. Col. Yakubu Gowon	Aguiyi-ironsi, Col Ade Kunle Fayuyi
July 29, 1975	Col. Joe Garba—Successful	Brigadier Murtala Mohammed	Col. Ibrahim Taiwo, Gen. Murtala Mohammed, Lt. Col. Akintehinwa, ADC,
Feb. 13, 1976	Lt. Col. B.S. Dimka—Unsuccessful	Gen. Olusegun Obasanjo succeeded assassinated Head of State (no regime change)	1. Major General I.D. Bisalla (Defence Commissioner), Joseph Gomwalk (Ex- Governor of Benue-Plateau), 3. Col. A.D.S. Way, Col. Isa Bukar, 5. Lt. Col. T.K. Adamu, Lt. Col A.B. Umoru, Lt. Col B.S. Dimka, 8. Lt. Col Ayuba Tense, Major C.D. Dabang, Major Ola Ogunmekan, Major J.W. Kasai, Major J.K. Afolabi, Major M.M. Mshelia, Major I.B. Rabo, Major K.K. Gagara, Capt. M.R. Gotip, Capt. M. Parvwang, Capt. J.F. Idi, Capt. A.A. Aliyu, Capt. S.Waklan, Capt. Austin Dawurang, Lt. A.R. Aliyu, Lt. William Seril, Lt. Mohammed, Lt. E.L.K. Shelleng, Lt. O.Zagmei, Lt. S. Wayah, Lt. S. Kwai, Lt. Peter Cigari, Lt. Lawerence Garba, Seven non-commissioned officers, Mr. Abdulakarim Zakari (civilian broadcaster

<p>Dec. 31, 1983 Aug. 27, 1985 Dec. 20, 1985</p>	<p>Brigadier Sani Abacha—Successful Brigadier Sani Abacha—Successful Gen. Mamman Vatsa—Unsuccessful</p>	<p>General Mohammedu Buhari Maj.-Gen. Ibrahim Babangida No regime change</p>	<p>Brigadier Bako _____ Musa Bityong, Lt. Col. Christian A. Oche, Lt. Col. Michael A. Itorshe, Lt. Col. M. Effiong, Major D.I. Bamidele, Major D.e. West, Major J.O. Onyeke, Major Jobias G. Akwoshikiki, Capt. Sese, Lt. K.G. Dakpa, Comm. A.A. Ogwiji, Wing Comm. B.E.N Ekele, Wing Commander Adamu C. Sakaba, Squadron Ldr. Martin Olufolorunsho Luther, Squadron Ldr. C. Ode and Squd. Leader A. Ahura.</p>
<p>April 20, 1990</p>	<p>Major Gideon Orkar—Unsuccessful</p>	<p>No regime change</p>	<p>Gideon Orkar, Awokoya Akogun, Col. U.K. Bello, Maj. Nnuibibowei Empere, Cyril Ozoalor, Arthur Umokoro, Julius tua, Martins Ademokhai, Pius Illegar, Nicholas Odey, Parebo Kakolo, Monday Bayela, Jephthar Mesai, Sunday Effiong, Francis Ogo, Samuel Mbasue, Albert Ojengroge, Geoffrey Deosiriya, Emmanuel Aiyemola, Stephen Iyeki, Joseph Efe, Afoalbi Moses, Idowu Azeez, Vitalius udzer, Jonathan Ekimi, Solomon Okungbowa, Richard Isaghoji, E.J. Esuku, Barnabas Jarikpe, Egwolo Makpamenkun, Adegamen Friday, Monday Esebawen, Nhadi Mugaha, Etim Umoh, Wasiu Lawal, Ekaminar Makililo, Peter Umuyoma, Goodluch Emefe, Samson Idejere, Jolly Agbodowei, Samuel Obasuyi.</p>

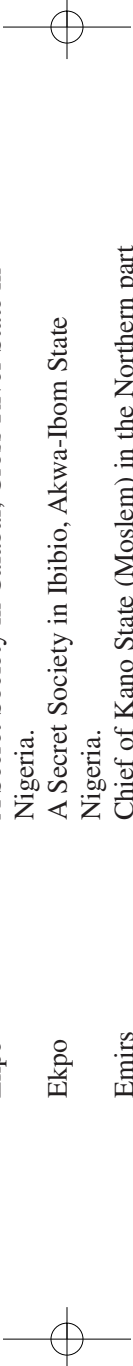
(continued)

<i>Date</i>	<i>Leader—Outcome</i>	<i>Beneficiaries</i>	<i>Victims (Killed)</i>
<i>Alleged Coup Plot Date</i>	<i>Leader—Outcome</i>	<i>Beneficiaries</i>	<i>Victims</i>
1987	Squad. Ldr Martin Luther— Court Marshall	No regime change	General Mamman Vatsa, Squadron Leader Martin Luther
March, 1995	Gen. Shehu Yar'Adua— Court Marshall	No regime change	General Yar'Adua, General Olusegun Obasanjo, Col. Bello Fadile, Col. Lawan Gwadabe, Col. Happy Katus Bulus, Col. L.M. Fabiyi, Charis Anyawu, Beko Ransomekuti etc.
Dec. 20–21, 1997	General Oladipo Diya— Court Marshall	No regime change	Generals Diya, Abdulkareem Adisa, B.S. Magushi, Ishaya Bamayi Lt. Cols. M. Garba, Ribah, Tajudeen Olanrewaju, Col. Fadipe and others

Source: "The Westerner" A weekly newspaper. Volume I: No. 34 January 15 pp. 21:27

Appendix G

Glossary of Ibo (None-English) Words



Ala	Land.
Chuku Ibina Ukpabi	A high shrine at Aro Chukwu, but destroyed in the colonial era by the Europeans.
Ekpe	A Secret Society in Calabar, Cross River State in Nigeria.
Ekpo	A Secret Society in Ibibio, Akwa-Ibom State Nigeria.
Emirs	Chief of Kano State (Moslem) in the Northern part of Nigeria.
Eze	Chief of individual towns in Iboland in Nigeria.
Igwé	A title name of a first- class chief in Awuka, Anambra State, Nigeria
Juju	Oath.
Juju Men	Witch Doctors, who can cure the bewitched, by consulting the oracles or shrines.
Mbiam	A type of oath in Akwa-Ibom and Cross River States.
Ndi eze Ikpe	Judicial Council of a chief in Iboland, Nigeria.
Ndi Dibia	A professional organization of certain spiritual leaders among the Ibo Tribe of Nigeria.
Umunna	Family members in Ibo language.
Oba	King of Benin, Nigeria during the Old African Empire of Benin.
Obong	A Chief of Ibibio or Calabar in Cross River and Akwa-Ibom States.
Ogbuinya	A title name for people who achieved a lower level title at Ebonyi and Enugu States.

Ogboni	A Secret Society in the Yoruba-Nigeria.
Oha	General meeting of everybody in a given village or clan.
Onyiba	A high title holder at Okposi and Uburu communities in Obi Ozara local government area.
Ozo	Highest title holder in Awka Anambra State-Nigeria.
Ezekereuwa	God

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