THE PROCESSES OF LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE: A CASE STUDY OF THE JUDICIARY IN THE WESTERN STATE OF NIGERIA

by

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ABSTRACT

This is a study of judicial processes and procedure in the Western State of Nigeria. The judiciary is conceptualized as a formal organization which lacks fitness into the classical organizational theory of bureaucracy because it is engulfed in intra-organizational and inter-organizational complications. Judicial processes and procedure are therefore to be understood within the framework of a multi-organizational inter-connectedness. Consequently, the study took as its theoretical focus the systemic approach which in turn embraces the structural-functional orientation with the concomittant exchange and conflict underpinnings. Its central focus is that organizational interdependence will affect organizational performance adversely or positively even if the rules of bureaucracy are observed. The study also examines the judiciary as a formal organization in which professionalism encourages fragmentation of group cohesion and this, in turn, is shown to limit the degree of bureaucratization found in the organization. The end result of these perspectives is that organizational performance is a function of the interaction of internal and external forces. Consequently, it is concluded that a combination of the natural and rational models to the study of organization would enhance our understanding of organizations and the judiciary in particular.

This study is divided into three main perspectives. The first takes an historical orientation, tracing the development of the judiciary in Nigeria from its very inception through a period of institutional experimentation to a period of institutional stability and reforms. It also traced the circumstances which led to the regionalization of the judiciary in Nigeria and how the judiciary of the Western State of Nigeria has performed during periods of political instability and experimentation. This section also focuses on the jurisdictional limitations of the various tribunals and their relations with one another. The second part focuses on the internal organizational structure of the judicial departments and isolates the interaction of professionals and non-professionals as a factor which encourages in-group and out-group relations bothering on mutual but manageable intra-organizational strains. Attention has also been directed to the inter-organizational inter-connectedness as a factor which may enhance or inhibit the performance of the judiciary. The third part spells out the procedures involved in adjudication of cases and attempts to relate the theoretical judicial process to judicial process in practice. Marked deviation from the theoretical expectations is observed in practice as a result of the interaction of internal and external forces. The adoption of a social process orientation lends credence to this claim. Finally the study raises the issue of the notion of justice; the relationship between the law and the society; and the human problems in law enforcement.

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GLOSSARY OF WORDS

Stare decisis	The principle of precedents which are authoritative and binding and must be followed.
Per se	Taken alone
Fiat justitia ruat caelum	Let justice be done, though the heaven falls.
Sine qua non	Indispensable
Pari pasu	(With equal step) equally, without preference
Per incuriam	A decision of the court which is mistaken through want of care
Pro tanto	To that extent
Ex officio	By virtue of his office
Sub judice	In course of trial
Dramatis personae	Actors
Modus operandi	Mode of action or operation
Locus in cuo	The place in which
Autrefois acquit	Formerly acquitted of the same offence
Autrefois convict	Formerly convicted of the same offence
Prima facie	Of first appearance
Allocutus	The demand of the court to a prisoner convicted on indictment as to what he has to say why the court should not proceed to pass judgment upon him

Nolle prosecui	An acknowledgement entered to stay a proceedings
Guardian ad litem	A person appointed to defend an action on behalf of an infant or a person of unsound mind
Inter se	By itself
Garnishee order nisi	Order asking a debtor to pay his debt to a third person
Modus vivendi	Way of life
Coram	Judge/Magistrate
Audi alteram partem	Hear the other side
Decree nisi	Order of dissolution of marriage to be made absolute later
Fait accompli	A situation of no return
Ignorantia juris neminem excusat	Ignorance of the law excuses nobody
Ratio decidendi	The reason (ground) of a judicial decision
Sine die	Indefinitely
De novo	Anew or all over

CHAPTER ONE

INTRODUCTION

Every society is faced with the problem of keeping order. This makes it necessary for societies to define what they consider right or wrong for their citizens. Thus it can be argued that the mechanisms for social control exist in all societies, but these vary according to a society's level of advancement, its preparedness to accommodate change, and its cultural values. One such mechanism is law.

Law affects and is affected by other institutions in the society. For example, the family, religion, politics, etc., are affected by legal institutions and they in turn are affected by them. Thus law is merely an institution which employs the force of organized society to regulate individual and group conduct. Law attempts to prevent redress by the sword and physical combat by substituting regulated punishment for deviations from prescribed normative patterns.

Law tends to be the core of society and Hoebel confirms this hypothesis as follows:

> All system of law - primitive, archaic and modern laws - must have some essential elements in common. To delineate the common elements we must have to look at society and culture at large in order to find the place of law within total structure.[1]

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1. Hoebel, Adamson. The law of primitive man (Cambridge) Harvard University Press (1967), p. 5.

According to this legal luminary, we must have some idea of how society works before we can have a full conception of what law is and how it works.

This thesis examines one of the agencies that enforce the law (rather than the law). With this in mind, it is essential to make a distinction between law-making and law-finding. This is not an attempt to draw a rigid boundary between law-making and law-finding but the distinction is necessary in order to examine the interdependence of the various organisations charged with the maintenance of law and order. I have therefore adopted Weber's notion of law-finding as that involving "execution" as a technical matter."[1] In the introduction to Weber,[2] Rheinstein claims that Weber was not interested in writing a systematic sociology of law which would have involved him in an examination of (according to Weber's own definition) "the relationship between all legal and other social phenomena." Weber was concerned with how law in the sense of politically organized enforcement of a social order, has arisen at all. He was concerned with the operation and organisation of the enforcement machinery; its effectiveness and the way by which its effectiveness are determined.

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1. Max Weber. Law in economy and society, Translated by Edward Shils and Max Reinstein (ed.), Max Rheinstein (Cambridge) Harvard University Press (1954), p. 59.

2. ibid. p. XLVII.

Apart from accepting the rigid principle of separating law-making and law-finding, Weber in his characteristic categorization of social phenomena, made a further distinction between law-finding which is "rational" and that which is "non-rational." By his non-rational law-finding, he means decisions which are not guided by means which are beyond the control of reason, such as an oracle, a prophetic revelation or an ordeal.[1] The law-finding body with which I am concerned in this study is based on rational principles.

Nevertheless, it stands to his credit that he made the distinction and regarded the judge "in Common Law, as the central figure in the Legal Universe." According to Weber, the activity of the judge decisively affects our lives and the other activities of all other members of the legal profession are oriented towards him. Thus we can rightly claim that in a common law country, the analysis of the judicial process is coterminous with an analysis of legal thought in general. Furthermore, it has not been the least of Weber's merits that he has shown that "judge-centredness" of the common law is not a general feature of all legal systems. Weber has not only shown that legal system may be dominated by figures other than judges, such as priests, consultants of predominantly temporal or sacred learning or professors, but has also demonstrated that the character of the court is the same regardless

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1. ibid.

of who occupies the bench.[1] Most invariably, they are shaped by the political climate of the time and place. Furthermore the government of the day cannot but have a part to play in determining the form of its courts, the laws it should administer and the conditions of service of its personnel. The only thing that is entrenched implicitly is its "independence." Thus in the language of Friedman,

> . . . every legal order, federal or unitary, whether civilian or military, is faced with the problem of the role of the courts in the evolution of law.[2]

He asserts that until the turn of the century the opinion prevailed in theory and practice that there was a clear-cut division between the spheres of the legislation and the judiciary. It was the function of the former to make the laws and of the latter to apply them.

It is our view that to admit this oversimplified analysis is to deny to the judiciary its law-making functions and this has been shown by Park[3] when he argues that judges make rules where none existed. In fact, the whole doctrine of "Stare decisis" is "law-making" if only for

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1. Gluckman also identified courts among the Barotse manned by councillors and the Bohannans also identified among the Tiv different types of "Jir" in "Judicial processes among the Barotse" and "Justice and Judgment among the Tiv" respectively.

2. Friedman, W.G. The law in changing society. (London) Stevens and sons Ltd. (1959) p. 24.

3. A.E.W. Park. Sources of Nigerian law. (Lagos) African University Press (1963), p. 6.

the inferior courts. But that is not all, this assertion can be supported by the statement of Lord Denning in Attorney-General v. Butterworth[1] that

> it may be that there is no authority to be found in the books, but if this be so, all I can say is that the sooner we make one the better.

What is being emphasized here is that, although jusges hardly ever admit themselves of making new laws, yet the decisions of the judges do not merely expound rules that existed before but rather themselves create the principles of the common law.[2] In reality, therefore, the legal system of any society comprises statutes and judge-made laws.

Yet, this all-pervading institution-court-which makes such a contribution to the legal system of a society has been described by Emmet U. Mittlebeeler[3] as a "neglected field of Public Administration" It is his claim that the study of administration of the courts has fallen behind all studies of administration in Africa. He argues that there has been no lack of interest in African law even though this has come mostly from legal dignitaries. This neglect has been stretched to

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1. 1962 Weekly law reports, p. 832.
2. Park, op.cit.
3. Emmet U. Mittlebeeler. "The courts: a neglected field of public administration. In Quarterly journal of administration "Vol. 4, No. 4 (Institute of Administration, University of Ife, July 1970) p. 287.

include the study of the development of European legal system in Africa. According to Adewoye, the general tendency[1] is to take the "reception" of the European institutions for granted as if it is not important to understand the way by which the new laws came to be established in the African soil. It is important to know how traditional legal entities had fared before colonial disruption.

Reasons for the lack of interest is difficult to establish. After all, major issues in the life of a society often appear as questions for the courts to decide. Across the forums of the courts, there have passed most of the great forces whose conflict and resolution have been the themes of a society's history; they include land disputes, commercial rivalries, organized labour, social welfare legislation, taxation, public ownership of public utilities, war and internal security, church and state, a free press and public order, efficient law enforcement and the right to fair trial, interests of property and interest of personality, the most urgent claims of government and the most treasured claims of the individual.

If the judiciary pervades social life as shown above, it seems reasonable to go beyond the realm of legal technicalities (which has

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1. O. Adewoye. "Prelude to the legal profession in Lagos 1861-88." In Journal of African law, Vol.14, 2 (Summer 1970), p.98. He claims that it is not evident that much attention is being given by scholars of African law to the development of European legal institutions in Africa.

been the tradition of African law-writers) to examine the machinery which performs this arduous task. What are the various organizations - formal or informal - which make it possible for the courts to carry out this tedious tasks of being the "go-between" in conflict situations? How are these organizations related and how do they cohere? What are the effects of the diverse norms governing the incumbents that operate in an arena where the normative patterns are specific? These are some of the questions which this study will attempt to answer.

The problem

This is a study in sociology of law, and Leon Mayhew[1] in examining the concern of sociology of law identified four broad areas. They are: (i) The study of the functioning legal agencies; (ii) The study of development of legal order in the private sectors of society; (iii) The study of the impact of law on conduct; (iv) The study of law as a normative system, defining and contributing to the coherence of the major institutions of society. The first among these is the core of this investigation. That notwithstanding this study will not be concerned with all the bodies charged with the responsibility of enforcing the law. The judiciary as an agency administering the law and its dependence on other organizations is the central focus.

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1. Mayhew, Leon. The sociology of law. In Knowledge and society (ed.) Talcott Parsons, pp.187-199.

The evolution of the judiciary itself provides an opportunity to investigate the relations between law and other major institutions in society. In fact, the presence of judicial institutions has been credited with facilitating socio-cultural transformation.[1] Thus the study of the judiciary as an organization has the promise of helping us to identify problems of disorganization in society.

Writers[2] has been mostly interested in the development of legal norms per se and not in the evolution of legal organizations. They have not shown concern for the interrelatedness of legal institutions and organizations. It is this gap that this study will attempt to fill. This is necessary since legal organization seems to develop with a degree of regularity that itself invites attention and explanation. The present study will attempt to establish the fact that there is a regularity in the relationship between changes in legal processes and other aspects of social life.

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1. O. Adewoye. "Courts of law and socio-cultural change in southern Nigeria 1854-1954." In the Nigerian journal of sociology and anthropology Vol.1, No. 1, 1974, p.57-78.

2. Durkheim, explaining change, observed that restitutive sanctions replace repressive ones as a result of growth of the division of labour and corresponding shift from mechanical to organic solidarity. This change factor has also agitated Weber's mind when he viewed the development of formal legal rationality as an expression of, and precondition for, the growth of modern capitalism.

It is not enough to know that the "judiciary" is an organization, charged in collaboration with other organizations, with responsibilities for the administration of justice; it is equally important to know how it actually performs these functions. Our task shall not have been completed if we focus on this organization alone without stressing its dependence on these other institutions which it has no power to control e.g. the police. It is important to explain the social situation in which it functions and to identify, if any, problems that are encountered. We shall also investigate the consequence of these inter-dependence on the functioning of the judiciary. I shall demonstrate the impact of social pressures on courts and other agencies operating in the system with particular reference to inter- and intra-organizational relations. It is also intended to establish that legal activity cannot be understood as a mere expression or reflection of legal concepts and rules, it must be considered within the framework of the society within which it operates. The study will attempt to examine the consequences of variations in judicial decision and to perceive it as an indication of on-going attempts to adapt legal norms to rapid social changes. At each point where the law is linked to the larger society the legal process shows the impact of socio-economic differentiation which is manifested in the nature of cases that go to court and the propensity to unending litigation by way of appeals.

Since the items enumerated above are intricately involved in the determination of the type of judicial set-up in a society, one of the tasks of this study will be to examine the various judicial organizations that have existed in the Western State of Nigeria. We will try to isolate the adjudicative processes in traditional Yoruba society and to explain how the maintenance of order has been a major aspect of social life. I shall also examine how the traditional system has been fused into the modern judiciary. Lastly, attention will be focused on the judicial organization as it is at present in operation in all its ramification in the Western State of Nigeria. I have chosen to investigate this topic on the assumption that the judicial organizations must have had some organizational difficulties with regard to their functions and attainment of their goal. We share the view that "a juristic act is never an individual, an isolated, thing, it is part of the prevailing social order."[2]

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1. Incidentally the present Western State comprises mainly the Yoruba speaking group.

2. Eugen Ehrilich. Fundamental principles of sociology of law. (Cambridge, 1937), p. 397.

CHAPTER TWO

THEORETICAL PERSPECTIVES AND METHODOLOGY

Theoretical perspectives

The nature of our problem in this study suggests that a combination of two or more models of explanation should be employed. The complex nature of the judiciary as an organization shows that the judiciary should be analysed first, as a bureaucratic organization from the perspective of the rational model. Second, as a complex organization from the perspective of the natural model; and third as an organization that persists in interdependence and exchange. These three perspectives will enhance our analysis and understanding of the judiciary as an organization which has emerged as a result of the needs of the society to maintain order.

One of the most popular and possibly the most controversial models of analysing social phenomenon is the structural-functional model, otherwise known as the organismic model. According to this model, every society is deemed to have needs which must be satisfied if it is to survive. Furthermore, the various societal institutions form patterns (structures) and this operate (function) in such a way as to satisfy the needs of the society. According to

Beatie,[1] the distinction between structure and function is really that between form and process. In considering the function of socio-cultural item, it is necessary to examine it within the larger social entity of which it is a part. This is because the notion of "survival" assumes that there is an environment to which the item is positively adjusting. This, of course, implies that explaining any social phenomenon requires an analysis of its structure and function.

Radcliffe-Brown[2] claims that the function of a recurrent physiological process is the correspondence between it and the needs of the organism. According to this view, the essential units are connected by networks of social relations into an integrated whole. Thus, it can be argued that the function of any recurrent unit is the part it plays in the social life of the whole and therefore the contribution it makes to the maintenance of the structural continuity. Therefore, in order to understand this interdependence, we have to investigate as thoroughly as possible all aspects of social life, considering them in relation to one

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1. Beatie, John: Other cultures (London) Routledge and Kegan Paul Ltd. (1969) p. 60.

2. Radcliffe-Brown, R.: "On the concept of function in social science" in American Anthropologist vol. 37 (1935) pp. 395-6.

another. It is further argued that it is essential to investigate the activities of the units and the way in which they are moulded by, or adjusted to, social life.[1] In this perspective, structure can be said to refer to a set of relatively stable and patterned relationship of social units. If structure is a relatively stable enduring pattern, function will refer to the dynamic process within the structure. Emphasizing the function, Malinowski[2] describes it as the part which a social or cultural item plays within the integral system of culture and the manner in which it is related to other units in the system.

Merton[3] has in fact provided a more useful paradigm of structural-functional analysis. In his view, functional analysis depends upon a tripple-alliance between theory, method and data and it is anchored on the three postulates of functional unity, functional universalism and functional indispensability. Even though these interconnected postulates have been described as 'debatable and unnecessary' nevertheless their importance lies

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1. Coser, Lewis and Bernard Rosenberg: Sociological theory: a book of readings (Toronto). The Macmillan Company (1969) p. 629.

2. Malinowski, B.: "Anthropology" in Encyclopedia Britannica (First Supplementary Volume (London) (1926).

3. Merton, R.K.: Social theory and social structure (Glencoe) Free Press (1957) p. 25.

in the assumptions that standardized social activities or cultural items are functional for the entire social cultural system. Secondly, it is held that all social cultural items fulfil some sociological functions and that these items are consequently indispensable.

The notions of harmony and interdependence in this perspective have been overstressed to the neglect of conflict in the system. According to Merton, it is an empirical question whether the cultural items do uniformly functions for the society as a system and for all members of the society.[1] Since social systems are adjustive and adaptive, persistent uniformity and stability as postulated in this model is not an accurate description of reality. As a matter of fact, the degree of integration is an empirical question and it varies from society to society and over time. It can therefore be argued that what is functional to one item may be dysfunctional to another. This in fact implies a notion of conflict. Yet, society needs some element of order in spite of the inherent conflict, if it is to survive.

The need for survival makes it imperative for societies to create mechanisms that would guarantee the existence of order. A meaningful analysis of such institutions requires a consideration not only of its structure (the static) but also of its dynamics.

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1. Merton, R.K.: ibid. p.26.

Order is needed in all facets of social life even that involving the dyad. What order means to a group depends on the goal of that group and the environment in which it is operating. In general terms, order is deemed to be positive and its opposites are conceivable only in terms of it. Cohen contended that the existence of social order is problematic and cannot be taken for granted.

There has been a lot of argument on the nature of 'order'. It means different things to different people and at different periods. It is Cohen, more than any other person, who has provided what can be regarded as a more realistic definition of order.[1] According to him, "social order" can mean the "existence of restraint, the inhibition of impulse or more specifically the control of violence in social life."[2] The notion of order presupposes the notion of reciprocity. If men must live together, their behaviour must be regulated by rules and norms. The presence of rules and norms will enhance predictability of the behaviour of members. But not all rules are specific, some are ambiguous, while some conflict with existing ones, and still others are tyrannical, and to that extent, confusion may result

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1. Cohen, Percy: Modern social theory (London) Heinemann (1969) p.18.

2. ibid.

from their presence. Whether the rules conflict or not, whether they are ambiguous or not, the fact that they persist is evidence that they have been internalized by the members of the group, or that the group is prepared to maintain it by force. Thus it can be seen that they constitute an important structure of the society. My contention therefore is that the rules that exist are not the handwork of any particular individuals but institutions of the entire society. In other words, they are part of the culture of the people and in the Durkheimian sense 'rules of collective representation'.

The notion of order has its negative form. If men must suppress those drives, whims, or impulses which go against the normative constraints, they need be compensated. The form of compensation would depend, to a large extent, on the situation in which the actor finds himself. If deviation from the normative expectations is punished, the conformist is indirectly rewarded. In effect, people are not committed to the maintenance of order to the same degree because of their varying ability and needs. While there is a good deal of reciprocity and cooperation in social life, there is equally a good deal of opposition and conflict. Cohen argues that "reciprocity, cooperation, opposition and

conflict may be compounded in the same relationships."[1] It is his contention that while there is much that is predictable and consistent in social life, there are always some areas of uncertainty and inconsistency resulting from conflicts of principle, or conflicts between the expected and the possible.

If order persists, how is it maintained? All societies, preliterates or literates, in answering this question, have defined the modes of keeping order within their borders and among their members. A common trend has been towards institutionalization of the laws and the law enforcement agencies. The result is that every society has means whereby its members can look towards an "impartial" umpire for the maintenance of order. In effect, certain institutions are vested with the power of determining what order is and what it is not. The institutions so created may have coercive power depending on the constitutional environment in which they operate.

A society creates institutions for specific purposes. More often than not, depending on the particular society, these institutions take the form of organizations with specific type of arrangements, rules, and norms of behaviour. The institutions have been invariably analysed from the perspectives of forma

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1. ibid.

organization theories. There is still a lot of controversy in the literature on the nature and type of organization theories. It is not my aim to get involved in this controversy but to accept that there are theories of organization which relate to different aspects of organization. And since theories are systems of explanations, it is my considered view that the numerous theories of organization should be adopted for meaningful analysis of an organization. If theories emphasizing goal are used to the detriment of theories explaining structure, the resulting analysis will not only be meaningless but also incomplete. It is Herbert Simon's[1] argument that:

> there are a great many things that can be said about organizations in general without specification of the particular kind of organization under consideration.

It is Simon's contention that organizations can be studied from several perspectives. What he did not clarify is whether a

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1. Simon, Herbert: "Comments on the theory of organization." in Rubanstein, Albert H. and Chadwick J. Herbertsworth, Some theories of organization (Illinois) The Dorsey Press Inc. and Richard D. Irwin Inc. (1960).

combination of the various perspectives was possible for the study of an organization.[1] The implication of this contention is that "organization theory" is a general term embracing different theories which relate to different aspects of organization. From this argument, we see that the general trend in organizational studies has been towards integration of the various theories. This trend has become more pronounced in the model (bureaucratic model) with the non-rational (natural system) model.

These perspectives have also been described as the statics and dynamics of organizations. Feibleman and Friend[2] claim that the statics treats organization as independent of their environment and therefore isolates from problems of interaction with

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1. Maison Haire has argued that 'organization theory is a whole group of conceptual developments having hearing on the problem of industrial organization. Game theory and decision theory, information theory and communication theory, group theory and developments in motivational theory can all be focused on as the central topic. Maison Haire (ed.) Modern organization theory. John Wiley & Sons (1959).

2. J. Feibleman and J.W. Friend. "The structure and function of organization." In F.E. Emery (ed.) Systems thinking. (Middlesex) Penguin Books Ltd. (1969), p.30.

other organizations. If the judiciary is viewed from this perspective, it will lend strength to our understanding of its structure and the interrelatedness of its parts. This is done in this thesis through the detailed descriptive analysis of the judiciary in chapter five. However the dynamics gives us greater scope in understanding organizations for it treats organizations as dependent, to some extent, upon their environment and therefore as interactive with other organizations. This contention is illustrated in the various cases analysed in chapters six and nine. In this perspective the judiciary is seen as a process of actions and reactions which are intricately held together by the common aim of law enforcement and administration of justice.

This dual conceptualization cannot be seen in water-tight compartments, for the division is not absolute. No organization is even completely static or dynamic, all have structure and experience functional changes.[1] I consider it useful to combine both approaches if the judiciary is to be analysed in its proper context. The static analysis involves treating organizations as wholes and it is from the whole that the parts can be analysed. The basis of organization are wholes, parts and sub-parts, and there are elements of relations among parts. The relationship among parts

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1. ibid.

is regulated and standardized. While the statics perceives organization as abstraction the dynamics perceives it in concrete terms. From this point of view, the relationship between an organization and its environment is reciprocal. This means the organization affects the environment and the environment affects the organization.

The nature of our problem necessitates the use of both models. It is fruitful to combine the two approaches in order to understand the nature of social relations involved in the judiciary. The usefulness of a theory lies in the explanation of social phenomenon and whether a theory explains adequately or not is a matter of empirical test. Thus, we are examining the social relations involved in judicial processes within the framework of organization both from the perspectives of the rational and natural models. In doing this, we make certain assumptions about the judiciary:

(a) The judiciary is a formal organization to the extent that its structure and purpose are rationally created and have emerged at a particular time.

(b) The performance of the judiciary cannot be analysed and understood unless it is in relation to other organizations which are peripheral to it.

The promise of this orientation is that we would be able to see the judiciary both in static and dynamic forms. Apart from this, it

will enable us to analyse the judiciary as both open- and close-system. This dual orientation is meaningful to the extent that it enables us to analyse actions in their proper context.

Our claim is that the judiciary is a formal organization for the explicit purpose of achieving specific goals. It is established, among other things, for the purpose of maintaining order.[1] The way in which it is created, the goals to be achieved, the status structure that defines the relations between participants have not spontaneously emerged in the course of social interaction but have been consciously designed a priori to anticipate and guide interaction and activities.[2]

With this conception of formal organization, the judiciary is to be analysed first within the framework of a bureaucratic model. I am adopting this first approach because all formal organizations are to some extent bureaucratic.

Bureaucracy, according to Weber,[3] is a means of rationalizing organization. This conception of bureaucracy by Weber underplays its

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1. Order is maintained in forms other than in the judiciary. The police, the prisons, the family and religious organizations are agencies for the maintenance of order.

2. Blau, P.M. Formal organizations: a comparative approach. (London) Routledge and Kegan Paul (1963), p. 5.

3. Weber, Max. The theory of social and economic organization. (Translated by A.N. Henderson & Parsons, T.) New York: Free Press (1947), p. 145-146.

relationship with its environment.[1] His ideal type bureaucracy is one in which the goals and purposes are clearly explicit. Organization rules, procedures, regulations are derived from the goals in a manner that says "if this is the goal, then this is the most rational procedure for achieving it."[2] According to Weber and writers of his ilk, the task to be performed in the achievement of the goal are subdivided among the members of the organization so that each member has a limited sphere of activity that is matched to his own competence. The offices are arranged in hierarchy. Every official in this administrative hierarchy is accountable to his superior for his subordinates' decisions as well as his own. Apart from this, the operations are governed by a consistent system of abstract rules and consists of the application of these rules to particular cases. The system is designed to ensure the coordination and uniformity in the performance of every task, regardless of the number of persons engaged in it. The positions of the incumbents are clearly defined.

In addition to the above, the ideal official conducts his office in a spirit of "formalistic impersonality" without "hatred or passion" and

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1. Weber's notion of bureaucracy is that of a closed-system. He ignores factors that would deflect a bureaucracy from this purely closed-system.

2. Hall, Richard H. Organizations: structures and processes. (New Jersey) Prentice-Hall Inc. Englewood Cliffs (1972), p.15.

hence without "affection and enthusiasm." For rational standards to govern operations without interference from personal considerations from official business is a prerequisite for impartiality as well as for efficiency. Furthermore, employment in the bureaucratic organization is based on technical competence and the official is protected against arbitrary dismissal. This constitutes a career for him because there is system of promotion according to seniority or achievement or both. This is said to encourage the development of loyalty to the organization and the espirit de corps among its members. It is further said that the purely bureaucratic type of administration is capable of attaining the highest degree of efficiency.

Max Weber never meant this model to represent reality, hence all bureaucratic establishments may not possess the attributes. And in fact, when all the attributes are present, it is usually problematic in the sense that the same elements which are supposed to produce efficiency may inhibit it. Blau[1] points out that if reserved detachment characterises the attitudes of members of the organization toward one another, it is unlikely that high team spirit will develop among them. He argues further that the strict exercise of authority in the interest of discipline might induce subordinates, anxious to be highly thought of by

1. Blau, Peter. Bureaucracy in modern society (New York) Random House (1956) Tenth Printing 1963), pp. 28-33.

their superior, to conceal defects in operations and to that extent obstruct the flow of information upward in the hierarchy. This, he contends, would impede effective management. To Blau, insistence on conformity tends to engender rigidity in official conduct and this inhibits rational exercise of judgment needed for efficient performance of tasks. Blau concluded, that those factors that enhance efficiency in one respect often threatens it in another.

Gouldner, on the other hand, claims that[1]

> . . . Weber fails to weigh the possibility that a bureaucracy's effectiveness or other of its characteristics, might vary with the manner in which rules are initiated, whether by imposition or agreement. . . .

Implicit in this argument is that there are several patterns of bureaucratic organization reflecting the modes through which rules evolved.[2] It is Gouldner's view that the cultural neutrality which Weber postulates is based on a wrong assumption for "our culture is not neutral but prefers agreed-upon rather than imposed rules."[3]

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1. Gouldner, Alvin W. Patterns of industrial bureaucracy. (Illinois) The Free Press, Glencoe. (1954), p. 20.

2. Gouldner arrived at three types of bureaucratic patterns which reflected how rules evolved in the situation. They are punishment-centred, mock and representative bureaucracies.

3. Gouldner has shown that social, physical and cultural factors have serious implication for the nature of bureaucratic organization that operates in any situation.

Gouldner further points to the fact that Weber tended to assume that the ends of different stratum within a bureaucratic organization were identical or at least highly similar. In the study of the Gypsum Plant by Gouldner, he demonstrates that the different stratum has different goals. In fact, Gouldner seems to be saying that the ends of several strata in the bureaucratic organization should be regarded as the end of the organization. He argues that since the ends are not necessarily identical and may in fact contradict one another, studies of bureaucracy therefore should be focused on these various ends rather than on the goal of organization. Thus, one can examine the peculiar nature of any bureaucratic organization only within the context of social relations involved.

In the light of this, the judiciary can only be understood in its dynamic processes. The degree of bureaucratization and the modus operandi of the organizational members can only be meaningful if the intervening organizational units are examined in actual court situation. However the bureaucratic model described provides a conceptual framework for understanding the internal structure of the judiciary but does not account for its dynamics.

The inadequacies of the rational model have provoked much controversy. Most criticized of all the elements is the "closedness" implied in the Weberian model. It is a truism that organization oriented to particular goal would gear its activities towards achieving the goal but it is

equally true that the processes of achieving the goal necessarily involves the organization in external social relations. Organizations cannot, on the face of it, be free from environmental pressures. Thompson[1] argued that if organizations must attain maximum rationality, they must protect themselves from certain environmental changes, and at the same time ration their resources to accommodate necessary changes from the environment. Organizations struggling to maintain optimum rationality, therefore, are inevitably engulfed in a network of social relations external to them.

The implication of this is that organizational theories are forced to move away from purely rational model to take care of the external involvement. In fact, other research findings[2] suggest that an organization cannot be viewed as a closed system if we are to understand its dynamics. Thus it is meaningful to analyse the nature of organization by examining factors other than those internal to it. But this cannot be achieved if the bureaucratic model alone is utilized. In this study, the judiciary is analysed in terms of both internal and external relations.

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1. Thompson, J.D., W.T. Mcwen. Organizational goals and environment. In American sociological Review Vol. 23 (1958), p. 213-31.

2. Stanley, H. Udy has identified series of bureaucratic characteristics and shown the manner in which they are not associated with each other. Udy's research demonstrates that bureaucratic elements in an organization are not necessarily related to rationality. He concludes "Bureaucracy and rationality tends to be mutually inconsistent in the same formal organization." American sociological Review Vol. 24, No. 6 (1959) pp. 791-795. "Bureaucracy and rationality in Weber's organization theory."

This takes us logically to the dynamic analysis of our subject - the judiciary in the Western State of Nigeria. If, as we maintain, the judiciary is one of several institutions in society, then it will be contradictory to argue at the same time that it exists in isolation of the system of which it is a part. Within the framework of 'natural system' approach emphasis on the goal of the organization becomes secondary because the approach stresses the interdependence of parts and their relations to the environment. Even, planned change in one part will have important, and usually unanticipated, consequences for the rest of the system, These environmental organizations are the convenient vehicles by which the judiciary achieves its goal.

Organizations are affected by what comes into them in the form of 'input'; by what transpires inside them in the form of 'throughput' and by the nature of environmental acceptance of the organizations and their 'output'. Thus, we claim that understanding the judiciary involves much more than understanding goals and the arrangements that are developed for their accomplishment; it involves understanding the environmental strains and stresses. Consequently both approaches - the rational and natural - are important for a meaningful analysis of the structures and processes of the judiciary.

There are certain conflict of norms and expectations in the judiciary. Some of the goals are at times contradictory. For example the goal of

interpreting the rules as given may conflict with the notion of natural justice. In addition the judicial procedure itself permits a slow process to ensure equity and at the same time enjoins speed in the interest of the offender and justice. Lack of appreciation of these is, in part, the basis of much criticism of the judiciary by both the public, the government and even members of the organization itself.

The judiciary, admittedly, is purposely created to serve certain ends but it is not clear whose ends these are. If we conceive the judiciary solely as a 'formal organization', we may, following the classification of Blau and Scott, on the criterion of "cui bono" (who benefits)[1] classify it as a "service organization" in which case the clients are the prime beneficiary. But a critical examination of the goals of the judiciary will show

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1. Blau, P. and R. L. Scott. op.cit. p. 42. These beneficiaries are:
   (i) the members or rank and file participants;
   (ii) the owners or managers of the organization;
   (iii) the clients or generally, the public-in-contact;
   (iv) the public-at-large.

   The combination of the categories then becomes the basis of their classification of organization. The prime-beneficiary model produced four types of organizations:
   (i) 'Mutual benefit' associations where the prime beneficiary is the membership.
   (ii) 'Business-concern' where the owners are the prime beneficiary.
   (iii) 'Service organization' where the clients are the prime beneficiary; and
   (iv) 'Commonweal organization' where the prime beneficiary is the public-at-large.

that it is not only a "service organization" but a "connonweal organization" in which the public-at-large is the prime beneficiary. I say this because the role of the judiciary as 'umpire' in conflict situations influence the day-to-day life of all. In addition, the judiciary through its activities sets correct standard for future behaviour or approves of past actions. To this extent, it is a commonweal organization contributing to the maintenance of order in society.[1] In pursuing the goal of keeping order, the situation necessarily involves many other organizations and individuals. This is the basis of our conceptualization of the judiciary as an open subsystem within a larger social system and for adopting both the rational and natural systems approaches.

The accomplishment of its goals is not the concern of the judiciary alone but that of the other institutions as well. The activities of both the judiciary and the peripheral organizations and individuals can be analysed under the broad perspective of social action theory[2] which emerges from the combination of our model. The basis for this is that interaction of people of diverse norms and expectations take place in the

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1. It may be argued that the public-in-contact-litigants bear the brunt of its activities, yet it should not be overlooked that its decisions have serious implications for the public-at-large.

2. Percy Cohen op.cit.p.96. said "All actions is directed to the attainment of goals. An actor striving to reach a particular goal must have some ideas and information about the objects which are relevant to goal-attainment, he must have some feelings about them in relation to his needs and thirdly, he must make choices.

judicial scene where the rules of action are definite. The emphasis therefore is on the processes by which the organization copes with its task, on the roles of the different actors and on their contribution to the end of justice. Thus, we conceptualize the judicial process as the sequence of steps taken by the courts in deciding cases and disposing of legal controversies. The process involves existence of "rules of the game" which are known and accepted by the contestants in spite of their conflicting orientations. The goals of diverse groups and institutions are the motivating factors in their 'behaviour' in the judicial situation. Consequently, some elements of cooperation and conflict are inevitable. It is our view that inter-organizational relationships take the form of bargaining and exchange. which requires that the behaviour of organizations and individuals should be mutually reinforcing.

Social exchange involves reciprocity and it refers to the degree of reinforcement people find in the activities of the group. It also emphasizes the social approval and activity to the extent that if the behaviour of 'A' is approved by 'B', 'A' tends to repeat that activity. On the other hand, if an action of 'A' does not receive the approval of 'B', 'A' tends to desist from such behaviour. Exchange theory therefore directs our attention to the behaviour and relationship that are socially rewarding and thereby tend to

persist. In the context of the present study, the activities of the judiciary can be seen within the framework of exchange model since the judiciary is enmeshed in a network of social relations that are crucial to its survival. It is therefore argued that if the judiciary must keep on getting the cooperation of other organizations and vice versa, it must make its own behaviour more valuable to them. It is further argued that most of the frictions in the judiciary have their roots in the actions of other organizations. It is further contended that in any social organization, reciprocity will result in mutual exchange of favour and this tends to strengthen, often without explicit intent, the social bond among organizations. What the organization exchanges may be tangible or intangible depending on the goal of the organization. The need to reciprocate for benefits received in order to continue receiving them serves as a "starting mechanism" of social interaction and group structure. It is therefore argued that exchange requires trusting others to reciprocate and this mutual interdependence is the cornerstone of our analysis of the judiciary. This is exhibited not only in the relationship of the judiciary with other organizations but also in the relationship among the units constituting the judiciary.

Theoretical synthesis

Our theoretical discussion involves perception of the judiciary as an organization created in response to the need of the society and therefore possesses a distinctive pattern of social relations (structures). Emanating from this is the notion of a system which stresses interdependence of units within itself and with the environment. It also involves a dynamic conceptualization of actions and reaction necessitated by the diversity of goals and the inter-relationship of various organizations. We have also introduced the concepts of the exchange and bargaining to illustrate the way in which the judiciary maintains a structure while at the same time accommodates environmental changes. These theoretical perspectives have been used at various stages of our analysis.

The following theoretical themes have been differentiated to guide our analysis:

(a) The judiciary is a formal organization which cannot be understood strictly in terms of the classical bureaucratic theory of organization. This is because it is enmeshed in a complex set of intra- and/or inter-organizational relationships.

(b) Organizational interdependence will affect organizational performance adversely or positively even if the rules of bureaucracy are observed.

(c) The performance of the judiciary is a function of its internal structure and the nature of its relationship to other organizations.

(d) Professionalism and bureaucratization tends to be inversely related.

As it will be seen in this thesis, a historical analysis is given in order to show how the present judicial structure has emerged. This historical discussion forms the theme of chapters three and four. The relationship of the various arms of the judiciary (otherwise its structure) is analysed in chapter five. Since, as it is argued in this thesis, the judiciary cannot be properly understood except in relation to other organizations, an analysis of its interrelationships with other organizations is given in chapter six. It will be seen that the analysis as mentioned earlier has incorporated both the rational and natural models of bureaucracy.

The judiciary is conceptualized in this thesis as a bureaucratic organization of a complex nature which consists of people with different orientations and social background. For an adequate analysis of the judiciary, it is important to explain the behaviour and social relationship of these actors as enacted in various judicial situations. This is done through detailed analysis of cases in chapter nine. What has been done is to show how the various theoretical perspectives have to be used at different levels of analysis. We have adopted this strategy on the presumption that various theoretical models, taken singly, would only explain a segment of social reality. Besides a better analysis is achieved through a combination of the advantages of the various models.

Methods of study

The theoretical perspectives adopted in this thesis and which are spelt out earlier calls for a combination of several methods which are amplified in this section. Our intention is not to show how our methods conform to a particular stereotyped "scientific method" but to show the extent to which the theoretical perspectives and the methods used reinforce one another.

Having conceptualized the judiciary as an organization enmeshed in a network of social relationship with other organizations, we will now attempt to delineate the universe of study. Essentially it comprises individuals representing organizations, and others who do not represent organization. The component organizations are the police, the prison, the bar, etc.; while the discrete members are litigants, criminals and witnesses. These are scattered in various parts of Western Nigeria. Thus, at one level, the universe is finite since it can be perceived to comprise of organizations and at another level, it is difficult to talk of the universe. because members are dispersed and discrete. Some of the organizations interacting in the judicial situation have no persisting memberships, while others with defineable members have them all over the country. These diverse groups are considered crucial to our analysis of the judiciary as perceived in this thesis.

I prepared an interview schedule (See Appendix A) which was pretested in the month of July 1973 at Ibadan on twenty respondents comprising lawyers, judicial officers, judicial staff, etc. The respondents did not cooperate easily for some reasons which I now discuss.

Most of the problems encountered in this study resulted from two sources: (1) the nature of people to be interviewed, and (2) the aims of the research. For instance, it was difficult to secure the cooperation of some judicial officers because some were arrogant while others were afraid lest their positions are affected. Some lawyers felt it unethical to make comments on the judiciary, while others felt that they have too much to do to have time for any interview. The case of the police requires more explanation. They probe people and thereby have developed an unfavourable attitude to being probed. The only people who willingly cooperated were the prisoners who were obeying "orders" from the prison officials. Among them too, there were some uncooperative respondents who either refused to answer questions or remained impenetrable.

Some of the respondents refused to answer questions but agreed to chat on condition that such discussions "shall not be recorded." Some cannot see why a sociologist should be concerned about the court. A judicial officer remarked:

> What is the business of a sociologist with the judiciary? We are asked to sentence people and we are doing so.

Because of this misapprehension, some did not answer questions about the research. Further still, some judicial officers felt that they were not officially in the positions to speak for the judiciary and yet others felt they should not be bothered on the ground of insecurity in case the documents are made public. In such circumstance, I had to accede to informal discussions.

Some lawyers were more interested in the personality of the researcher. First, there was the wrong notion that only lawyers should conduct research in the legal field. Some demanded to know whether I was aspiring to become a lawyer. Others felt sociologists are too inquisitive. A lawyer remarked:

> I do not want to talk to you sociologists. You are too inquisitive. You can ask people about the type of stew in one's pot or how many times one has sexual intercourse with one's wife.

Apart from this fear of being probed, which bred negative attitudes, some were contemptible of academicians. Apart from thinking that only lawyers could handle the problem, some feel that academicians are 'no use'. One lawyer whom I knew before was surprised to see me undertaking a research. He remarked:

> So you want to join the academic circle. After some time you too will be writing funny articles in our press.

This contemptuous remark may have been influenced by the standards and behaviour of the legal profession which is embedded in the jargon "learned friend" and "noble profession."

Another identifiable problem attendant on this study as shown in the pretest is that it attempts to describe an organization in which the 'dramatis personae' are highly articulate and able to defend themselves. It is probably inevitable that this has some repercussion on the standards applied to the research. Within the broad group of judicial officers and lawyers, it would have been detrimental to restrict the research to the so-called "good lawyers" and "respectable judges". Even if I had the intention of selecting the good ones, the individual's attitude to the research dictated whether he becomes one of my respondents or not.

Having encountered such problems at the pretest, I decided to use three principal methods such as documentary analysis, participant observation, and survey-questionnaire.

The fieldwork, upon which this study is based, was done between August 1973 and August 1974. During the period, I travelled extensively to almost all the towns in the Western State of Nigeria with a view to collecting information about the judiciary. In some places, I collected documents that were available about the judiciary and in others I had to interview people. In other

places, I had to observe workers in their work places, litigants and criminals in the judicial situation and the court itself in session. These methods were used as they become expedient, but for our discussion of methodology they shall be separated.

The first method is documentary analysis. Among the documents collected are: Intelligence Reports and Memoranda by colonial officers; Parliamentary Debates, Reports of Commissions and tribunals and the instruments establishing the various judicial tribunals. I also consulted books, articles and Government publications on the various aspects of the judiciary. These provide information on different interpretation given to various events and they are very useful as a means of cross-checking certain facts.

The documents selected were those following our conceptual framework, that would enable us analyse and understand the various parts of the judiciary. For instance the Intelligence Report and Memoranda by colonial officers are important for understanding the way in which the Nigeria judiciary was conceived and later changed by colonial administration. Parliamentary debates, Reports of Commissions and Tribunals, and the various laws establishing the various judicial tribunals are invaluable in our understanding of how the judiciary has been affected by political and constitutional changes. Books, articles and Government publication,

were examined to provide information on different interpretation given to various events and they are very useful for cross-checking the authenticity of the various assertions about the judiciary. These documentary analyses form the basis of the historical discussions given in chapters three and four of this thesis. The analysis has clearly demonstrated the factors which influence the emergence of the modern judicial system. In addition, some of the documents (particularly the books) contain a description of the structure of the judiciary.

This particular method was supplemented by questionnaire-interview. As I have identified the social network that constitutes the judiciary, I consider information from members of these other organizations invaluable to our understanding of the judiciary. Consequently, I travelled to almost all the towns in the Western State of Nigeria where there are courts, police stations, prison yards and lawyers' offices. Lawyers who were not visited in their chambers were interviewed in the court premises. Thus, the thirteen months of fieldwork was largely spent in the courts and courts' premises, police stations, prison yards and lawyers' chambers. I also spent some time looking for litigants in their private houses.

Thus, those interviewed were essentially members of organizations who from time to time and/or at one time or the other, have had connections with the judiciary. Attempt was made to include the diverse groups to enable us examine their conception and perception of the judicary. Since I conducted the interview personally, I had the opportunity to probe areas and follow leads which otherwise would have been impossible through mail questionnaire or through the use of interviewers. Thus a flexible approach was embraced depending on the situation being considered. In interviewing, for example, I used both structured and unstructured interview guides. In other words, apart from the prepared questions, other questions were asked as they became expedient.

As I said earlier, the choice of my respondents was dictated by the problems which I encountered at the pre-test. I applied for permission to interview some members of the staff of the court, the police and the prisons. The court granted the permission with the condition that confidential matters were not to be divulged to me and strict instruction to that effect was inserted in the letter of introduction given to me by the Chief Registrar. Our first problem was to determine what is confidential and what is not. To every court official, all court documents are confidential. The police, on the other hand, only permitted administration of

questionnaire through the Public Relations Officer at Ibadan and it was he who distributed the interview schedule to policemen of his choice. Consequently, I had no direct contact with any police officer. The prison authorities gave permission to interview prison officials and prisoners with the embargo to keep the secret of the organization secret.

In the case of the lawyers and litigants, the evasiveness of most of the lawyers and litigants suggested that we should use accidental sampling techniques, i.e. those interviewed were those willing to be interviewed. It is hoped that important information may be obtained by listening to litigants. Problems of locating the litigants and their preparedness to cooperate also compelled the use of accidental sampling technique. Because of these problems, I did not set any limit on the number of respondents but insisted on having a fair representation of all the categories involved in adjudicatory processes. It was however not possible to interview accused persons whose cases were currently in court. Apart from the difficulties of eliciting response from them, such actions are regarded as interference in the course of justice.

The choice of respondents was governed by expediency. At the time of the interview, there were forty-seven judicial officers in the High Court of Justice and seven in the Court of Appeal.

The customary court presidents were not included because they were not fully integrated into the Judicial Department of the Western State of Nigeria as a result of their close relationship with Local Government Councils. In fact, their auxiliary hands are local government councils' officials. I planned to interview all the fifty-four officials but only twenty-six eventually responded. Of the questionnaires delivered to the police, only fourteen were returned. The situation of the lawyers is different and the problems I encountered with them emanated from their evasiveness, misapprehension and intolerant attitude. As at 4th January, 1973, 3,145* had registered as legal practitioners in this country since the inception of the Nigerian Bar. From this list it was difficult to know where these are domiciled since the list contains their names, registration numbers and dates of call. Bold efforts were made to get some of them interviewed. They were interviewed in the course of the investigation as they became available and were willing to cooperate. Most did not cooperate. At the end of the period, I succeeded in getting thirty-five legal practitioners

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*. The figure includes who have died and those who have left the profession. It was therefore not possible to determine how many of these were actually practising at the time of the study. In addition, the legal profession is a unitary system and legal practice is not state-based. It is a country-wide concern. It is therefore difficult to categorise a lawyer as belonging to the Western State only.

interviewed. I did not consider this a serious handicap in view of the difficulty of interviewing mentioned earlier and the availability of other sources of information.

In selecting my respondents from the prisons, I used a stratified sampling technique in the case of the prisoners and employed purposive sampling technique for the prison officials. In fact, the prison officers interviewed were selected by the officers of the prisons I visited viz. Abeokuta, Ilesha, Ibadan, Ado-Ekiti and Ijebu-Ode. The inmates interviewed included prisoners and those awaiting trial. The serving prisoners, both men and women, include long-term and short-term prisoners.[1] Prison officials were present when interviewing the prisoners and that in some way affected their responses. Thus it can be seen that I was greatly limited in my choice of respondents.

I also interviewed some court personnel, who were not professionals, litigants, and discharged offenders. It was difficult to estimate the number of litigants and all I did was to wade through some court case files in some of the towns I visited to locate their addresses. Some of the addresses that were collected were later found to be false or they were not permanent.

In all I interviewed 182 respondents distributed as follows:

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1. Three female prisoners were interviewed.

TABLE 1

Distribution of respondents

Category	Number Interviewed	Percentage of total respondents interviewed
Judicial officers+	26	14.3
Legal practitioners	35	19.2
Court officials	33	18.1
Police officers	14	7.7
Prison officials	17	9.4
Prisoners	27	14.8
Litigants*	30	16.5
Total	182	100.0

\+ The professional staff of the judiciary.

* Includes accused persons who have been discharged.

Some of the questions asked were designed to reflect the socio-economic characteristics of the members of the diverse groups. Others were asked to enable us perceive the judiciary as a social system. Some questions were asked to see the extent to which interdependence of organizations affects the performance of the judiciary. Efforts were made to appreciate the extent to which

individual's social position affects his perception of justice as well as judicial processes. The societal perception of the judicial processes was also investigated. Questions were asked to distil from the respondents what they considered to be responsible for the various problems of the judiciary. Some of these problems are delay, shortage of staff, judicial unpredictability etc. Respondents were requested to suggest solutions to some of the problems identified.

The danger of using accidental sampling techniques is well recognized in this study. It is also accepted that the more differentiated the social system to which informants belong and the extent to which the relationship is different, the more likely that any information will be non-representative of the whole. However, it is within the permitted scope of scientific methodology that researchers can rely on informants to provide that sort of information which is well known to all members of the subject group - in this case information concerning widely recognized rules, norms, statuses and statuses occupant. The advantage of this is that it provides satisfactory data and is more efficient than questioning of a sample of respondents.[1] Furthermore, when the objective of the

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1. Zelditch, M.: "Some methodological problems of field studies" in American Journal of Sociology vol. 67 (1962) pp. 566-576.

study requires that people be studied in their normal surrounding, the choice of methods often comes down to a combination of survey research and observation.[1] It has also been argued that when complex social relationships or intricate patterns of interaction are to be examined, sample survey is grossly inadequate.[2] Truly the strength of sample survey lies in its potential quantification, replication and generalizability to a broader population within known limits of error, nevertheless participant observation normally has an edge in qualitative depth and flexibility.

Having accepted the inadequacy of the purposive sampling technique, and having recognized the limitation of the findings that may result from such techniques as reported in chapter eight of this thesis, I used observation method. I tried, where possible, to follow proceedings in certain cases which were selected on the basis of convenience. The cases were chosen on the basis of the distinction between criminal and civil cases and are analysed in chapter nine of this thesis.

I attended court sessions for the first three months of the fieldwork at Ibadan and later moved to Ilesha, Oyo, Akure,

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1. Donald Warwick and Charles Lininger: The sample survey: theory and practice. (NY) McGraw-Hill Book Company (1975) p. 9.

2. ibid.

Ado-Ekiti and Abeokuta in that order. I attended two assizes sessions at Ibadan and I followed proceedings in the selected cases from the time I started fieldwork till they were concluded. They were analysed to illustrate actual judicial processes. It is hoped that the case analysis will shed some light on the gap between laid-down procedure and the practice, and also to elicit some problem areas of the organization. It is also hoped that this dynamic state will help us to see the interdependence of organizations and institutions bare.

Some courts statistics were collected for analysis. Documents consulted include monthly returns of cases (civil and criminal) for both the High Courts and the Magistrate's courts, quarterly returns of cases; monthly returns of adult probation; annual abstracts of cases; Judicial divisions and magisterial districts, matters In-re; Chief Justice Tour of Inspection; Quarterly returns of cases pending for three months and over; Prison inspection by Magistrates and Judges; Personal files of staff of the judiciary; and some case files.

The files containing statistics of cases were collected for the five years preceding the investigation, i.e. 1969 to 1973. The five-year period was chosen because documents and files for this period were the only ones readily available. Besides, the

administrative capacity of the judiciary to keep all records, other than the five-year period specified above, in proper order, was inadequate. The rate at which documents are filed in the court surpassed any other organization of its size and magnitude of functions. All these documents were necessary to make for the bias that may result from the method of selecting the respondents.

The diverse methods have been used in this study to provide opportunities for cross-checking facts and for a much more complete picture of the situation being examined. Non-randomly selected sample may introduce unknown and unanticipated bias into the findings; but it is permissible if other sources of data are available to serve as a check on the findings.[1] In this thesis, chapters eight and nine should be seen as complimentary.

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1. Homans, G.C.: in an article "The strategy of industrial sociology" said:
"People who write about methodology often forget that it it is a matter of strategy, not of morals. There are neither good nor bad methods that are more or less effective under particular circumstances in reaching objectives on the way to distant goal" in American Journal of Sociology vol. 54 (1949), p. 330.

CHAPTER THREE

THE HISTORY AND DEVELOPMENT OF THE JUDICIARY IN NIGERIA: AN OVERVIEW

In this chapter, we shall examine the development of the English-type judiciary in Nigeria. This will include an examination of the imposition of the English judicial system upon the traditional judicial system; the evolution of a unitary system of courts; the series of reforms and reorganizations which have taken place overtime. This excursion into history is to enable us to demonstrate that the present judicial system in the Western State of Nigeria is a hybrid of two systems - the traditional and the English systems.

The traditional court system

A.E.W. Park in his search for the "sources of Nigerian law" identified three. These are (a) English law - general law of England that was introduced or "received" into Nigeria; (b) the products of local institutions established originally by British authorities which consists of local legislation and Nigerian case law; and (c) customary law.[1] He argued that the aims of the British authorities was to preserve as far as was compatible with imperial law, the institutions of newly

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1. A. E.W. Park. The sources of Nigerian law. (Lagos) African Universities Press (1963) p.1.

dependent territories. Thus, when the colony of Lagos was created in 1862, apart from the introduction of the main body of English law, cognizance was taken of the existing institutions of the people. An understanding of what followed the cession of Lagos and the gradual establishment of British rule over the rest of Nigeria would be incomplete if the traditional structure and adjudicative system is not examined.

It is known that long before the establishment of British rule in Nigeria, the various people of Nigeria had reached the stage where redress for injuries suffered directly or indirectly was taken out of the hands of the individual and his kindred. There prevailed among the various ethnic groups which later became Nigeria a complex system of laws and customs that governed social life within the various groups.[1] The right to justice no longer resided in the disputants with the stronger arm. This stage has been aptly described as "the stage of public as opposed to private justice."[2] It is therefore not surprising that Fadipe credited to the Yoruba people interest in both retributive and reparatory justice. According to him, the Yoruba also had the notion of peace-making justice. Among the other ethnic groups, similar institutions

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1. Nigeria did not exist as one entity before 1914 although the component parts came finally under the British in 1900.

2. N.A. Fadipe, The sociology of the Yoruba, edited with an introduction by F.O. and O.O. Okediji (Ibadan University Press, 1970), p. 223.

existed that one is tempted to say that the imposition of a foreign culture was unfortunate as it turned back the hands of the clock[1] for it disrupted a system that was near to perfection.

The notion of justice was essential in the legal system of a people. For instance, Fadipe[2] claims that retributive justice among the Yoruba, is aimed at requiting upon the doer "an act not only harmful to others but immoral and blameworthy" while in reparatory justice, the emphasis is to secure for the injured party compensation from the other party for damages caused either willingly or under a misapprehension. However, in peace-making justice the aim is to intervene and arbitrate in quarrels and misunderstandings which impair kinship solidarity or are likely to deteriorate into actual breach of the peace. This conciliatory aspect of the system is not prominent in the judiciary of Western societies.[3] The conciliatory system is essentially geared towards the maintenance of the custom of the people. It is perhaps the dissimilarity of this from the English system that has prompted Adewoye to describe the system as one in which "justice was being dispensed without wig."[4] Expatiating on this,

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1. In the northern part of the country there existed a well developed system of administration and a codified law of the moslem tradition.

2. Fadipe, N.A. op.cit. 223.

3. ibid. p.223.

4. Adewoye, O. The legal profession in Southern Nigeria 1863-1943 (unpublished Ph.D. thesis, Columbia University, 2968) p.13.

Adewoye claims that the presence of professional advocacy was unknown but that a group of people called "Baba-Ogun" existed for purposes of pleading the cause of the parties in litigation before the traditional tribunals. To him, the basic difference between Western way of dispensing justice and the traditional system can be located in the absence of the meticulously created paraphernalia of the Western culture as exhibited in the scarlet robes of the judicial officers. Essentially, the processes were similar; and a distinction was made between public offence and individual grievances just as it is in the developed societies. In spite of the similarity, we must not lose sight of the other major differences as exhibited in the social set-up of the two systems. Unlike the Western pattern of adjudication, the adjudicative mechanism of indigenous societies were intricately linked with the political, religious and economic structure.[1] Thus, the same persons may, at various times, act in the various positions in the society all depending on the matter to be discussed. And, as these were interwoven, so also were the grievances closely enmeshed in the other spheres of life. However, a distinction was made between public offences which usually were of a religious or political nature and were tried by the secret societies in most Southern

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1. "The division into the political and administrative aspects of government is not readily observed in Yoruba political system" in Lloyd, P.C. Yoruba land law (OUP, London) 1962, p.39.

Nigeria communities and individual injuries which were tried by the family or quarter tribunals. In the northern territories there existed a neat system of courts headed by the Emirs or Alkali and the processes of adjudication cannot be regarded as inferior to that of the colonizers.

It will be misleading to say that there existed a uniformity in the various walks of life of the Yoruba of South-Western Nigeria.[1] Thus, the various groups have slightly different political units which performed seemingly identical functions. But essentially, in ancient times, the head of the village or town was at the same time the administrative, religious and judicial authority. He was approached by complainants, and he arranged arrests and punishment.

There were three levels of judicial organization - the administration of justice in the family, in the village or quarter, and in a central body for the whole group.[2] The family court was naturally the least developed form of judicial administration. It consisted of the family council, the body which was also the family administrative authority - sitting informally upon purely domestic issues. It met in the family compound with

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1. Imoagene grouped the Yoruba into three main distinct units according to their social and political set-up. These are the North-North-East, South South-East and West-central. O. Imoagene. Social mobility in emergent society (Ph. D. thesis)University of Ibadan, 1971.

2. Intelligence report on Oke-Odan, Ilaro, Ilobi, Ajilete and Ilashe of Ilaro division of Abeokuta province, para.121.

the council of the elders usually sitting on the verandah of the family head's house. The jurisdiction of this "court" was limited to minor disputes among members. Such offences include land disputes within the lineage, fighting, petty theft (when the thief is known) and adultery within the lineage.[1] In discharging these functions, the council acted as peace-makers and arbitrators rather than as a bench of judges since the notion of justice for the autochthonous people emphasized reconciliation rather than punishment. For instance, punishment was usually a fine of kola and palmwine and in some cases, both parties were fined. The aim of the elders is mainly to settle the misunderstanding and not to punish a person. The kola and palmwine were to a certain extent, a peace offering denoting settlement.[2]

Immediately above the family court was the quarter or village court. Its jurisdiction was both appellate and original. This consisted of the "Baale" or the head of the quarter and his council. The village court, in its judicial capacity, met in the same place used for deliberating purposes on other political, economic and religious matters. In the court, the "Baale" first received the complaint before appointing a day for hearing. At the hearing the complainant first gave evidence

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1. Lloyd, P.C. A comparative study of the political institutions in some Yoruba kingdoms (unpublished) B. Sc. thesis, Oxford University (1952) p.169.

2. ibid.

which may be admitted or rejected by the defendant. The court had the prerogative as to whether there was need for witnesses. The verdict of this court was delivered by the members who spoke in an ascending order of seniority. The court members would retire into privacy for deliberations if they were not altogether in agreement. However, the final judgment is always delivered by the "Baale."

The basic differences in the judicial set-up of the various Yoruba groups can be found in the structure of their "Supreme Courts." Since the political structure and the judicial organization were intricately interwoven, and since the judicial system among the various subtribes of the Yoruba country tended to vary from group to group, it is not surprising that the judicial system among the various subtribes of the Yoruba country tended to vary at the town level. Among the Central and South-Eastern Yoruba, the Ogboni society played a dominant role in political as well as in judicial issues. But, among the North-North-East Yoruba, the political structure is a bit decentralized and the head chief of a village or town was the supreme judicial body. He exercised this jurisdiction in conjunction with the members of his council. Thus, the central body which was the Oba-in-Council formed the highest judicial body and functioned in the following capacities:

(a) a court of appeal from the village or quarter courts;

(b) a court of first instance for important cases, or cases between members of different villages.

Its system of appeal was carefully worked out such that the dissatisfied litigants and the members of the lower court would have confidence in the system. Both litigants and court members were allowed a hearing at the appeal sessions and the judgment of the lower court could be amended, affirmed or reversed.

The court in its capacity as a court of first instance heard all major cases. These appear to have been cases like murder, wounding and adultery for the criminal; whilst land disputes and divorce formed the core of the civil.

The seriousness of the cases mentioned took them out of the jurisdiction of the village or family courts. The criminal cases were of sufficient magnitude to qualify as offences against the whole group. The same gradation operated in the punishment prescribed for the various offences. The punishment took the form of social chastisement, physical incarceration and banishment. At the lowest level of punishment it was restitutive and compensatory. Murder, was theoretically always punished by death, although privileged persons appear to have been able to escape this penalty by the payment of compensation to the dead man's family.[1]

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1. Analysing feuds and other disputes among the Nuer, Evans-Pritchard said: "When a man kills a near kinsman or a close neighbour, the matter is quickly closed by compensation, often on a reduced scale, being soon offered and accepted, for when a homicide occurs within a village general opinion demands an early settlement, since it is obvious to every one that were vengeance allowed, corporate life would be impossible." Evans-Pritchard, E. E. "The Nuer of the Southern Sudan" in Fortes, M. and E. E. Evans-Pritchard (eds.) African political systems (London) Oxford University Press (1967) pp. 291-295.

However, those unable to escape the death penalty were decapitated with a sword. In addition, the property of the murderer was then confiscated and divided among the council members, with a portion however going to the court of trial.

It is in civil matters that we see significant difference in the present system of settling dispute and that of the past. This difference is epitomized in the fact that both the plaintiff and defendant paid fees before the hearing of a case, and both the winner and the loser also paid cost to the court after the closure of the case. This is in sharp contrast to the present day system. The cost could be money, food, and drinks.

In adjudicative exercise, oath taking played a dominant role in the weight attached to evidence adduced in courts. This in fact had tremendous weight on the decisions of the court to the extent that this might mean exculpation from blame to any oath-taker. This might be regarded as extortion of facts from parties, but it helped the court in deciding guilt or innocence. Perhaps this was being furthered in the system of trial by ordeal which took different forms depending on the nature of offence. This procedure appeared to have eased the work of the judges in that the suspects shared-belief in oath may force him to make a confession of his crime. It may appear from the point of view of the present legal system to be against "fairplay and natural justice." Nevertheless,

it appeared to have been adequate for the purposes and circumstances of that society where complicated system of investigation as in modern times was unknown. Moreover, this cannot be discredited on the ground of equity in that the pre-occupation of the community was maintenance of peace and order. In the estimation of the people, the elders before whom the oath was administered were representatives of ancestors who were revered and held in great esteem. The elders themselves believed they were under the constant watch of their ancestors. The occurrence of a dispute would have offered the disputants opportunity to fabricate were it not for the existence of this belief. Oath-taking helps, not only to distil truth from lies, but also to regulate behaviour. Trial by ordeal was resorted to only when doubts existed. This was also anchored on the notion that if human attempts to get at the truth failed, at least the unseen forces would not err. Moreover, it was strongly believed that the outcome of the ordeal was the judgment of the supernatural powers.

Thus, by taking oath, the work of the court was made easy and strength was lent to its decisions since everyone would have seen that the judgment had been fair and consistent with the traditional practice and with available evidence. Maybe it was a misunderstanding of this method of taking evidence that led Epstein to declare that African courts

do not sift evidence.[1] To him, no evidence is rejected as irrelevant as all decisions are based on oath taking. The existence of fairness and consistency is not far to discover if one follows the discussion above. It may also be argued that the African traditional court system does not permit of fabrication especially that its method of adducing evidence is intricately entrenched in the belief system of the people. Furthermore, the end of justice was not strictly arbitration. Rather, it was geared towards reconciliation so that the members of the group could continue in a wholesome society.

At this point it is necessary to comment on the composition of the judicial organs. Democratic government involves the separation of the three arms of government - the legislature, the executive and the independence of the judiciary is emphasized. This independence may be lacking in a situation where the administrative body also performed judicial functions. But, a critical examination of the traditional judicial system gives the impression that the dreaded injustice that could ensue was avoided. In fact, one can argue that the absence of separate judicial personnel ensured democratic justice, because the aim was not to blame but to ensure harmony and peace. The procedural tenets of the

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1. Epstein, A.L. Juridical techniques and the judicial process. (Manchester) University press for Rhodes-Livingstone Institute paper No. 23, pp. 20-21.

system also guaranteed to the commoner fair and equitable justice. It can also be argued that since the society was not interested in the punishment per se, and that its interest lay in the harmonious relationship of its members, it would have been unfair to have judges of independent mind who would have interpreted the law without bearing in mind the demands of the political situation. And for a non-industrialized society, it provided a simple system comprehensible by the members.

It is true that the court may be difficult to identify, especially that its personnel also performed political and religious functions. Nonetheless, although difficult, identification can be done in almost every legal system, be it archaic or modern.[1] On this same issue, Seagle notes that

> the court of the bush is nonetheless a court; because it does not sit everyday, because it may not always employ compulsory process, because it is not housed in a permanent structure upon whose lintel is inscribed "fiat justitiaruat caelum."[2]

To Seagle, the tests of ascertaining whether a court exists are (1)

(1) Responsibility - that they knew; (2) Authority - that they achieved;

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1. Max Radin claims that among primitives courts may be regularly constituted by the tribal group such as the tribal council of an American Pueblo sitting in judicial capacity or a court of the West African Ashanti, constituted of the chief, the council of elders and henchmen. Quoted in Adamson Hoebel: The law of the primitive man (Cambridge) Harvard University Press (1967) p. 24.

2. ibid. p. 24.

and (3) Method - unhampered system of formal precedent which required them to judge according to the past. Whether our type of traditional Yoruba courts conform with the above criteria is irrelevant to this investigation, but one thing that is basic is the fact that the Yoruba people recognized them as courts and they so regarded themselves. The essence of a court is that a community has spoken and its judgment executed, i.e. commands obedience. Perhaps these were the type of courts which Radin and Seagle had in mind.

Considering the law that was being applied in the pre-British days, Fadipe claims that this was not in accordance with any written code of laws but with a body of customs, usages, codes of manners.[1] He stressed that "law" can be used in describing the system if it has been long established and sanctioned by custom. The fact that the laws were not written do not make them a different thing. They are laws to the extent that they had the use of force at their disposal. The use of physical coercion is a sine qua non of law in any society and they must be exercised by a socially authorized agent. The law has teeth - that can bite if need be, although they may not necessarily be bared. Truly, as Jhering emphasized "Law without force is an empty name" and more poetically "a legal rule without coercion is a fire that does not burn,

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1. Fadipe, op.cit., p.707.

a light that does not shine."[1] The law as existed among the Yoruba was law in all its facets. The fact that it was not codified did not deny them of the characteristics enunciated by the legal luminaries mentioned.

In summary, we have attempted to establish that in traditional Yoruba society, there existed a neatly worked out system of courts with both original and appellate jurisdictions. It has also been demonstrated that a code of law existed which governed social relations in all the groups and also that this system was not without fault. In spite of the shortcomings of the system, we have tried to demonstrate that it was effective and that the effectiveness devolved to a large extent on the religious and ethical sanctions attached to it. Thus when the British arrived on the scene, they appreciated the merits of the system because apart from being simple, delay was minimal. In cost it was very inexpensive to the extent that its motive was peace keeping.

The effect of English legal system on the traditional court system

The super-imposition of any new system on a traditional one is likely to produce either of two results. First it may lead to the total eclipse of the existing one or, may produce a hybrid of the old and the new. Whichever pattern this takes, it necessarily involves processes

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1. Jhering, R. Von. Law as a means to an end (New York) 1924, p.190.

of adaptation and adjustment. The system so far described is no exception to the rule stated above.

The coming of the British necessarily brought in its trail the establishment of British institutions. As it is the policy of the British colonial administration to establish British institutions in their colonies, a police court was established at Olowogbowo in January, 1862 after the cession of Lagos.[1] This was followed by the establishment of the Supreme Court of Her Majesty in April, 1863.[2] In the same year, an ordinance declared that

> the laws of England shall have the same force and be administered in the settlement as in England, so far as such laws and such administration thereof can be rendered applicable to the circumstances of this settlement.[3]

The provision of this ordinance shows clearly that the English legal system would not be applicable to the Nigerian situation in its entirety. It is this acknowledgement of the existing system that led to the birth of the dual system of law in Nigeria where the traditional judicial system continued to exist in the form permitted by the British while establishing British courts.

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1. Otunba-Payne, J.A. Table of principal events in Yoruba history. (Lagos) 1893, p.11. The exact date of establishing that court is not documented for it is recorded that Sir Yegi - 2nd Chief magistrate in 1863.
2. Supreme court ordinance No. 11, 1863.
3. Ordinance No. 3, 1863.

The impact of English law upon indigenous institutions was not without stresses and strains. However, this does not imply that it has been mainly negative and that it has been simply disintegrative.[1] In fact, not all the changes that took place can even remotely be described as other than salutary. Many of these changes are inevitable.

This dualism formed the basis of Elias' treatise on the Nigerian legal system. According to Sir John Verity,[2] Elias deals in detail with what may well be considered a classic example of the gradual application of the common law of England and the English judicial system to a new people concurrently with the preservation of the laws and customs handed down to them through the ages by the traditions of their forefathers. The present relationship of its two branches, each maintaining its fundamental principles but ever more closely integrated, is a measure of the success with which this curious process has worked itself out in the course of the past century. To this learned Chief Justice, the two systems have existed harmoniously because both the common law and what is described as the Native Law and custom of Nigeria are living organisms, growing from the general custom of the people and capable of adapting themselves to changing circumstances and varying conditions of thought and life.

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1. Elias, T.O. Law in a developing society. (Benin City) Ethiope publishing corporation (1972) p.107.

2. Sir John Verity was one time chief justice of Nigeria and he wrote the foreward to Professor Elias' "The Nigerian legal system" (London) Routledge & Kegan Paul Ltd. (1963).

Mere recognition of customary laws is not the same as enforcing them. The policy of the British authority was to see in operation indigenous institution existing pari pasu with the English system, consequently it became imperative for them to allow the traditional authorities to continue to administer customary laws provided they were not repugnant to natural justice, equity and good conscience and on condition that they were not contrary to any existing law and were in conformity with public policy. Thus, Keay and Richardson[1] (1966) linked the development of law and the establishment of the courts with political and social developments which led to the establishment of customary courts styled "Native Courts." But as far as Ajayi was concerned, the courts were only "native" in the sense that their personnel and a part of the law which they administered were indigenous.[2] In fact they were not the same as the indigenous judicial institutions of pre-British days since they were established by statutes.[3]

Apart from being creatures of statute, their powers were prescribed by statute. They had jurisdiction in cases where all the parties belonged to a class of persons, who have ordinarily been subject to the

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1. Keay, E.A. & S.S. Richardson. The native and customary courts of Nigeria (London) Sweet and Maxwell (1966) pp. 3-4.

2. Ajayi, F.A. The interaction of English and customary law in Nigeria. In Journal of African law. Vol. 4 (1960), p. 40.

3. Native courts ordinance, cap. 142 and Native courts ordinance (Colony) cap. 143.

jurisdiction of the native tribunals.[1] They were empowered to enforce such provisions of ordinances as the Governor might by Order-in-Council specify and also the provisions of all rules or orders made under the Native Authority Ordinance (Cap 140 of the 1948 laws, now repealed) and the provision of all rules, orders or bye-laws made by a Native Authority under other ordinance.

Ajayi claims that the Native Court system itself was considered as an adjunct to the well-known British colonial practice of "Indirect Rule" of the colonial territories through the medium of "tribal institutions which the native peoples have evolved for themselves."[2] Since the original traditional institutions have not been replicated, the system no doubt was losing its cridibility as a result of which its sanctions were altered radically. In place of its formerly inadequately organized sanctions, the whole organized coercive power of the modern Nigerian state is now available for its enforcement - the courts, the police, prisons and prisons authority, court messengers and ultimately the army[3] now function as agents of enforcement.

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1. See section 8(1) of cap.142 (1948)Laws of Nigeria and 8(1) of cap. 143 for Colony.

2. Sir Donald Cameron. The principle of native administration and their application, para.1.

3. Nwabueze, B.O. The machinery of justice in Nigeria. (London) Butterworth & Co. Ltd., (1963), p.3.

In the processes of these developments, the local people started to lose grip of their institutions. Colonial administrative officers were soon injected into the system to administer customary law. The officers who were credited by their overlords with vast knowledge of the custom and language of the people they ruled, were vested with extensive judicial power. However the native courts were allowed to exist and be directed by the natives when the Protectorates were proclaimed in 1900. This was due partly to the shortage of the available judicial officers, partly to the inaccessibility of many of the outlying districts, and no doubt due to the attachment of the people to their traditional institutions for settling disputes. But later as a result of the Native Courts Proclamation 9 of 1900, two classes of courts were established, viz. Native Courts presided over by a Native Authority and styled "Minor Courts" and Native Courts presided over by a European officer and styled "Native Councils." The former which consisted of one or more members, appointed and removable by the High Commissioner, handled matters where both parties were natives or the non-native party consented in writing. On the other hand, the Native Council had original jurisdiction concurrently with the minor courts but had greater power in certain matters, which were not within competence of the Minor Courts and occupied a supervisory position to them. The Commissioner in charge

of a district was ex-officio president of the "native council" and other members consisted of such persons as were appointed by the High Commissioner.

This position remained till the amalgamation of Northern and Southern Nigeria in 1914. As a result of the amalgamation there came into operation in the southern territories the system of judicial organization that hitherto existed in the North. The era of paternalism has come. It was manifested in the premise of political justice as epitomised by the administrative officers acting in judicial capacity. The control of the native courts was taken from the ambit of the English type courts so that their "nativeness" may not be polluted. Channel of appeal ended with the administrative officer at the top. The native courts therefore existed as a "parallel" rather than as an integrated system of courts. And, until the attainment of self-government in Western State (Region) in 1957, there was an official anxiety about the possible danger of exposing the indigenous judicial system as it had been adapted for use in the native courts to the full impact of English judicial techniques as applicable in the Magistrate's and superior courts of the country.[1] The judicial reforms of Donald Cameron[2] did not alter the situation in spite of its far reaching effect on the English type institutions.

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1. Ajayi, op.cit. p. 41. The emphasis was on preserving the sacredness of the native institutions even though foreigners were injected into them.

2. Sir Donald Cameron op.cit.

This does not however mean that the traditional court system went unscorched by the foreign system. The latter's influence appeared to have been more pronounced in the field of practice and procedure than in the field of substantive law itself.

The fact that section 14 of the Native Courts Ordinance of 1948 provided that "the practice and procedure should, subject to rules made under section 49 of the rules, in general, be regulated by native law and custom," shows that the native court system was no longer native in the sense of the personnel continuing to be the traditional rulers and the laws applicable to be customary rules. In fact, this pollution did not end there. Administrative officers were empowered to make rules of court for the procedure and practice of the customary courts. Thus, when the Native Courts Commission of Inquiry of 1952 reported that " "very little customary procedures remain," it was only making an irrebutable statement. The typically English forms of civil action like cases for "declaration of title," for "damages for trespass," and for "injunction" sooner or later became by adoption very common in the Native Courts.

In summary, we have seen that as a result of the super-imposition of an exotic legal order in 1900 (1862 in Lagos) there had occurred a change of sovereignty, and the British government assumed complete "power and jurisdiction." The consequences of this has been aptly

described by the observation of the Privy Council as quoted in Nwabueze[1] thus:

> In all cases (of change of sovereignty) the result is the same. Any inhabitant of the territory can make good in municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rules as he had under the rule of its predecessors avail him nothing.

But, as it has been shown, this rule has not been strictly adhered to and consequently a total abrogation of our customary law has not occurred. It is also a fortune that the British colonial policy did not insist on this dictum for it expressly empowered the High Commissioner as the sole legislator, to respect "any native laws regulating the civil relations of any native chiefs, tribes or populations under Her Majesty's protection except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction or clearly injurious to the welfare of the said natives."[2] This policy has enjoined our successive local courts to "observe and enforce the observance of native law and customs" subject to the limitations mentioned above.

This, according to Nwabueze, has had far reaching consequences. Though its criterion of validity rests as before on acceptance by the people of the community, its sanctions have altered radically in that a

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1. Nwabueze, op.cit. p.3.
2. Article 6, Southern Nigeria "Order-in-Council" 1900.

well-organized system of courts, police and prisons now enforced the laws. Apart from this, the introduction of western education into the country has had the beneficial effect of minimizing the vagueness of the customary law. Moreover, native courts have been empowered to make rules embodying customary law and judicial decisions of the English type courts also form an authoritative source of law when they have been repeatedly followed to justify taking judicial notice of them.

English judicial institutions on the Nigeria scene.

As mentioned earlier, the first action of the British authorities upon the creation of the colony of Lagos in 1862 was to introduce the main body of English law. The influx of British citizens into the territory made it mandatory for the enactment of laws that would govern the entirely alien relationship that the changes brought about. In the first, there was the problem of the relationship among the aliens themselves and secondly, the relationship between the British and the indigenes. The social and economic activities which this new interactions produced also made it mandatory on the new rulers to inject into the new "kingdom" their own laws. Apart from the ambivalence of the British government itself as to the fate of the colonies, the economic interest during the period made the injection of English institutions into the country a sine qua non. And the fact that the aliens were in the minority among a

so-called "barbaric" people, pressure was consistently put on the home government in all the colonies for protection. This protection could not be provided effectively by the traditional government hence the formal and direct establishment of the colonizers' institutions.

The change in administrative machinery was accompanied by changes in legal institutions. As a result there came into being three branches of English law; namely, common law, equity and statute.[1] According to Park, the common law is essentially a system of rules abstracted from cases, it involves the notion of "precedent." The implication of this is that a court declares the rule in order to determine the case before it. The slate is not wiped clean, it becomes the precedent to be followed by a judge, and in a latter case upon the same point.[2] The second is like it - a case law system - equity.[3] But the third -

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1. Park, A.E.W., op.cit., p.5.

2. This is not to say that all precedents are binding on all courts. It is the decision of a superior court that binds the inferior ones, but that of a coordinate court is merely persuasive. However a court may refuse to follow its own precedent in a similar case if the previous decision was given per incuriam.

3. The only distinguishing mark between common law and equity is the fact that one was developed by the courts while the other was developed by the Lord Chancellor in the court of Chancery. This was so till 1875 in England when the judicial system underwent a complete reorganization through the Judicature Acts 1873-1875 and since then the common law and equity have been administered together in the same courts. That has always been the case in Nigeria. (Park, A.E.W. op.cit., pp.9-10).

enacted law - is basically divided into two types - Acts of Parliament and delegated legislations.

It is the system described above that was imposed on a simple agrarian people in the 1860s. It imposed a condition that had insalutary consequences for the native institutions to the extent that the latter were allowed to function only if they were compatible with the existing rules (i.e. English Rules injected into the country) and that they did not offend the rules of "natural justice, equity and good conscience." It was left to the British administration to determine that which conformed to their set standard and any Nigerian statute that was repugnant to that set standard was also pro tanto void. Perhaps this explains why most English laws were incorporated in Nigeria even by the Nigerian legislatures. This has been metaphorically described by Park when he said,

> most English laws incorporated in Nigeria were not brought but they of their force and motion crossed the sea to Nigeria. They did not come under their own steam in a United Kingdom ship, but as passengers in a Nigerian ship.[1]

This cultural imposition necessarily gave birth to convulsive situations that the traditional pattern wallowed in hardship to retain its identity.

It is the development of this foreign institution that formed the core of Elias" Legal System in Nigeria. Elias' approach was developmental for he traces the history of the court from the inception of the

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1. Park, A.E.W., op.cit.

British administration through periods of uncertainty and change. He claims that the period 1861-1874[1] witnessed the establishment of about eleven separate courts which were very short-lived and which were essentially special tribunals. However, the first court worthy of note, at least for our purpose, is that established by the Supreme Court Ordinance No.11 of April 1863 aimed at providing better administration of justice within the settlement of Lagos,[2] and also as "a court of jurisdiction holden and presided over by the Chief Magistrate." This was given both criminal and civil jurisdictions equivalent to that of the court of Her Majesty's Queen's Bench, Common Pleas and Exchequer in England. According to this source, appeals lay from it to the Governor-in-Council. Elias claims, and rightly too, that the prevailing conditions made it inevitable that final judicial discretion should have been vested in a purely political authority and that this might have been responsible for the practice of such in later years. Various ordinance established more courts and increased the powers of existing ones. The personnel of the courts were not lawyers[3] and could not be expected to dispense justice according to strict legal ethos. Apart from this, the activities of the

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1. Elias, T.O., op.cit. see p.44 for the names of the courts.

2. ibid.

3. Adewoye, O. Prelude to the legal profession in Lagos 1861-1880. In Journal of African law Vol.14, 2, Summer 1970, p.99.

personnel were not delineated in water-tight compartments. Most often, Elias claims, the court judge may combine the work of the prosecutor with his, and cases where the Registrars of courts were made prosecutors or judges were not uncommon. However, the court of civil and criminal justice came into being in 1866 and superseded the Chief Magistrate's court. It was at this juncture that the notion of preliminary investigation came into being in Nigeria for it was provided that all criminal cases to be tried in the Chief Magistrate's court must be sent from the Police Court or other Magistrates' courts, together with written sworn deposition.[1]

Another court of any significance during this period was the Consular Court. Article 1 of the 1872 Order-in-Council to Consuls appointed to the South-East empowered them 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 British and the local chiefs in these territories.[2] According to Elias, "this was designed for peace, order and good government of Her Majesty's subjects

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1. Elias, op.cit.

2. It will be remembered that this was the peak period of the oil trade between the British citizens and the Niger Delta people. The aliens were fraudulent and thereby needed the backing of their government to force things done.

living within the said territories." The Consuls were further authorized to make regulations and rules. This regulation also laid down the conditions under which offenders could be punished; the conditions were that, the laws must be known and knowable to the affected person and authorised by the Foreign Office.[1]

The opening of the second era 1876-1900, as delineated by Elias, witnessed the birth of the Supreme Court.[2] This introduced the notion of a Chief Justice and the Full Court system. Apart from this, it led to the establishment of Divisional Courts which sat in the provinces with only one judge presiding. The ordinance also provided for the establishment of District Courts headed by Commissioners who were officers of the Supreme Court ex-officio. This was a court of lesser jurisdiction than the Supreme Court. This period also witnessed the influence of the Royal Niger Company on the administration of justice. The period preceded the proclamation of both the Southern and Northern Protectorates in 1900. During the period, 1876-1900 attorneys have started to make their presence felt as a result of the demand of the English judicial system. According to Adewoye,[3] the earliest ones were "self-taught"

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1. Elias, op.cit.
2. Ordinance 4 of 1876.
3. Adewoye, op.cit.

which the English judicial system inadvertently produced. Apart from the uncertainty of the role of legal practitioners in the judicial system, it was also an era of hostility between the administration and the lawyers. Inadequacies of the court and the propensity of the people to litigate were invariably blamed on the lawyers.

Another chapter was opened in the legal history of Nigeria when by an Order-in-Council dated 27th December, 1899 the Protectorates of Southern and Northern Nigeria were proclaimed to take effect from the 1st of January, 1900. These new bodies were to be administered by a High Commissioner with power to make laws "which will be styled proclamations." Automatically the regulations of the company which were in force became repealed. Certain ordinances and regulations of the Niger Coast Protectorate were by "The Ordinance Extension Proclamation No. 11 of 1900"[1] extended and applied to the new Protectorate of Southern Nigeria. It will be noted that the activities of the Royal Niger Company whose administration was terminated by the events of 1900 operated mainly along the Niger and the Northern provinces. This was the beginning of injecting into the South institutions as existed in the North.

Elias,[2] in his historical perspective, saw this period as the beginning of the attempt at producing a uniform court system for the country.

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1. Elias, op.cit.
2. ibid.

The period 1900-1914 thus became the formative years for a unitary judicial system. Nwabueze[1] claims that a Supreme Court of Judicature which was in line with the Supreme Court as established by the 1876 Ordinance was by Proclamation 6 of 1900 established for Southern Nigeria Protectorate. However, the significant departure from the 1876 pattern was that Commissioners' courts were established under "The Commissioners" Proclamation No. 8 of 1900. Yet of great concern was the omission of appeal system, admission of Barristers, Solicitors and Proctors in the proclamation. The proclamation also denied recognition of the idea of reconciliation and arbitration by the court in civil and criminal matters. The power of the new court was limited to people

> who are not natives of the protectorate and natives who have married or shall be married in accordance with the provisions of the Marriage Proclamation 1900.

On the other hand, the Commissioners' courts were given summary jurisdiction in certain cases. These courts enjoyed far wider powers of imposing sentence than did their opposite numbers in the colony and its suburb. The Commissioners were also given discretionary power[2] whether to transfer to a Native Court (they were also established as a result of the political changes of 1900) any dispute between natives with

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1. Nwabueze, B.O. op.cit.

2. Sec. 18 of proclamation 8 of 1900.

or without application by the parties. It also became necessary for the establishment of a Criminal Procedure Proclamation as was the case in 1876. And to make the jurisdiction of the new court run throughout the Southern Protectorate, series of agreements were made with the Yoruba Obas on the one hand and the British administration on the other. And, on 1st May, 1906, the Lagos Colony became amalgamated with the Southern Protectorate. The new change necessitated the change of nomenclature in the judicial system to reflect what had happened. Hitherto, the Egba Jurisdiction of Supreme Court Proclamation, 1904 had brought Egbaland under British judicial system. Here, because of its independence, the traditional court was saved by creating a "mixed court." The process was completed in 1915 when the existing ordinances were repealed by the Jurisdiction of Courts Extension (Protectorate) Ordinance 1915; and the jurisdiction of Supreme Court, Provincial courts and native court[1] came into operation in the whole Yorubaland.

Although we have claimed an attempt at a uniform system of judicial organs, no uniform system actually emerged until the merger of the two administrations.

A Supreme Court and Provincial Courts were established for the English type courts as was the case in the Northern Protectorate. At

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1. These courts were already in the Northern Protectorate where the colonial administration was on a firmer basis.

the same time, Emir's and Alkali's courts were allowed to remain under the political surveillance of the District Officer, the Resident, the High Commissioner and the Governor in that order. (An attempt was made to put the native courts in the two protectorates on a better uniform basis). But one significant point to note is that the judicial system of the Protectorate of Northern Nigeria was, on the whole, probably better organized than that of the Southern Protectorate in the period before 1914.[1]

A new situation dawned on the country when in 1914, the two administrations were amalgamated. This obviously entailed a process of unification of the laws and the legal systems of both administrations. And in Lord Lugard's[2] words, the judicial system might be described thus:

> on amalgamation the Chief Justice and Puisne Judges of Northern Nigeria were abolished and a single Chief Justice with four Puisne Judges for Nigeria were appointed, in lieu of the previous seven judges. . . The three Police Magistrates required for Lagos and Calabar and their relief, are placed under the Chief Justice for administrative purposes. It is now usually a condition of appointment that they shall be qualified barristers, and they have adequate prospects of promotion in the Judicial and Legal Departments. The station Magistrates,[3] on the other (who were at first included in the magistracy) have

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1. Elias, op.cit. p.109.
2. Lord Lugard was the Governor of the merged administration and was at the centre of the 1914 judicial reorganization.
3. These were administrative officers charged with the administration of justice.

> been merged in the administrative branch, to which they naturally belong. Their magisterial functions are secondary to those of the "Local Authority" of the township of which they are in charge. When the former duties become too onerous a Police Magistrate is appointed. They replace the former Cantonment Magistrates in the North. A single Attorney-General was appointed for Nigeria, and each Lieutenant-Governor is provided with a Legal Adviser. A Crown Prosecutor completes the legal establishment.[1]

From the above, it can be said that new phenomena have been introduced and a solid foundation was laid for a unified legal system. It then became necessary "to evolve a system applicable to the whole country with only such disturbance of existing conditions as was necessary in the interest of good government."[2] Elias claims that the learned Chief Justice Sir Edwin Speed thought that the system as it obtained in the Colony of Lagos (as distinct from the Protectorate) was properly organised and should not be disturbed. As for the functions of the Northern Nigeria's Supreme Court, Elias further claimed that, there remained only to be increased the staff complements for equal efficiency as the Colony's Supreme Court. The Provincial courts of the Northern Protectorate was so successful that it was extended to the Southern territory. By these arrangements, there came into existence throughout the country

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1. Quoted from Elias, op.cit. pp.125-6.

2. The duty fell on Sir Edwin Speed, the first Chief Justice of the amalgamated administration to draft the necessary instruments.

a uniform court system. These were the Supreme Court, Provincial Courts and Native Courts.

The Supreme Court was given both original and appellate jurisdictions and the jurisdiction was confined to the commercial centres. It enjoyed concurrent jurisdiction with the provincial court over all "non-natives" throughout the country, and its Commissioners were the various police and station magistrates and all political officers exercising judicial functions.

Even though the Governor-General, on introducing the Supreme Court Ordinance into the Legislative Council in 1914, described it as "the result of mature and careful consideration, with the highest technical and legal advice" yet the independence of the judiciary was not in any way guaranteed. How laudable a scheme was this! The involvement of political officers in the administration of justice is in no way compatible with the principles of fairplay and equity. It is indeed the result of mature and careful consideration when laymen who served as administrators took such active part in dispensation of justice! The judicial system that came into being was motivated by the paternalistic flavour of the administration. Because of this patenalism no legal representation was permitted in the Provincial Courts. The local bar did not take the matter with satisfaction and their main attacks were on the composition of the provincial courts.

They also argued that the judgment of the provincial courts savoured too much of political justice as it allowed no appeals in criminal cases, most especially that the courts had jurisdiction in capital offences. Apart from their own legal inability to appear before the Provincial Courts, they felt that the political officers had too much to grapple with.

Ably defended by its protagonists, the political officers were credited with immense knowledge of the criminal law and that their familiarity with the people put them in vantage position to acquire expert knowledge about custom. It was claimed also that non-appearance of legal practitioners before the courts would save the political officers of embarrassment that was likely to result from the interaction between legally trained and untrained legal administrators. It was also argued that there was a close supervision of the political officers which eliminated the possibility of abuse. Lastly, it was argued that the new system made justice cheaper.

Explaining why the lawyers were excluded from the courts, Adewoye[1] claims that the authority viewed the activities of the lawyers with misgivings hence derisive comments about them were made by political officers. It was alleged that some of the lawyers were politically causing great inconvenience to the smooth running of the administration.

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1. Adewoye, op. cit.

They were, in spite of the embargo on their practice, able to forment trouble among the people leading to litigation and a likely disruption of social life that added intensity to the problems of the administration. Rather than the lawyers suffering, it was the clients that suffered on account of paying for services not rendered. Thus, it became glaring that instead of protecting the litigants, the litigants were being bled to death financially. It reached a stage when the people were reposing greater confidence in the lawyers than in the administration. The lawyers would not take this lying low and they launched attack on the system.

The significance of the 1914 reorganization was the ban on legal practice. The new system remained until 1933 with nothing that is credit-worthy. The whole notion of provincial courts led to corrupt practices and a chain of violent reactions. It did not keep the lawyers out of disputes in the protectorate. The cost of litigation which the administration aimed at keeping low was also not realised since what would have been paid to lawyers were offered clerks as bribes.[1] According to Adewoye, this also allowed quacks to parade the protectorates as advocates. And instead of the lawyers, letter-writers* sprang up to champion the cause of the citizens. Adewoye argues that

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1. Adewoye, O. op.cit.

* The letter-writers are people who take it as a profession to assist others in writing petitions and other quasi-legal documents. The preparation of documents that would have been the lawyers' exclusive preserve became the letter-writers'.

> it was ironic that an administration that was anxious to protect non-literate litigants from being bled to death by lawyers should let loose on the same people a class of men less educated than the lawyers, and from all indications, not any more scrupulous.[1]

Short of appearing in court, letter-writers found a role to play in the judicial system that operated in the Protectorate until 1933. They functioned in all respects as barristers, and the most important of their functions was writing petitions.

The deficiency of the 1914 reorganization was echoed in the press by lawyers as well as by the legislative council. In official circle, some of the political officers yawned so much for a reform. It was Donald Cameron more than any other person that actually belled the cat. He succeeded in establishing the principles of the separation of judicial from political functions. Because he was aware of the problems of staff, he did not insist on having legal men on the bench but insisted on having different people performing different functions. The axe then fall on the provincial courts which were abolished. By the same token, the power of of the Supreme Court was drastically reduced for it was now confined to the township of Lagos. In the meantime, the High Court sprang up for

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1. Ibid. p. 206. It is also to be noted that the administration had withdrawn the licences of the letter-writers and thereby sent them underground to practise. This rendered any form of control impossible.

the Protectorate. Much as he saw faults with that system his own reform however did not go much further than the one he attacked.

By the Protectorate Court Ordinance of 1933, High Court and Magistrate Courts were established. Together with the Native Courts, they were charged with the responsibility of administering justice in the Protectorate. However, their powers were excluded from the colony of Lagos just as the Supreme Court in Lagos was excluded from the protectorate. In certain cases, in the protectorate however, jurisdiction in criminal matters involving non-natives was reserved to the Supreme Court. The Chief Justice was vested with the power to direct where a case should be heard and determined.

It is significant to note that the Supreme Court and the High Courts were coordinate courts and appeals from them lay to the West African Court of Appeal.[1] The only mark of difference lies in their territorial jurisdiction and quality of their personnel.

On the issue of having two coordinate courts, Nwabueze[2] argued that it was born of the fear of personnel problems. According to him, it was thought that appointment to the Supreme Court would require a first-class calibre lawyer. And, because these were hard to come by in those

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1. The WACA having been established in 1928 as appeal court for the British West African colonies. Nigeria came under its jurisdiction in 1933.

2. Nwabueze, op. cit.

days, the government conceived the solution to lie in having a court of less exalted status than the Supreme Court. It was therefore intended to recruit lawyers, not qualified for Supreme Court appointment, to the Protectorate High Courts. Apart from these, the arrangement permitted appointment of administrative officers with sufficient legal experience to the High Court bench and the magistrates' courts. Another significant change that took place under this scheme was the separation of duties of administrative officers performing both political and judicial functions. It led to the birth of the magistrates' courts which inherited part of the jurisdiction of the provincial courts but now largely manned by administrative officers who no longer held their post in ex-officio capacity, but by appointment which took into account their qualifications and legal experience. Although this change is laudable, the continuing existence of the same personnel as involved in the Provincial Court system made it less significant.

The case of the lawyers began to receive greater attention and the ban on them was later lifted. They were permitted to practise in the Protectorate courts except in the Native Courts. The relaxation of the ban was not total even in the protectorate courts because regulations were made to exclude lawyers from land matters which were believed to give lawyers their "chief profit." It was provided that lawyers could appear in land matters only on appeal to the High Court or Magistrates' Courts.

Creation and abolition of courts had been a normal feature of the judiciary in Nigeria. The frequent changes did not satisfy all. In fact the protagonist of the new system, Sir Donald Cameron, did not stay long enough in Nigeria to see how the changes he introduced worked out in practice. The lawyers frowned on their exclusion from involvement in land matters and continued to press for the repeal of the 'obnoxious' law that denied them a living. The problem of shortage of staff was acute as the few qualified personnel served in the two systems. This, no doubt, was a dissipation of scarce resources that wise counsel would have prevented if the administration had taken the people into confidence. There was no need for duplication of institutions as far as Nigerians were concerned. However, the judicial system continued to maintain its oneness to the extent that the jurisdictions of the Supreme Court ran across the country. The journey of having a stabilized system has not ended.

In 1943, another reorganization took place. It consolidated and amended the existing situation by creating another court. This new arrangement was confounded in the Magistrates' Courts Ordinance No. 24 as amended by No. 43 of 1943. It merged the courts of the commissioners of the Supreme Court in the Colony with the Magistrates' courts in the protectorate and substituted a chain of courts covering the whole country under the name Magistrates' Courts. In addition, Magisterial

Districts, each with its own magistrate, were established. The judges of these courts were ex-officio justices of the peace and were classified into first, second and third class grades of magistrates according to the differences in jurisdictions and remuneration.

Similarly the Supreme Court Ordinance which came into effect on June 1, 1945 (No. 23) as amended by No. 33 of 1945, merged the Supreme Court of Nigeria with the High Court of the Protectorate of Nigeria. Under the Chief Justice, the judges were graded Senior Puisne, second, third and the fourth Puisne Judges and a number of puisne judges. According to Elias,[1] the significance of this is that for the first time the Supreme Court writ now ran through the length and bredth of Nigeria in theory as well as in practice.

In addition, the position of Nigerian cases to the West African Court of Appeal (WACA) was slightly modified. The West African Court of Appeal Ordinance No. 30 of 1943 added one provision to the principal ordinance of 1933 and this was to the effect that an appeal should lie to the WACA from all matters in respect of which provision was expressly made in any ordinance for such appeal. This omnibus provision avoids the necessity for an elaborate amending ordinance which would obviously be inevitable were specific mention to be made of all the judicial changes of 1943.

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1. Elias, op.cit., p.152.

The only significant innovation brought about by changes of the war years was that a separate Juvenile Court was created. By the Children and Young Persons Ordinance No. 41 of 1943, two juvenile courts were established - one at Lagos and another at Calabar. Each was constituted by a qualified magistrate sitting as chairman with assessors chosen in rotation from the panel.

The unitary system established by the various judicial ordinance remained in force till 1954 even though some sort of quasi-federal government was established in 1946. Hence, until 1954, the organization of the Nigerian judiciary was centralized. There was a single court for the whole country together with the various subordinate courts; magistrates' courts and native courts.

From the foregoing, it is evident that the history of the Nigerian judiciary has been fraught with problems - problems of instability and inadequate staff, problems of experimentation and institutionalization. The problems should be perceived from the perspectives of politics and of need. On the political sphere, it was difficult for the successive administration to define in precise form what the judiciary should do. Misgivings about the role of a court abound among political officers. Some political officers even advocated total exclusion of judicial activities from their areas of jurisdiction while others felt that judicial functions and officers should be placed under their control. Apart from

this, it was also thought that the judiciary was obstructing the "peaceful" administration of the country. The attitude to the practice of law was motivated by nothing other than political considerations. The administrative officers felt that if lawyers were allowed to wield power in the courts, they automatically would wield it outside and they saw this as a threat to their positions. This attitude is understandable if one grasps the paternal inclination of the administrative officers and their so-called claim to "expertise" in the people's culture. Lastly, the instability of the judicial institutions was caused principally by lack of foresight, planning as well as misunderstanding. The administration's preoccupation was to use the judiciary for its peace-making purpose with the "natives."

On the issue of need, the courts were created as the administration felt they were needed. The consequence of this was the numerous short-lived courts and the duplication of judicial institutions. It is because the administration lacked adequate personnel that it resorted to courts manned by local people. It was also a question of satisfying the political yearning of the colonial administration that it also endowed courts manned by administrative officers with supervisory functions over the local courts. Therefore, the system savoured of political justice most of the time. This practice was anchored on the theory that the political officers knew the people more than the legally qualified people. It was

also felt that the administration of the law should not be left to a body which claimed independence of the administration such as an independent judiciary. Hence, attempts were made at various periods to bring the judiciary under the close surveillance of the administration.

The series of reforms and reorganizations followed political and administrative changes and were geared towards the demands of various situations. For instance, the 1900 and the 1914 reforms were motivated by the new political situations - Proclamation of the Southern and Northern Protectorates and the amalgamation. On the other hand, the reforms of Sir Donald Cameron arose out of his effort to put the country on the way to 'self-rule'. Consequently, he saw an independent judiciary as a necessity. The charged atmosphere which the Lugardian reorganizations of 1914 generated also made the Cameronian reforms a necessity. Incidence of discontent were expressed both peacefully through the Legislative Council and violently in riots at various places in the country. And, when Sir Donald came on the scene, the stage was set for a radical change which he expeditiously performed on the judiciary. In fact, he was the first Governor to establish a Nigerian judiciary with responsibilities for administration of justice and divorced from an independent of executive authority. His reforms and the principles embedded in them were followed somewhat belatedly after the Second World War and under the pressure of approaching self-government. The new trend was towards

strengthening the powers of the professional judiciary in relation to the task of supervising the work of the customary courts rather than being subservient to the political officers.

The 1946 constitutional changes left the judiciary unitary until the inception of effective regionalism in 1954. However the years preceding regionalism was not uneventful in the history of the judiciary in Nigeria. Need for improvement was recognized and efforts were made in that direction. For instance, the changes that took place in the Native Courts was the result of the Brooke's Commission of 1951 and the enactment of general customary court reforms were its effect. Although the customary courts by these enactments became more statutory, it also became Nigerian in personnel and operation. Both the personnel and the laws administered were made more local than they were when political officers dominated the scene. The political officers were excluded from the scene and legally qualified personnel were appointed to man the high grade customary courts. The procedure became more formalized and a new arrangement whereby the courts were dependent on the local councils for its remuneration was institutionalized. It is upon this that subsequent customary court legislations were built.

The change was not confined to the customary court. The general trend in the English type courts was towards "Nigerianization." In

procedure, though essentially, English, the trend was in the direction of "Nigerianness." The relationship with foreign courts such as the WACA became extinct and a Supreme Court for Nigeria was established, with the Regional High Courts subordinate to it.

The era of unstable courts has disappeared and the goal of the courts were clearly defined. A stable procedure of appointment to the bench was established. Since the 1954 reorganization, the judiciary in the country can be seen as enjoying the highest stability since its birth in the 1860s.

The situation that came into being in 1954 was not without opposition. The problem of whether a federal judiciary should be retained or be replaced by regional judiciaries posed great threat to the judicial body. This issue provoked great debate and was staunchly opposed by both the Bench and the Bar. The Bar entertained the fear that inter alia the judiciary might become a tool in the hands of politicians and that differences in the conditions of service offered by the various regions might result in an uneven distribution of judges. The Bench, led by its chief, Sir John Verity, was equally vocal and vehement in its opposition. According to Nwabueze, the learned Chief Justice, in a memorandum presented to the Lagos Constitutional Conference in 1954, argued the need to preserve a single standard of learning, experience and integrity;

and to avoid the possibility of appearance of political influence in the courts. These arguments did not, however, prevent regionalization but elaborate provisions were made to ensure the independence of the judiciary.

The federal constitution of 1954 empowered the regional legislatures to establish courts for their respective regions, in pursuance whereof each Regional Legislature had in 1955-59 established a High Court, Magistrates' Courts, and Native or Customary Courts, in their respective Regions on the pattern of the system existing before regionalization. One consequence of this is that each region became a foreign country in relation to the other regions for the purposes, at any rate, of the exercise of judicial powers.[1]

Up to this point, we have traced the history of the Nigerian judiciary to the beginning of regionalization. A common trend which has become manifest in this regard is the gradual processes of development by experimentation in the legal systems of this country. It has been shown that development stages coincide with the political climate of a particular period. Great concern was shown for the statutory procedures of the courts but little concern was shown for the actual execution of these procedures. Thus a gap was created between procedure and practice. This study is an attempt to examine the gap between the statutory provisions spelt out and the processes of law-enforcement in action.

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1. Nwabueze, B.O., op.cit.

CHAPTER FOUR

THE CREATION AND THE GROWTH OF THE WESTERN NIGERIA JUDICIARY: 1955 - 1973

In this chapter, we shall discuss the processes by which Nigerian judiciary was regionalized. The discussion includes a cursory examination of the laws establishing the Western Nigeria judiciary including the various amendments that have been effected. In the process, we shall set out the jurisdictions of the courts and their relations to one another, and the control exerted on them by the enabling laws. This discussion will highlight the circumstances under which the various changes that had taken place were evolved and an evaluation of this process of change.

Prelude to the regionalization of the Nigerian judiciary

The introduction of the Richards' Constitution in 1946 was the last attempt by the British administration in Nigeria to determine the constitutional development of Nigeria without prior consultation with Nigerians. By this singular act, Nigerian nationalism was rekindled and the most articulate protest against the constitution ensued. The National Council of Nigeria and Cameroon led by Herbert Macaulay and Nnamdi Azikiwe undertook a country-wide tour "to educate the people"

and collect funds to enable the party launch attack on the constitution by visiting Britain "where power lay." Even though their visit was unsuccessful, subsequent constitutional processes took cognizance of the points of disagreement. Apart from introducing a quasi-federal constitution, it brought together the whole country under one effective umbrella; the first since Lugardian amalgamation of 1914. That apart, it reactivated the national awareness of the citizens of the country that their representatives now found a common enemy in colonialism although with varying degree of dissatisfaction. The constitution also provided a forum through which Nigerians discussed other problems. As it stressed oneness it also emphasized regionalism for it gave the country three administrative headquarters apart from Lagos which was the centre of administration.

The constitution provoked sharp criticism but Governor Richards did not stay long enough in Nigeria to see the constitution evolved. Shortly after his arrival in Nigeria, Sir John Macpherson, promised a review of the constitution. He took care and avoided the error of Sir Richards by consulting the people on the issue.

In January 1950, a conference of all Nigerian representatives was held at Ibadan. Apart from the discussion on the future constitutional development of the country, the conference discussed the set-up, power, composition and functioning of the judiciary. Participants expressed

dissatisfaction with the judiciary as it then was, especially the lower grade courts. It was argued that justice was available only at the Supreme Court and WACA. The recruitment system was attacked as unsatisfactory. And participants argued that the separation of the judiciary from the executive was long overdue. The practice whereby the executive controlled the judiciary, whether implicitly or explicitly, was viewed with the greatest dismay. Participants felt that judges appointed by the Governor - Head of the Executive - were bound to be subservient to the executive. It was the view of the conference that the Chief Justice be endowed with power to appoint and supervise his brother judges. According to the participants, the judiciary as the third and inevitable arm in any constitution must be independent, sound and impartial. The participants were of the opinion that the mode of appointment and rate of pay inhibited a good judiciary and consequently produced corrupt justice.

This conference also considered regionalization of the Native Courts. Thus we saw for the first time, among Nigerians, forces favourable to the balkanization of the judicial system. It was stressed that native courts would be better managed if placed under regional ministerial control. The underlying reason is not far-fetched. The three major groups (Yoruba, Ibo and Hausa/Fulani) agree that the

Native Courts were essentially matters for the Regions in that it affected matters about the tradition and customs of a people. Implicit in this was an agreement among Nigerians of their cultural diversity. This apart, they agreed that the judiciary should form an important part of the proposed constitution and its powers, roles, and composition must be entrenched in it.

The Macpherson constitution[1] that resulted from these discussions was however silent on the judiciary. Thus, in spite of changes in other spheres, the judiciary still remained in the old form, i.d. the Governor continued to appoint the judges, the native courts remained unitary and the judiciary remained under the control of the executive. It was not clear how this ominous omission was viewed by the nationalists who hitherto advocated its separation from the executive! It is also unimaginable how the judiciary could wallow under such an unfavourable atmosphere!

The position of the judiciary can be understood properly only within the larger context of the constitution and the political situation that bred it. Crowder[2] commented thus:

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1. The Nigeria Constitution (Order-in-Council, 1951 No. 1172).

2. Michael Crowder: The story of Nigeria (London) Faber Limited (1966), pp. 282-283.

> The Macpherson constitution, though much more liberal in its outlook than its predecessor, and much more in keeping with the desires of Nigerian themselves, was destined for a short life. Partly this was because of its own deficiencies, partly because of the political situation at the time.

Crowder goes on:

> In effect the constitution was a compromise between these two positions and power lay effectively neither to the centre nor to the Regions. And since, on its promulgation, it was stated to be only a step towards further constitutional development the various parties, despite an initial willingness to make it work, all the time had their eye on future change.

It appears that the temporary nature of the constitution was responsible for most of its deficiencies. In fact, the omission of the judiciary from it gives the impression that the constitution was only out to complete the number of years scheduled for Richards' constitution. Thus, a constitution that took three years to take off, managed to live for less that length of time.

In 1953, there was another constitutional deadlock. It shook the very existence of the country and the result was that a new machinery was put into motion for a constitutional review. Several issues including self-government (which was one of the issues that sparked up the crises), the position of the judiciary and the position of Lagos were discussed at a constitutional conference that took place in London between July and August 1953. It was the first practical approach to deliberate on the issue of Federalism in Nigeria. At the London conference, discussions

were centred on the structure of the courts. The chairman of the conference - Oliver Lyttelton opened discussions on the judiciary. He felt the Federal Government should continue to be responsible for "administration of justice, other than Native Courts."[1] Chief Obafemi Awolowo, asked whether there was any objection to the normal structure in Federal constitutions, i.e. that there should be a federal court which would hear appeals from the Regional courts and which would also be a court of first instance in dealing with constitutional matters.[2] In response, Oliver Lyttelton pointed out that there were three objections. First, there would be the practical difficulty of splitting up the existing judiciary in Nigeria into three Regional Courts and a Federal Court. Secondly, such a splitting up would increase the expense of operating the judiciary. And thirdly, there would be conflicting decisions which would increase litigation. The delegates could not agree on these touchy issues. Moreover, the discussions on them could not be continued because the delegates from the Northern Region had no legal adviser. Consequently the conference agreed that the matter be referred to a Committee.

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1. Record of proceedings of the Nigeria constitutional conference held in London in July and August 1953.

2. ibid.

The committee, under its chairman - Sir Sydney Abrahams met between 13th - 14th August, 1953 and recommended that

> The court of highest jurisdiction in Nigeria should be called the "Supreme Court of Nigeria" which shall consist of a Chief Justice and so many other judges as the central legislature prescribes.[1]

The committee also recommended that the judges of the Supreme Court should be appointed by the Governor-General acting on the instructions of Her Majesty the Queen in whose pleasure they hold office. The qualifications for appointment were that

> a person shall not be qualified to be a judge of the Supreme Court unless he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters, in some parts of Her Majesty's Dominion, or he is, or has for not less than ten years been, qualified to practise as an advocate in a court or courts having such jurisdiction.[2]

The central legislature was to recommend such remuneration for the judges except that the remuneration shall not be diminished during their continuance in office.

It was also recommended that the Regional Legislature should establish in each Region a High Court, which shall exercise jurisdiction as may be vested in it by the Regional Legislature. The judges of these courts were to be appointed by the Governor of the Region on the

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1. ibid.
2. ibid.

instruction of Her Majesty the Queen and they shall hold office under similar conditions as the Supreme Court judges.

The power[1] of the Supreme Court were to include original jurisdiction (i) in all inter-Regional disputes, (ii) in all disputes between the Central and Regional governments, (iii) on question of validity of a central law, (iv) in all matters arising under any treaty, affecting consuls or other representatives of other countries, and in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Central government.

It was also recommended that the Supreme Court should have power to hear appeals from the High Courts of the Regions, but the committee members disagreed on the procedures for appeal and on the agency to lay down the procedures. The arguments centred on whether the Supreme Court should lay down the procedure to the exclusion of the High Court. The objection to an unqualified right of appeal was based on the assumption that it would disturb the operation of native and customary courts which in their view should be entirely a Regional matter.[2] It was therefore agreed that the present system of native customary courts, which includes administering Islamic Law, shall be a Regional

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1. See paragraph 4 of the report of the Abraham's committee annexed to the record of proceedings of the Nigeria constitutional conference held in London in July-August 1953, p. 78.

2. ibid., pp. 18-19.

matter,[1] subject to such appellate jurisdiction as may be agreed provided that no

> Regional legislature shall empower any court to apply or enforce any Native Law or Custom prevailing among the inhabitants of such area. The courts shall not enforce or apply any native law and custom except in so far as such native law and custom is not repugnant to natural justice, equity and good conscience, nor inconsistent with the provisions of the constitution or of a central or regional law.[2]

Lastly, and in view of the changes now recommended, suggestions were made for appeals from the Supreme Court henceforth to lie direct to the Judicial Committee of the Privy Council and not to the West African Court of Appeal.

From the deliberations and its results, it appears that centrifugal forces[2] were allowed free hand even in matters as serious and as important as the judiciary. The forces had been in operation since the Ibadan conference when pressure was mounted for a decentralized service including the judiciary.

The London deliberations as they affected the judiciary provoked unsavoury reactions from the Bar and the Bench; regionalization of the judiciary was regarded by both as an abominable pill that must not be

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1. This is a compromise to allay the fear of the Islamic Northern people.

2. The report, op.cit.

swallowed. These issues affecting the judiciary were hotly contested at a subsequent constitutional conference which took place in Lagos between 19th January and February 1, 1954. Among other things, the issue of appointment of judges re-echoed and the London agreement was reaffirmed. It was also suggested that the appointment of magistrates should be removed from the ambit of the Civil Service Commission. The argument was buttressed by the fact that the Civil Service Commission could be amenable to political influence. A contrary view was that, if the Civil Service Commission would be subject to political influence on appointment of judicial officers, similar objections would apply to the whole field of Civil Service appointments. Resulting from these conflicting views, it was suggested that the Chief Justice together with the representatives of the Bar should recommend magisterial appointments. Implicit in these suggestions is that legal appointments should be recommended by legal professional men and not by laymen unconnected with the law.

Outside the conference, opinions differed as to the role of the judiciary and its relationship with the other arms of Government. There was also no consensus on the regionalization of the judiciary. In the memorandum submitted by the Northern Element Progressive Union to the conference, the party urged uniformity in the judicial system and

that control should reside with the central legislature. The party did not stop at this, it further advocated a central control of Native Courts with power to review proceedings and decisions granted to the Supreme Court. In fact, the party was of the view that the conference was incapable of handling the matter and therefore suggested that the matter of the judiciary be referred to a committee of lawyers and each political party represented in the conference should nominate two lawyers to such a committee.

The Bench also reacted to the notion of regionalization of the judiciary. Basic to the argument as presented by its Chief Justice - Sir John Verity[1] - are six principles. To the learned Chief Justice, balkanization of governmental organs should not extend to the judiciary. Secondly, the judiciary should be free of any political and administrative influence. His third line of argument is that the jurisdiction of the judiciary should be allowed to run throughout the country. This does not mean that cognizance should not be accorded variation in the system. Fourthly, he advocated for uniformity and certainty in court processes. He stressed the view that the system that would evolve should aim at reducing cost of litigation. Finally, there should be the continuance of one judicial body in Nigeria. Implicit in his argument is that the system

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1. Memorandum submitted by the Chief Justice - Sir John Verity - to the Nigeria constitutional conference 1954.

he headed needed only modifications to reflect the proposed Federal structure. The Chief Justice argued that the Supreme Court writ be allowed to run throughout Nigeria and be constituted in divisions to be known as

(a) The Northern Division

(b) The Western Division

(c) The Eastern Division

(d) The Lagos Division, and if necessary

(e) The Cameroon Division.

The Chief Justice further proposed that there should be Central Registry for each Division and Judges shall preside over the sittings of the court at such places within each Region as the Chief Justice may from time to time direct. Sir John was of the view that the auxiliary staff of the judiciary should remain federal. However, he conceded that the Native Courts should remain a Regional matter, with appellate jurisdiction given the Supreme Court on customary matters.

If all Nigerians attending the conference favoured federation as a form of government, it was not clear why there were different reactions to the regionalization of the Judiciary. Is the judiciary not an integral part of the government? If it is, why should there be opposition to its regionalization if the country is divided into Regions? These are few of the topical questions which I now turn to examine. It is pertinent to

consider the nature of work performed by the judiciary in any administration. As the third arm of the government and the protector of the citizens' right, it was viewed that regionalism will create an anomaly if it should continue to be controlled by the executive. Moreover, the political situation in the country then was in its developmental stages and centrifugal forces dominated the political arena. It was feared that a judiciary controlled by the Regions invariably manned by politicians may become a weapon of tyranny. Secondly, it was thought that the members of the organization should be allowed free hand in the discharge of their functions. If this was to be accomplished it was argued that the judiciary should not be regionalized. The Chief Justice was of the view that there were not enough qualified men to man the bench and therefore felt that an inferior judiciary might result.[1] Implicit in his argument is that a common standard of learning should be allowed to operate both for the Bench and the Bar to avoid conflict in their decisions. On the economic point of view it was argued that regionalism would mean greater financial strain on the government. Probably this argument conceives of the administration of justice as profit making or that it is a body that should pay its way.

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1. Nwabueze, B.O., op.cit.

The opposition notwithstanding, the conference proceeded to consider the administration of justice as recommended by the Abraham's Committee. On the issues upon which no agreement was reached at the last conference - procedure of appeals to the Supreme Court - the conference agreed that the matter should be left to the Supreme Court to make rules subject to any Federal legislation. On nomenclature of the Senior Judge of each Region, the Conference agreed that he should be styled the "Chief Justice."

These agreements became the basis for the constitution that resulted; and to a large extent the judiciary that emerged was a reflection of these agreements. Thus there resulted a break-through in the administration in that Nigerian views shaped, to a large extent, the form, which the organs of justice took. Nigerians advocated regionalism and got it. But the agreements were not laws, they had to be adopted by Parliament. The result of this was the Nigeria (Constitution) Order-in-Council L.N. 102 of 1954.

The Constitution - the product of the London and Lagos deliberations - came into effect on 1st October, 1954. Among other things, it provided for a Supreme Court of Nigeria[1] and stipulated the powers, mode of appointment and conditions of service of the judges. It also

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1. Section 138 of the Nigeria (Constitution) order in council L.N. 102 of 1954.

provided for the establishment of Regional High Courts and High Court of Lagos.[1]

One significant thing about the constitutional provisions was that the qualification required for appointment into both the Supreme Court and the Regional High Courts were the same, and conditions of service were identical.[2] It is also ironical that the constitution did not make any specific provisions for the Magistrates' Courts and the Native Courts in spite of the eleborate deliberations on these subjects. (We are aware that the silence of the constitution on this implicitly meant that these matters were within regional competence). It appears from these therefore that the forces of balkanization had actually emerged victorious, for there resulted five judicial bodies in Nigeria. However, the writ of the Supreme Court ran throughout the country and "all authorities in Nigeria shall carry out its orders."[3]

Thus in Nigeria, as a result of this phenomenal change, there came into being a Supreme Court with appelate and original jurisdiction in certain matters and five High Courts. Commenting on this, Kalu Ezera[4] said,

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1. Section 142, ibid.
2. Section 142 (2) (c) (i-ii), ibid.
3. Section 149(1), ibid.
4. Ezera, Kalu. Constitutional developments in Nigeria, (Cambridge) University Press (1964), p.191.

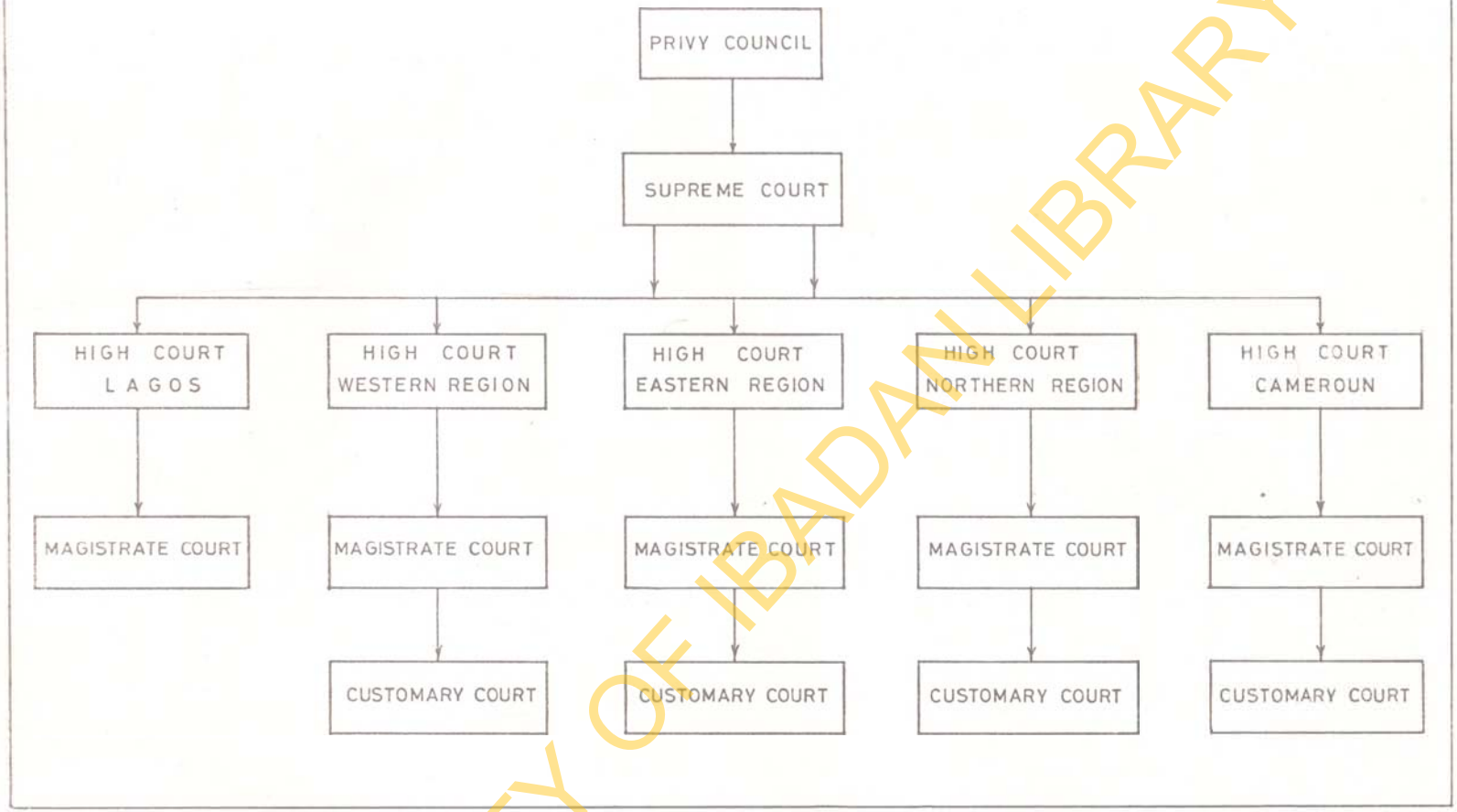

Fig. 1. Nigerian Judiciary After Regionalisation, 1955.

> Perhaps one of the most spectacular decisions of the Lagos conference and the resultant constitution was the regionalization of the civil service and the judiciary.

According to him,[1] it is difficult to measure the sincerity or insincerity of Nigerian leaders' motives for the regionalization of the judiciary. The Northern Peoples' Congress delegation was apparently motivated by the concern to safeguard its Moslem religious way of life from pollution by southern lawyers and "troublemakers." The other delegations had their own motives - some genuine and some 'political'.

The result of this is that each Regional legislature between 1955 and 1959 established a High Court, Magistrates' Courts and Native or customary courts on the pattern of the system existing before regionalization. The federal territory of Lagos was treated as a region. According to Nwabueze[2] one consequence of this is that each region becomes a foreign country in relation to the other regions, for the purposes, at any rate, of the exercise of judicial powers.

While the judiciary became regionalized, the other law enforcement agencies remained unitary. The police and the prison continued to be controlled from the centre.

The Bar remained unitary. The argument against fragmenting these bodies was that they might become tools in the political hands.

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ibid. p.194.

Nwabueze, B.O., op.cit., p.84.

This same argument also holds for the judiciary but it was ignored. It can be argued that the other law enforcement agencies were not regionalized because the politicians did not attach much importance to their influence on politics. It was presumed they could be controlled if there was an upright and fearless judiciary. Another argument may be that most members of the delegation were lawyers and they prosecuted the regionalization of the judiciary, a third arm of the government, more vigorously than that of the other agencies. It can also be argued that the politicians who deliberated on regionalism would have regarded regional government as a weak and incomplete entity without a court of its own to enforce its laws.

Another contradiction in the 1954 constitutional changes was the regionalization of the office of the Attorney-General. His position as the law officer of the government was in no doubt connected with the police and therefore its effectiveness in this sphere depends to a large extent on the police which remained unitary. If the police force was considered so important as to prevent it from being regionalized, it is hard to find, the justification for regionalizing the office of the Attorney-General.

The extent of the effect of regionalism on administration of justice has been summed up by Nwabueze[1] in the following language:

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1. Nwabueze, B.O., op.cit., p.88.

> Although the judiciary has been regionalised since 1954, it is to be observed that a close relationship still subsists between the courts of the different jurisdictions. The impact of the past provides the most important and potent unifying force for notwithstanding the growing divergence between regional laws in the past three or six years, the laws enacted for the unified country up to 1954 form the predominant portion of the laws of each Region and of the Federal Territory of Lagos. The courts of each jurisdiction administer justice in accordance therefore with laws which are substantially the same throughout the country, though no High Court binds another whether within or without the Region, the decision of one Regional High Court are entitled to the greatest weight in other Regions, especially when the law in point is the same. The past has been a centripetal force in both procedural and substantive law. Before 1954, there was only one body of rules governing civil procedure in the Supreme Court. Today in spite of regionalization, civil procedure in the High Court of Lagos and Northern Nigeria is still governed by the Rules of the former Supreme Court and although the Eastern Region has been given new rules, these are a verbatim reproduction of the pre-1954 Rules except for one or two additions. The new rules made for the High Court of the West are also based, with slight modifications (e.g. parties) on the old Supreme Court rules. Procedure in cri-minal matters is almost uniform except that there exists in the Northern States a Criminal Procedure Code. The position of the Supreme Court as the highest court and the doctrine of precedent which enjoins Regional Courts to follow decisions of the Supreme Court also constitutes another centripetal force. This has also been strengthened by the existence of a single Bar which is an indispensable force for efficient dispensation of justice for it is its prerogative to supply the Bench. The last and not the least of the centripetal forces is the existence of single police force.

It is therefore seen that the centrifugal forces have not been totally successful because the judiciary in practice remained one body throughout the country. The only area of success has been in the area

of native law and the existence of regional oriented judiciary. But the members of the Bench and Bar have always regarded themselves as a single body. The fear that there would be diverse standards of learning has not been borne out by facts. The Bar has remained national and in as much as it continues to supply men to the Bench, the fear of several standards can not but be regarded as a misplacement of emphasis. The writ of the Supreme Court which runs across the country tends to blur the argument that there would be several standards.

Instead of the anticipated problems, regionalization of the judiciary has improved administration of justice. It has been possible to allow legal training to be blended with customary law. Most judicial thinking have been tuned to local conditions because the learned men have invariably come from areas with little or no difference in outlook as the area of their jurisdiction. Apart from this, it has contributed, to a large extent, to the retention in the service of men committed to work who would not have enjoyed being posted to the various parts of the country and thereby becoming a foreigner in so far as the custom of the area admits. It has also enhanced the discovery of local talents and invariably the best men have always found their way to the Bench. It is also of tremendous advantage to the extent that the various judicial bodies have found it necessary to compete for recognition as the best of all the bodies.

The Western Region of Nigeria judiciary

(a) The high court of justice: Invoking section 142 of the Nigeria (Constitution) Order in Council, the Western Nigeria legislature pased

> A law for the constitution of High Court of Justice for Western Nigeria and for other purposes relating to the administration of justice in the Western Region of Nigeria (Law No. 3 of 31/1/55).

Introducing the bill in Parliament the then Minister of Public Health, Mr. S.O. Ighodaro[1] (now retired Justice Ighodaro) stressed the non-controversial nature of the Bill. He also hinted that it was in compliance with the provisions of the constitution. The law contained clauses about the salary of the Chief Justice and his brother Judges. It also introduced a new phenomenon by granting to the High Court original jurisdiction in land matters as against the practice under the old Supreme Court Ordinance where one cannot start an action in respect of title to land unless the native courts in the area had already decided the ownership. A second feature in this law is the establishment of a Council of Judges with the Minister of Justice presiding.[2] This Council was also to meet annually to consider the operations of the laws.

In debating this bill the National Council of Nigeria and Cameroon felt that the High Court law should include provisions for the Jury system.

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1. WRHA debate of October, 1954.
2. Section 57 of the high court laws - 1955. This section has been repealed in 1955 at the sessions which followed the October 1954 sessions.

The party abhored the presence of the Minister of Justice in a Council of Judges. It also felt that judges be allowed to decide when to hold their meetings rather than the annual meeting intended by the law. In fact it was suggested that the Bar Association should be represented on the council where the Chief Justice will occupy the chair. All these, according to the party, were meant to ensure the independence of the judiciary. In a counter-argument, the Action Group government of the Western Region said that the presence of the Minister of Justice in the Council of Judges was not intended to control the Judges but to enable him make use of their experience in formulating new laws.

However sound the last argument might be, it appears that resentment to the presence of the minister in the council of judges would be more tenable. And even if judges are not represented on the council responsible for law-making, they could still make their experience available to the law-making body in their day to day interpretation of the law. In fact, at the March sessions of the House of Assembly, only three months after its enactment, the Minister,[1] in moving the repeal of the obnoxious clause, said that it was his view that meetings of judges can be arranged without statutory sanction. This meant that the presence

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1. WRHA debate March 1955.

of a minister would no longer be required. Thus a situation bordering on political justice, which had been attacked in the past, was averted.

Apart from that, the main features of the law are that a High Court for the Region had been established with a seal bearing the inscription: "The High Court of Western Region." It also prescribed equal powers for all judges including the Chief Justice.[1] Thus, we have in the Region a High Court with branches in selected places in the Region as the exigencies of work dictated.

Part III of the Law deals with the jurisdiction and Law to be enforced by the court.

> The court shall have jurisdiction as may be conferred by the Regional Legislature and in addition to any other jurisdiction conferred by this law or any other law or ordinance, shall within the limits and subject to the provisions of this Law, possess and exercise authorities which are vested in or capable of being exercised by Her Majesty's High Court of Justice in England.[2]

In addition, the jurisdiction of the High Court shall include such jurisdiction as may be vested in it by Federal law.[3]

In carrying out the stipulated functions the law prescribes:

> The jurisdiction by this law vested in the High Court shall be exercised (so far as regards procedure and practice) in the manner provided by this law, the criminal procedure ordinance or any other ordinance or law, or by such rules and orders of court as may be made pursuant to this or any other law or ordinance.[4]

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1. Sec. 10(1) of the high court laws 1955.
2. Sec. 7(1) and (2) of the high court laws 1955.
3. Sec. 12(1) of the high court laws 1955.
4. Sec. 15, ibid.

The significance of these provisions are that the High Court is a court of unlimited jurisdiction and that this "unlimitedness" does not preclude the Legislature's power to add to or strip it of existing jurisdictions. It is of importance to note that even though the High Court of the Region has a separate existence, it is endowed with powers to enforce federal laws. In terms of procedure, the provisions admit of a standard practice all over the country.

On venue and distribution of business, the law allows the court to sit in two or more divisions and that the Chief Justice may divide the Region into Divisions and assign any portion to any division which shall be known as Judicial Division and may designate such Judicial Division by name and shall direct one or more judges to sit in one or more Judicial Divisions.[1] Subsection (3) of this section provides that the Chief Justice may determine the distribution of the business before the court among the judges thereof and may assign any judicial duty to any judge or judges. It is to be noted that the extra power of the Chief Justice is purely administrative.

From the provisions of section 10(1) it will be seen that the court is a single court with branches, hence the existence of one seal and duplicates. And, for the convenience of litigants and solicitors, it is

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1. Section 35(1) of the high court laws of 1955.

incumbent that branches be established. This "one court" principle is strengthened by the power conferred upon the Chief Justice by section 55 of the law to make rules regulating pleading, practice, and procedure of the court including all matters connected with the forms to be used. He is also empowered to make rules regulating the discipline, employment in causes and fees of legal practitioners and may also make rules regulating the taxation and recovery of their fees and disbursements. It is also his duty to make rules for defining, so far as conveniently may be defined by general rules, the duties of the several officers of the court.

And because of the nature of the work of the court - unlimited - and the circumstances under which it is called to act - a provision (Section 76) that

> No judge or other person acting judicially shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.

was made. It appears from this that cognizance is taken of the fact that judges are human beings and therefore not infallible. It is also designed to prevent unscrupulous litigants from bringing to ridicule judicial processes and procedure. And a third function of this may be that it ensures the dispensation of justice without fear or favour.

For the transition from the old Supreme Court to the new court, there was provided in the law sections that made for continuity. Accordingly, section 79(1) of the law stipulates:

> All proceedings instituted, commenced or taken in accordance with the rules of or practice of the Supreme Court established in accordance with the provisions of the Supreme Court ordinance in respect of any cause pending at the coming into force of this law shall be valid and effectual as though they had been instituted, commenced or taken in accordance with the provisions of this law and such proceedings shall continue before the court in accordance with the provisions of this law.

Thus, all the cases pending in the former Supreme Court in the Western Region before the commencement of the law became the High Court of Western Region matters. This section deemed everything done by that court valid and they were to have the force of law as if they had started before the new court.

Subsection (2) of Section 79 provides:

> The Judicial Divisions in the Western Region at the coming into operation of this law shall be deemed to have been established under the provisions of this law.

Like the former Supreme Court, the Western Regional High Court is organized on a territorial basis. The Region[1] is divided into Judicial Divisions in each of which one or more resident judges of the High Court constitute a Divisional Court for the exercise of the High Court's

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1. Nwabueze, B.O, op.cit. p.157-158.

jurisdiction within the Division. The High Court does not therefore exist apart from the Divisional courts. As mentioned earlier, this is dictated by exigencies of work. It was deemed necessary to validate existing documents in which references were made to the Supreme Court. And in Section 80(1) it was provided

> Subject to the provisions of this law or any other law, wherever in any Ordinance, law, rule of court, or other document, reference is made to the Supreme Court established in accordance with the provisions of this law, and where in any such ordinance, law, rule of court or other enactment reference is made to any judge, registrar or other officer of the Supreme Court, such reference shall be read, so far as the context shall permit, to mean a judge, registrar or other officer as aforesaid of the High Court.

The last significant provision of the law is that appeals from it lay to the West African Court of Appeal until the Federal Supreme Court assumed its functions in accordance with the Nigeria (Constitution) Order-in-Council 1954 and after which the WACA shall cease to have jurisdiction in Nigeria.[1] It is to be noted that by this law and the constitution, Nigeria (and therefore Western Region) withdrew from WACA, and cases now went from the Federal Supreme Court to the Privy Council.

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1. Section 81 of the high court law 1955.

The magistrates' courts

Unlike the High Court which was specifically provided for in the Nigeria (Constitution) Order-in-Council, the magistrates courts are creatures of Act of Parliament.[1] The magistrates' court law of 1955 was based on the magistrates' courts (Appeals) Ordinance Cap. 123 of the Laws of Nigeria 1948. Mr. (now Chief) A.M.A. Akinloye[2] introducing the law in Parliament said "we now have the opportunity of amending the existing ordinance in such ways as will bring the law into conformity with the present day needs of the community." According to him, the law demanded for increased legal experience among the magistrates and this was intended to ensure higher efficiency in the performance of their judicial functions. He continued: "Experience no less than qualifications will ensure higher standard."

The minister was shrewd enough to point out that the magistrates are civil servants and felt that was a serious anomaly violating the principle of the independence of courts. However, he felt that their independence was more guaranteed since they now have fixed salary. He added:

> Finally, I present this Bill as one that fulfils the needs of bringing the law governing the setting up of magistrates' courts and the appointment of magistrates very near in line, if not entirely in line, with similar law in Great Britain.

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1. Aguda, T.A. Select law lectures and papers. Ibadan Associated Publishers Ltd. (1971), p.16.

2. WRHA debate October 1954.

The Bill was passed without opposition. The law provides for the appointment of Chief Magistrates, Senior Magistrates[1] and Magistrates who must have had extensive legal experience. Provision was also made for the appointment and powers of Justice of Peace.[2] The jurisdiction of the magistrates are set out according to grades. However, power was/is given the Governor to increase the jurisdiction of any magistrate.[3] Part V of the law regulates the sitting procedure while part VI relates to practice and procedure. In part VII, provisions were made, inter alia, for the protection of magistrates, representation of the parties and the rules of court to be made by the Chief Justice with the approval of the Minister of Justice. This law also fixed the salary of the magistrates of all grades.[4] Appeals shall lie to the High Court which have wide powers especially in criminal appeals.[5]

For the above functions, the Region is divided into magisterial districts in each of which there is established a Magistrate's Court.[6]

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1. There now exists two grades of senior magistrates I & II and jurisdiction of the senior magistrate grade I has increased to ₦600 in civil matters and 3 years jail in criminal matters.
2. Part II of law No. 5 of 1955.
3. Part of IVof law No. 5 of 1955.
4. Part VIII of law No. 5 of 1955.
5. Supplement to the Western Regional gazette No. 39, vol. 3,23rd September 1954, part C.
6. Magistrates courts laws 1955 (No. 5 of 1955) sec. 3. TheChief Justice is expected to carry out the de-ineation of the districts.

According to the provisions of the law, a court is duly constituted when presided over by a magistrate who is then described as a presiding officer (S. 6(1)(a). Magistrates are graded into Chief Magistrates, Senior Magistrates and Magistrates.[1]

Every magistrate has jurisdiction throughout the Western Region, but may be assigned to any specific district, e.g. transferred from one district to another, by the Chief Justice.[2] Subject to the provisions of this or any other law, a Chief Magistrate has jurisdiction in civil cases.

(a) in all personal suits to the suit value of ₦1,000 (£500);

(b) in all suits between landlord and tenant;

(c) to appoint guardians;

(d) to grant injunctions;

(e) in any appeal from the decision of an Assessment Committee constituted under the provisions of the Western Region Local Government Law 1952.[3]

However, Senior Magistrates and Magistrates have and exercise jurisdictions in civil causes similar in all respects to that set out above except that the suit value is ₦400 (£200) in the case of the Senior Magistrate and ₦200 (£100) in the case of a magistrate. The power of

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1. Sec. 7(1), ibid.

2. Allot, A.N. (ed.). Judicial legal systems in Africa. London, Butterworths (1962), pp. 53-55.

3. Sec. 18(1). op.cit.

the magistrate is limited to the extent that nothing in section 18 is to be construed to confer upon any Chief Magistrate, Senior Magistrate or Magistrate original jurisdiction in any matter specified in paragraphs (a) to (e) of above.[1]

However, the Governor-in-Council may by order direct that a magistrate court may exercise original jurisdiction in all or any of the following matters:

(a) Suits which raise an issue as to title to land or any interest in land;

(b) Suits in which the validity of a device, bequest or limitation under will or settlement is disputed;

(c) Suits relating to the custody of children under customary law;

(d) Causes relating to inheritance upon intestacy under customary law and the administration of intestate estates under customary law;

(e) Matrimonial causes and matters between persons married under customary law.

On the criminal side, magistrates have power to try summary offences. But their powers of punishment vary. A Chief Magistrate can impose the following punishments:

(i) Imprisonment for not more than 5 years;

(ii) A fine not exceeding ₦1,000 (£500).

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1. Sec. 18(4), ibid.

In the case of Senior Magistrates, the maximum period of imprisonment is two years, and the maximum fine is ₦400 (£200). On the other hand, the Magistrate's maximum period of imprisonment is one year and the maximum fine is ₦200 (£100).[1] Lastly, a magistrates' court has power to hear and determine appeals from certain grades of Customary Courts.[2]

On the whole, the magistrate's court was established as a court of first instance as well as an appellate court. It entertains most of the minor cases and it is enjoined to promote reconciliation[3] in civil cases and in criminal matters provided such power shall not be exercised in a felony. Just like the High Court, the Chief Justice is to make rules of court for the operation of the court. In fact it is through the recommendation of the Chief Justice that the Governor may increase the jurisdiction of the Magistrate in both civil and criminal causes.

With these two laws, Law No. 3 of 1955 and No. 5 of 1955, the Western Nigeria judiciary was born. It was not until 1957 that the customary court laws was passed and this shall be discussed later. First, it appears the independence of the judiciary is now guaranteed by the series of provisions regarding terms of service, establishment of

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1. Sections 19 and 20 of the magistrate's courts law 1955.
2. ibid., sec. 33.
3. ibid. sec. 23.

appropriate machinery for appointment of judges, giving judges and magistrates security of tenure of office and by accepting the principle of judicial independence. This foundation became the basis for future changes in the judicial set-up and the processes of law enforcement and administration of justice in the Region.

Thus, the judiciary became independent of the executive and its powers were well delineated. A standard for appointment was also set and qualification and experience became the overriding criteria.

At the commencement of these laws in the Western Region, there existed four judicial divisions and three Magisterial groups and nine Magisterial districts. The geographical area covered then was the whole of the present Western State, Midwestern State and the old Colony Province of the present Lagos State. The problem envisaged in breaking a unitary system into federal had been averted by the saving clauses. The personnel of the former Supreme Court became the staff of the Regional judiciary in which they were serving at the commencement of the law. Thus the problem if at all, was in the adjustment of the staff to the policy of their newly established overlords. And in the case of the judiciary, this was not problematic, since provisions were made to safeguard existing situation.

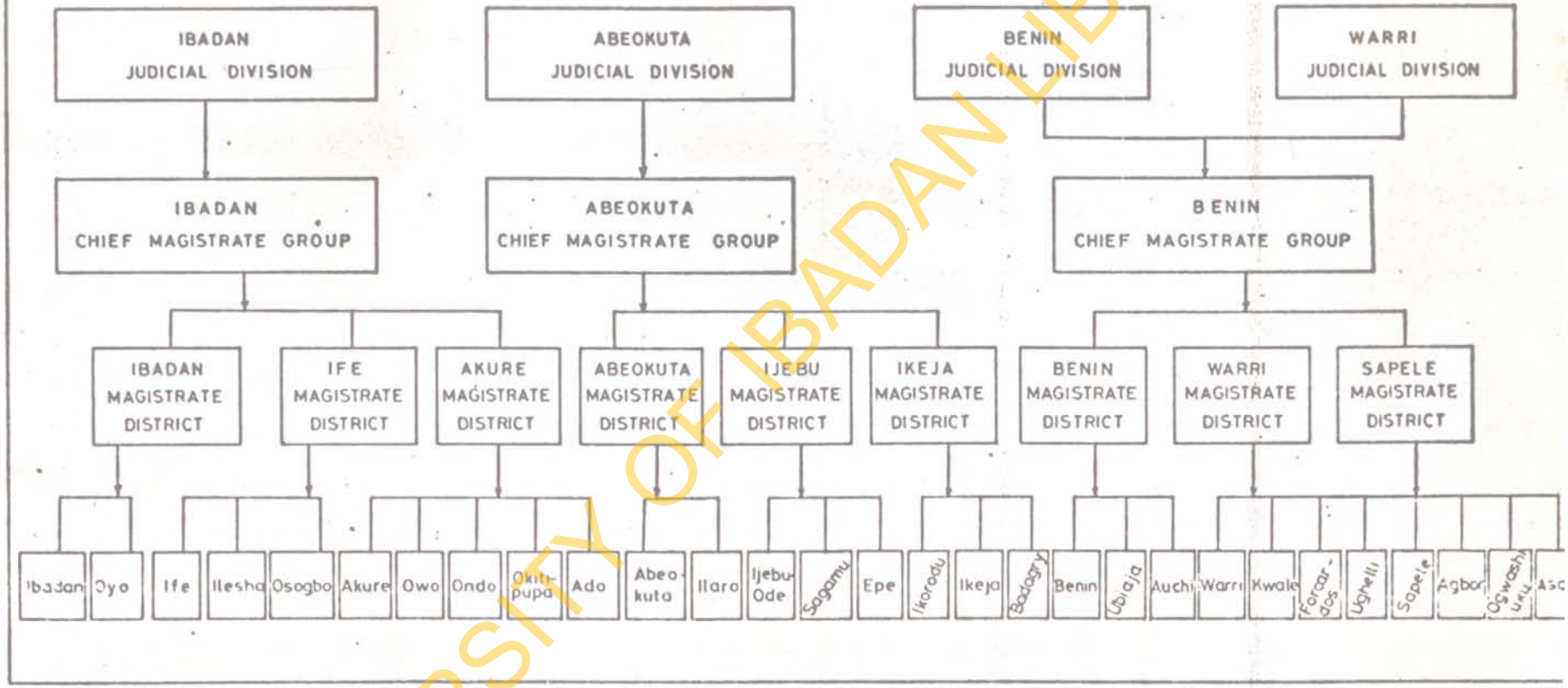

Fig 2 Judicial Divisions and Magisterial Districts in the Western Region of Nigeria at the Creation of the Western Region in 1955

On the attainment of self-government by the Western Region of Nigeria in August 1957, certain changes in the judicial set-up took place. The changes included provisions to ensure further the independence of the judiciary and the public services. It was recommended that the Chief Justice of a self-governing Region should be appointed by the Governor, acting in his discretion after consultation with the Chief Justice of the Supreme Court. A Judicial Service Commission consisting of the Chief Justice as Chairman, the Senior Puisne Judge of the Regional High Court, the Chairman of the Public Service Commission and a person who has been judge of the Regional High Court or has been a Judge of that court or any other court in the Commonwealth of similar or higher status, the last mentioned being appointed by the Governor acting in his discretion were to be set up. High Court Judges were then to be appointed by the Governor acting on the recommendation of the Judicial Service Commission. The arrangements also permitted the setting up a minimum to the number of High Court Judges to be appointed. It was agreed that their conditions of service should not be altered to the detriment of a judge during his tenure of office and the necessary funds should not be subject to vote. Elaborate arrangements were made for the removal and discipline of judges.[1]

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1. Report of the Nigeria constitutional conference held in London between 23rd May and 26th June, 1957, p.10.

The Nigeria (Constitution) (Amendment) Order-in-Council of 1958[1] gave effect to the agreements reached at the two London conferences of 1957 and 1958. By this new arrangement, provision was made for the appointment of a Chief Justice and a minimum of six judges by the legislature of the Western Region. By section 180F, a Judicial Service Commission was established with functions as agreed at the 1957 conference.

These measures had salutary consequences for the judiciary. The position of its personnel became more secured and provision for expansion was made. In a newly independent Nigeria, the role of the judiciary was crucial to its constitutional development. This was the justification for the elaborate arrangements made for that body. The new arrangement emphasized the importance of an independent judiciary. If the judiciary must function well as expected, it is essential that persons appointed to hold judicial offices are above board and must be persons who do not feel themselves to be under any obligation to any persons under any circumstances except that

> they are under obligation to their maker and humanity to dispense justice in the light only, of their conscience and the dictates of the law in the way they honestly conceive it.[2]

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1. WRLN. 109 of 1958.

2. Aguda, T.A. op.cit., p.3.

The nature of Nigeria's constitution continued to attract and promote intellectual arguments and conferences and seminars were held to discuss the future of an independent Nigeria. Of the numerous problems facing Nigeria, the role of the judiciary provoked serious arguments. The jurists, who met in Lagos between 8th and 15th August, 1960[1] agreed that the independence of the judiciary is a sine qua non to politica autonomy. This independence has been the British tradition of justice. It was this independence of the judiciary that the late Sir Winston Churchill claimed to be "a part of our (British) message to the world."[2] It was felt that if the judiciary must perform its functions without fear or favour its independence must be safeguarded.

The change in status does not seem to have effected much change in the judicial system. The existence of a Federal Supreme Court and the Regional High Courts continued to be the basis of the Nigeria judiciary. Each Region had a High Court, while the composition, jurisdiction, appointment and tenure of office of the judges were similar to those of the High Court of Lagos. There was provision in each Regional constitution for the establishment of a Regional Court of Appeal to which appeals

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1. Lionel Brett (ed.). Constitutional problems of federalism in Nigeria (Lagos, Times press, 1961).

2. House of Commons debate Vol. 525, cols. 1061, 1063 (23 March 1954) quoted in Sir Kenneth Roberts-Wray. Commonwealth and colonial law (London) Stevens & Fans Ltd., 1966), p. 478.

would lie from the Regional High Court in such circumstances, as may be provided by Regional law. There were in the Regions varying classes of Magistrates' courts staffed by legally qualified persons who were divided into magistrates grades I, II, III, Senior and Chief Magistrates.

The various Chief Justices were appointed by the Governor General or Governor on the advice of the Prime Minister or Premiers.[1] It was, however, stipulated that other justices of the Federal Supreme Court were to be appointed by the Governor-General on the advice of the Federal Judicial Service Commission. A judge could only be removed on grounds of inability or misbehaviour, and then only after a judicial procedure involving reference of the matter first to ad hoc tribunal composed of other judges and then to the Judicial Committee of the Privy Council whose decision was final.

The 1960 constitutional changes merely consolidated the previous arrangements for the judiciary since the introduction of a federal constitution. The new innovations were designed to ensure that the judiciary remained independent and that its men were of the best calibre. However, the dominion constitution left Nigeria an appendage of the Privy Council and hence the Queen in her capacity as the Queen of Nigeria could use

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1. 1960 Federal constitution sec. 105(1)(Federation). 116(1) Lagos High Court. In regions: North sec. 50(1), West and East, sec. 49(1).

Her Privy Council to wield power in Nigeria. This however did not take place during the three years the constitution was in force.

Before the introduction of the Republican constitution in 1963, events had occurred in the Western Region that is worthy of note here. The creation of the Midwestern State and the political crisis in the Western Region in 1962 affected the existing governmental and judicial set up. By the creation of the Midwestern State which used to be a part of the Western Region, there was a constitutional adjustment. An interim government was established and the jurisdiction of the High Court of Lagos was extended to the Midwest. Consequently the High Court in the Western Region had suffered diminution in its territory. The second significant event was the numerous litigation that the crisis in the West brought in its trail. When the Privy Council ruled against the Supreme Court's decision in the Akintola V. Governor, Western Nigeria and Adegbenro, it became obvious that the termination of the link with the Privy Council was unavoidable. Moreover the political crisis led to the establishment of an emergency administration for the Western Region. These events had far reaching consequences for the judiciary.

The "Majekodunmi Administration" suspended all organs of the government except the judiciary as provided by the constitution. This in effect meant that the Government, the legislature and the constitution

of Western Nigeria were suspended. However, the existing laws were allowed to remain in force, but could be suspended or replaced by the Administrator.

The crisis that led to the declaration of a state of emergency also encouraged proliferation of litigations in the Nigerian courts. Most of the members of the parties involved were restricted by the Administrator whilst some were detained. The then Premier however did not leave the actions of the former Governor unchallenged in the High Court. On the other hand, the "newly-appointed" Premier also challenged the validity of the declaration of emergency in addition to challenging the restriction order served on him. The first case - Akintola v. Governor of Western Nigeria - had a far reaching consequence for the judiciary. The Supreme Court found by majority decision for Akintola and on appeal to the Privy Council[1] the decision was reversed. The effect of this decision was promptly nullified by the constitution of Western Nigeria (Amendment) Law of 1963 which was duly consented to by Parliament a few days later.[2]

By the creation of Midwest State, the Western Nigeria judiciary lost jurisdiction over the area covered by the new Region. The judicial

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1. Adegbenro v. Akintola (1963), A.C. 614.

2. Elias, T.O. op.cit.

grouping therefore needed readjustment. Since the regionalization of the judiciary the West judiciary had increased the number of its branches and had readjusted jurisdictions as a result of several laws in the Region.[1] These internal readjustments had not resulted in the elimination of territorial jurisdiction which the creation of the Midwest Region had caused. But as aforesaid it was a voluntary liquidation of the jurisdiction after the creation of that Region, for, it seems, the judiciary was presented with a "fait accompli." Where a single court had jurisdiction was now shared by two. The changes that occurred are illustrated diagramatically:

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1. By W.R.L.N. 4 of 1956 eight magisterial groups were created.
By W.R.L.N. 2 of 1959, six judicial divisions were created.
And by W.R.L.N. 1 of 1962 seven divisions were created, etc.

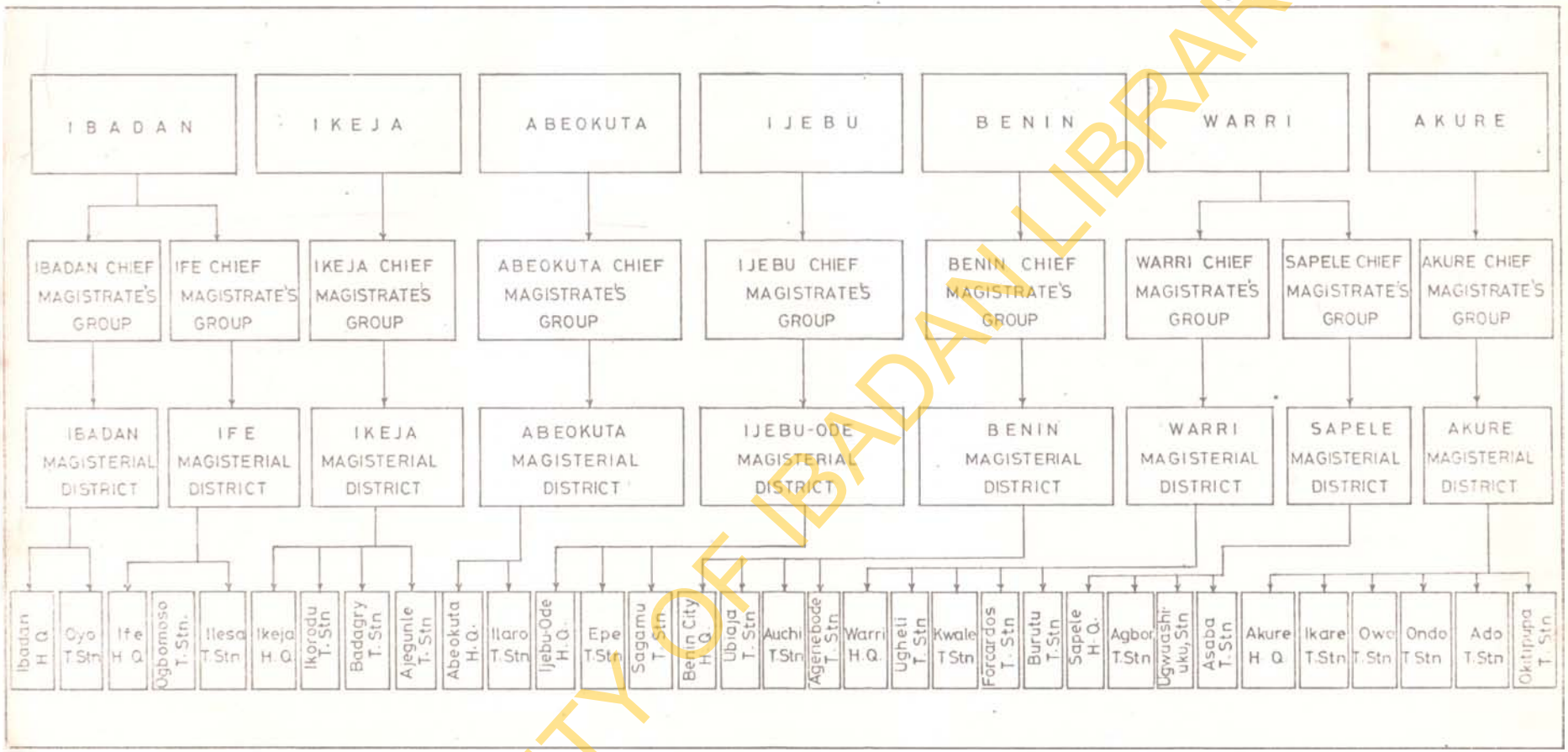

Fig. 3 Judicial Divisions and Magisterial Districts Immediately Before the Creation of the Midwest Region in 1963.

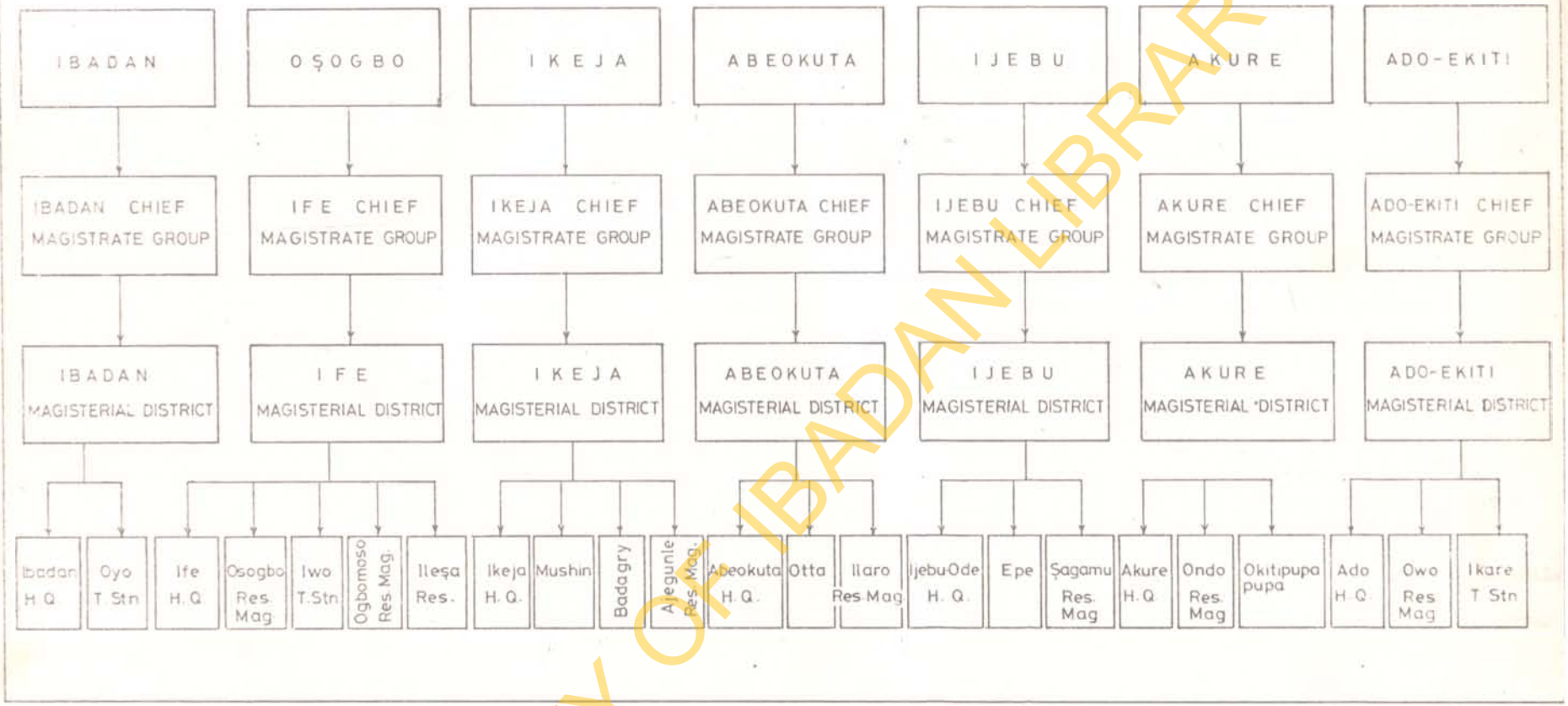

Fig. 4. Judicial Divisions and Magisterial Districts Immediately After the Creation of the Midwest Region. 1963

The diminution is only in terms of territory and not in terms of power. The High Court of the Midwest is nothing but the birth of a new child which does not mean the liquidation of the parents. This act again increased the number of judicial organizations in Nigeria and also enhanced the chances of taking justice nearer to the people. Whether it had lost territorial power or not the judiciary in the Western Region continued to wax strong in spite of the political and structural changes. This trend is bound to continue since the judiciary is part of a constitution which continued to undergo changes from time to time.

Another phenomenal change that occurred shortly before Nigeria took a Republican status was the legal practitioners' Act. It is important for it lacked precedence. The colonial government's attitude to lawyers had varied from hostility to toleration. It had either been total ban or neglect and at other times, it had taken the form of restriction of its activities. But none had actually given it a systematic approach that it deserved. Two decades before independence, the attitude to the lawyers had become less hostile. In fact, the Bar had become a force to be reckoned with in the development of our law. Its members were gradually making their presence felt on the Bench to the extent that the first Chief Justice[1] of Western Nigeria after the creation of the Region

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1. Sir Adetokunbo Ademola, now retired chief justice of Nigeria.

was a Nigerian. Their activities were recognized even more during the constitutional conferences for most of the delegates were of that profession. And as Nigeria was matching towards self-government it became imperative to re-examine the position of her profession both in their training and their practice.

A committee under the chairmanship of the then Attorney-General of the Federation, E. I. G. Unsworth, was established by the Government of the Federation to

> Consider and make recommendations for the future of the legal profession in Nigeria with particular reference to legal education and admission to practise, right of audience before the courts and the making of reciprocal arrangements in this connection with other countries, the setting up of a General Council of the Nigeria Bar, the powers and functions of the Council, the institution of a code of conduct, the disciplinary control of the members of the profession and the principles to be applied in determining whether a member of the Bar should be prohibited from practising in Nigeria.[1]

The Committee expressed dissatisfaction with the practice of training which involves learning foreign laws rather than the ones the lawyer is to practise. It was the committee's argument that legal practitioners should be further equipped for practice in Nigeria by establishing a law school. The committee also recommended qualifications for admissions into the Law School, and proposed a Council of

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1. Report of the committee on the future of the Nigerian legal profession, 1959, p.1.

of Legal Education which will be charged with the responsibility of prescribing the necessary examination for admission into the Nigerian Bar. The Committee recognized the fact that up to that time, there was a non-statutory association known as the Nigerian Bar Association and membership of this Association was open to all legal practitioners in Nigeria. The Committee also noted that the Nigeria Bar Association, at its August 1959 conference, adopted a new Constitution which contains provisions for a General Council to be known as the Nigeria Bar Council. It was the suggestion of the Committee that the Attorney-General of the Federation and Attorney-General of each Region should be ex-officio members of the Nigerian Bar Council. The Committee also suggested that provisions be made for the establishment of a disciplinary committee of the Nigerian Bar Council, in order to instil order into the practice of law in Nigeria. These recommendations were given effect by the legal Education Act, 1962 and Legal Practitioners Act 1962 respectively.

The essence of this discussion is to establish the inter-connectedness of the Bar with judiciary and its importance to the society. Another point worthy of note is the national character of the Bar.[1] It is significant to note that by these enactments, the position of the profession becomes

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1. The legal practitioners' act 1962, Sec. 20(1).

more stabilised, as systematic disciplinary measures were introduced.[1] Although it appears in practice that the Bar is a separate body, in reality and by this new arrangements, it is an adjunct of the judiciary. With these Acts of Parliament, the Bar, the Bench and the official Bar became integrated and interdependent. The consequences of these arrangements, were that there emerged a truly Nigerian Legal profession with Nigerian values and training. The Nigeria political autonomy was strengthened and before the Republican status was achieved, there had been an independent and indigenous legal profession.

Another factor in our constitution-making, which had lasting effect on the judiciary, was the events of 1963. In that year, an all-Party Constitutional Conference was held under the auspices of Nigerians in Nigeria for Nigerians. The conference deliberated on the type of republican constitution which Nigeria should have. The litigations between Akintola and Adegbenro and the judgment of the Privy Council on it were still fresh in the minds of the people. This and the new political goal made the conference to agree to the abolition of appeals to the Privy Council, and as a result the Federal Supreme Court became the final and highest court in Nigeria.

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1. The legal practitioners' act 1962, sec. 8. There was established a legal practitioners' investigating panel and a legal practitioners' disciplinary committee.

The conference however could not agree on whether the "Judicial Service Commission" should be abolished. This disagreement resulted from the vehement opposition by the opposition parties that the abolition of the Commission would not only destroy the independence of the judiciary but would also render the latter "a mere political arm of the executive."[1] In spite of the opposition and the soundness of the argument, the conference decided that in line with practically all Commonwealth and other countries, the judicial service commission should be abolished and that all judges should be appointed by the President or Governor on the advice of the Prime Minister or Premier respectively.

Apart from these far-reaching changes, four of the judges of the Supreme Court were to be appointed by the President on the advice of the Regional Premiers.[2] In addition to the provision empowering Parliament to establish courts of law for the federation, apart from the Supreme Court,[3] the regions were also authorised to establish their own courts of appeal. Elaborate provisions were made for the security of tenure

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1. Ezera, Kalu. op.cit., p.285.

2. Sec. 12 of the Nigeria constitution.

3. This provision has not been utilized as at now. There has been argument and counter-argument on this score. (See Nwabueze, B.O., Constitutional law of the Nigerian republic. (London) Butterworth (1964) p.285; Aguda, T.A. Select law lectures and papers.

of judges. Even though the judicial procedure for the removal of judges was abolished it was replaced by the provision that the President or Governor might remove a judge if an address to that effect was presented to him, and if such address is passed by a two-thirds majority of each House of Parliament or of the legislatures.

Commenting on this provision, Ojo said:

> This provision looks retrograde at first, in the sense that the influence of politics was being emphasized in an area which ought to be "politically neutral," yet one need not be prematurely alarmist.[1]

According to him, the institutions for appointment to, and removal from, the judiciary are valuable yet the freedom of judges to be independent and impartial after appointment is crucial. He pointed out that the abolition of the Judicial Service Commission has however not made our judges less courageous. He contended that the Republican constitutions did not disturb the rule that salaries of judges were a charge on the Consolidated Revenue Funds, the standing rule for parliamentary procedure that members of Parliament were not to discuss matters sub judice, and the traditional immunity from libel or slander or anything said by the judge in the course of judicial proceedings.

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1. Ojo, A. op.cit. in Elias (ed.), op.cit. p.13.

The new constitution gave the Attorney-Generals the right of audience in parliament and the legislatures. The Director of Public Prosecutions who was formerly insulated was then brought under political control. The police remained unitary.

This was the situation until the advent of the military government in January 1966. This political change is important for us because the new regime's attitudes to our subject is nonetheless significant. When by Decree No. 1 of 1966 the Parliament and Regional Legislatures were abolished, the judiciary was not. For the appointment and removal of judges in all the High Courts, the Court of Appeal[1] in the West and the Supreme Court, an Advisory Judicial Committee was set up. All judges are now appointed by the Supreme Military Council after consultation with this Committee.

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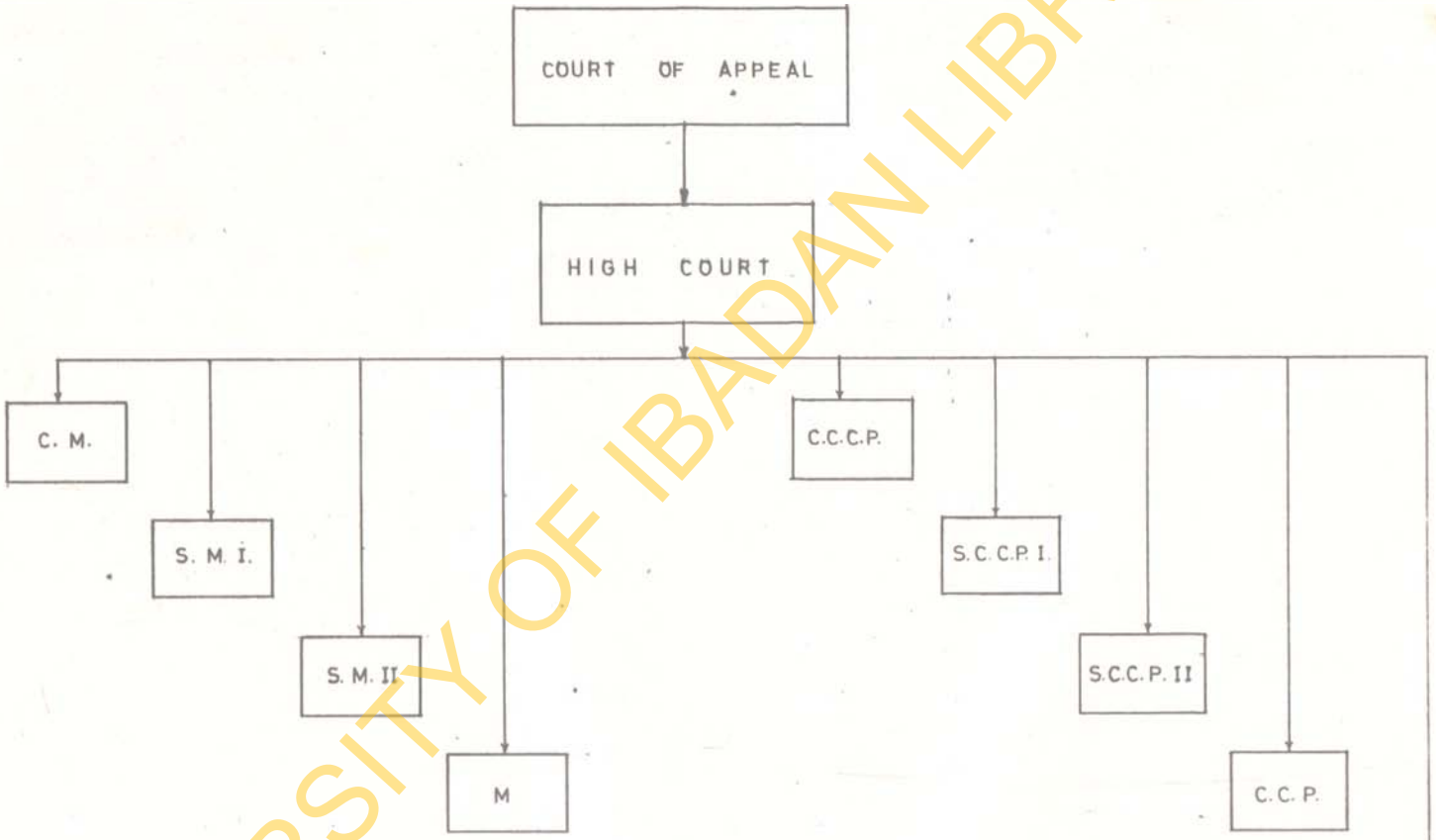
1. The Western State court of appeal was established by edict No. 15 of 1967.



C. M. — CHIEF MAGISTRATE
S. M. I — SENIOR MAGISTRATE GRADE I
S. M. II — SENIOR MAGISTRATE GRADE II
M. — MAGISTRATE

C. C. C. P. — CHIEF CUSTOMARY COURT PRESIDENT
S. C. C. P. I. — SENIOR CUSTOMARY COURT PRESIDENT GRADE I
S. C. C. P. II — SENIOR CUSTOMARY COURT PRESIDENT GRADE II
C. C. P. — CUSTOMARY COURT PRESIDENT

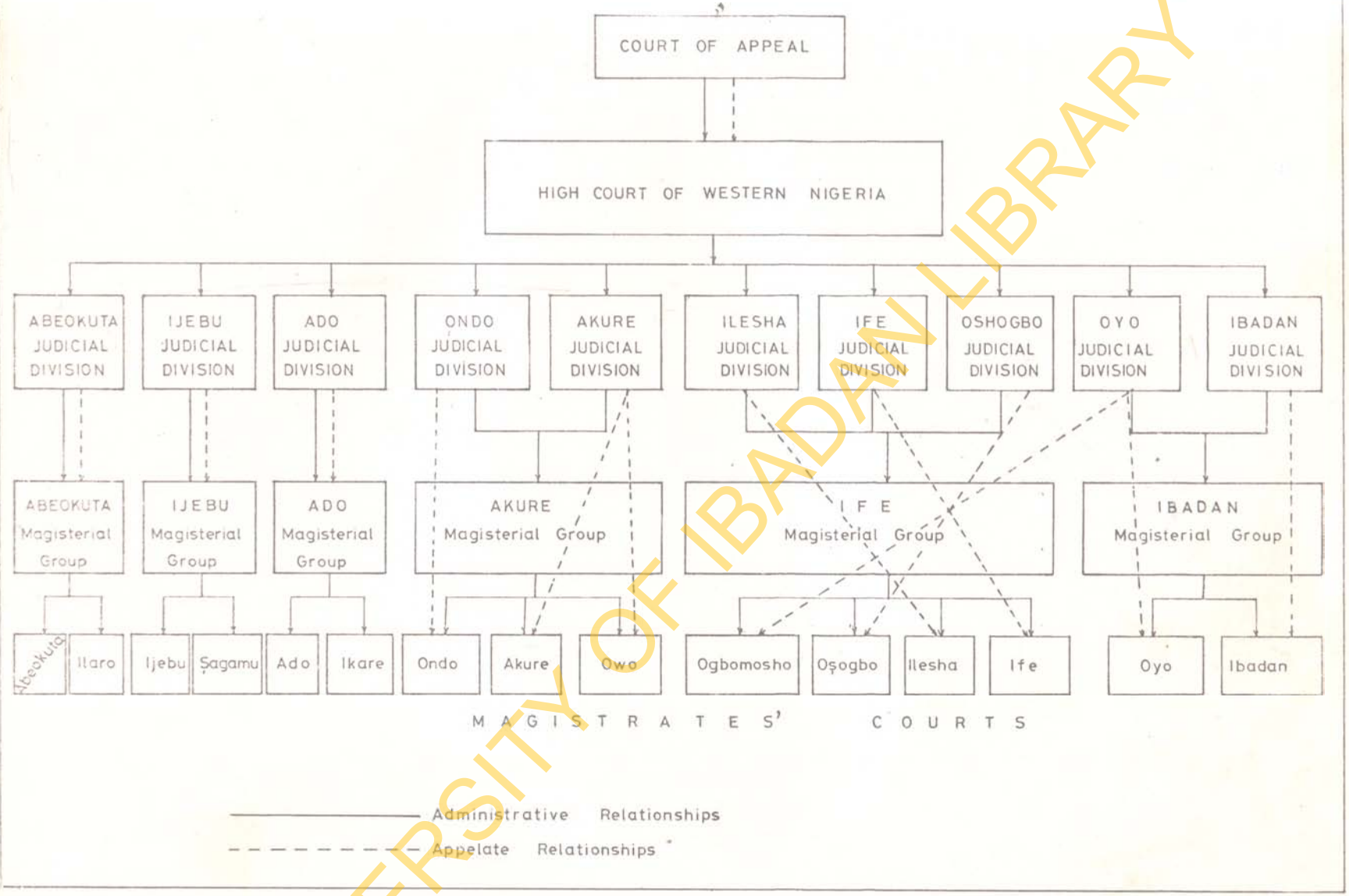


Fig. 6. Administrative and Jurisdictional Grouping of the Judiciary 1973

Customary courts

It appears not much enthusiasm was shown as to whether the Native Courts should be regionalised or not. Although dissatisfaction had been expressed at the Ibadan conference on the issue of Native Courts, this had not received any consideration in the constitution that resulted from that deliberations. The conditions of these bodies have been described as "deplorable" and therefore needed urgent overhauling. The allegations were that the system was slow, cumbersome and uncertain. And at the London and Lagos constitutional conferences of 1953 and 1954 respectively, it was stressed that Native Court matters be made regional and even then, the erstwhile Chief Justice of Nigeria, Sir John Verity, did not oppose this in his memorandum. It seems to me that recognition is given to the reality of diversity in our culture.

For the customary courts, the centripetal forces were not strong. The forces of regionalism had been at force even before the constitutional conferences. The Western Legislature[1] had passed into law "Codification of Native Laws and Customs" the motion

> that this House agrees that the Western Regional Government should make provisions at its earliest convenience for the setting up of a machinery in the form of a research party or a group of research parties for ascertaining what native laws and customs there are in the Region with a view to their codification.

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1. WRHA debates, 3rd February, 1953.

In arguing this motion late Chief S. L. Akintola said "native laws and customs mean different things to different people within even the same tribe and on the same subject matter." According to him, "the essence of the law is that it must be definite and easy to ascertain." In spite of the prevailing views and the favourable disposition to regionalism, the actual establishment of the new regional customary courts did not take place until three to four years after the regionalisation of the judiciary.[1] Their establishment was accompanied in the Eastern and Western Regions by a change of name from "native court" to "customary courts."

By the Customary Courts Law Cap. 31,[2] Law of Western Nigeria 1959, there was established for the Western Region customary courts of various grades.

Each court was established not directly by the enabling statute but by warrant given by the Attorney-General and Minister of Justice.[3] Since the courts are of various grades, the warrant defines the jurisdiction, powers and quorum of the court which it establishes, and its provisions on that behalf are conclusive.[4]

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1. Nwabueze, B.O. op.cit., p.94.
2. This is the same law as the W.R. No. 26 of 1957.
3. Nwabueze, B.O. ibid. pp.94-95. These have been exhaustively discussed in Keay, E.A. and S.S. Richardson. The Native and customary courts in Nigeria (London) Sweet and Maxwell, (1966).
4. The warrant can be amended to increase and reduce the status of the court.

The courts were the responsibility of local government councils which supply the fund and equipment to keep it going. In return, the fees and fines from such courts go to the councils. As a result the courts became a revenue-earning agent to the Councils and council officials started to employ them for political vendetta against political opponents. The law of the Western Region states that customary courts shall exercise jurisdiction "within such territorial limits as may be defined in the warrant." The laws to be administered are also stated as well as the persons over which courts have jurisdiction.

The first in the hierarchy of courts is Grade 'A' which is invariably presided over by legal professionals as sole judges. The Minister of Justice also reserved the right to appoint lawyers to any of the remaining grades hence some Grade 'B' courts are presided over by legal practitioners. The implication of this is that legal representation is allowed in these courts. There were also Grades 'C' and 'D' customary courts. The vast majority of the courts in the Region have no specific constitution.[1] Any combination of persons might be appointed to them, but in accordance with the 'bestman' policy great emphasis is placed on literacy in the English language. The panel of the courts varies from place to place, but three is invariably the quorum,

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1. Nwabueze, B.O. op.cit. p.98.

provided that once the court has entered upon the trial of any particular case no member of a customary court who was not present when the trial began is to take part in the proceedings.

The appointment of members was done by the Local Government Service Board with the proviso that the legally qualified ones shall be appointed by the Judicial Service Commission. The Local Government Service Board have a complete discretion as to whom they should appoint. More often than not, political appointees abound in the system although one of the agreements at the London constitutional conference 1958 is to the effect that it should be free from political interference.

The powers of the courts are as stated in the customary courts Rules of 1958. By these rules the customary courts were made more English than hitherto for the procedure was systematized and codified. Furthermore a relationship was established between them and the English type courts. The rules empower the courts to execute, if need be, warrants and summonses of the English type courts.[1] In fact in criminal cases the English type courts can admit to bail people before customary courts even though the customary court may not think it fit.[2]

Although the enabling law is a Regional one,[3] the type of court that is established in an area depended on the willingness of the local

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1. Order V rule 5 of the customary courts rules 1958.
2. Order VI rules 1-3 of the customary court rules 1958.
3. Customary court laws of 1957 W.R. No. 26 of 1957.

authority to support it and the availability of the personnel for such post. Thus it was left to the local councils to utilize the provisions of the law provided the fund was available for such a venture. According to Keay and Richardson, it was not the policy of the Regional Government to restrict closely the numbers of customary courts, but rather to relate the number of courts to the needs of the community, the ability of the local government councils to pay for them, and (latterly) the ability to provide adequate supervision.[1] The upshot of this liberal policy is that a court was established where a community has felt the need for its own court and the council has found the necessary funds. And as qualified personnels have become available, existing courts were up-graded. However, this trend does not preclude the existence of some large and wieldy benches.[2] The criminal jurisdiction of the courts also shifted from the customary criminal jurisdiction to statutory criminal jurisdictions.[3]

The next significant phase in the life of the new Customary Court system were consequences arising from the Western Region crisis which resulted in a declaration of a state of emergency in 1962. The

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1. Keay, E.A. and Richardson, S.S. op.cit., p.98.
2. ibid.
3. This may be in furtherance of the "repugnancy doctrine."

bill that had been passed by the pre-Emergency Government but had not received the Governor's assent was decreed to become law by the Order[1] of the Administrator. The Customary Courts (Amendment) Order 1962 made significant changes in the customary courts system. The power exercised by the minister was transferred to the Chief Justice of the High Court.[2] Appointment of judges of the customary courts became the duty of the Judicial Service Commission. The law, apart from clarifying the power relations between Grade 'B' courts which are presided over by legal practitioners, and those headed by laymen, took away the original criminal jurisdictions of the Grade 'A' and 'B' courts. The law also empowered the Chief Justice to appoint Supervising Authority for the inferior courts as it gave him or his delegate power to transfer any case pending in any customary court before final judgment. The last of the effects of this law was the disappearance of the Grade 'D' courts.[3] The existing Grade 'D' courts became Grade 'C'.[4]

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1. W.N.L.N. 230 of 1962 emergency powers (legislature) bills order, August 11, 1962. The W.N.L.N. 300 of 1962 is just one of the laws given effect to by W.N.L.N. 230 of 1962.

2. Sec. 3 of W.N.L.N. 300 of 1962.

3. W.N.L.N. 300 of 1962. The customary courts (amentment) order 1962 sec. (1) amending sec. 18 of the original law.

4. ibid. Sec. 33.

Although the emergency ended in 1962, peace continued to elude the Region until the fateful early morning of January 15, 1966. The customary courts during the crises were loyal instruments in the hands of oppressive government and local government councils of the period. It is not surprising that when the axe fell on the government, the customary courts in the Western Region were not left like the English type courts to continue to function unrestricted. The additional criminal jurisdiction exercised by the courts under section 24(3) of the Customary Courts Law was taken away.[1]

Edict 2 of 1966 must have been designed to cripple the customary courts in view of the ominous role played in the crises that preceded the military intervention. The creditability of this argument can be seen if one realises that the edict is one of the chain of edicts aimed at undoing the excesses of the last civilian regime. This edict was followed by another[3] revoking the appointment of all presidents, members and assessors of all Grades 'A', 'B' and 'C' customary courts in the Region. Perhaps the military thought that taking away of criminal jurisdiction was not enough as the presidents could still use their civil jurisdictions

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1. Edict No. 2 of 1966 of 27/1/66. The customary courts (revocation of additional criminal jurisdiction) edict 1966.

2. ibid.

3. Edict No. 8 of 12/2/66. The customary courts (revocation of appointments) edict 1966.

to victimize their political opponents. The role of these men had angered the vast majority of the people that their continuing in office could trigger off another crisis for the military whose avowed aim was the restoration of confidence in the establishment.

When the courts were reinstated and reconstituted, the criminal jurisdictions taken away by Edict No. 2 of 1966 was restored.[1] However, the power of the Minister in the original law continued to be wielded by the Chief Justice. The restoration of jurisdiction so soon thereafter may puzzle the ordinary man. But the reconstitution of the courts was a sufficient ground to allay the fears of the people and to show that normalcy have been restored. And since supervisory power remained in the hand of the Chief Justice, the so much dreaded political leaning of the customary court judges no longer constituted a threat. It may also be presumed that the new men on the customary court bench were detached from and unconnected with the discredited politicians.

The power of the Chief Justice continued to be exercised in several ways. First the appointment of customary court judges of the Grade 'A' and 'B'[2] courts became the duty of the public service commission. In fact these courts presidents became part of the Western State

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1. Edict No. 17 of 1966.

2. The grade 'B' (non-professional) president is appointed by the local government service board.

judiciary for supervisory purposes and therefore members of the Western State public service. Their attachment to local councils for pay and favourable conditions of service disappeared. They became civil servants and their activities as well as all benefits became subject to the civil service ethos and practice.

Apart from this change in status, there ensued a change in nomenclature and a defined jurisdiction on the same line with the English type courts.

The new edict[1] strengthened the position of the Chief Justice vis-a-vis the minister. Even where the minister can act, it must be in consultation with the Chief Justice. The upshot of this was that the courts presided over by legal practitioners were reconstituted with names such as Chief Customary Court, Senior Customary Court grade I, Senior Customary Court grade II, Customary Court grades I and II. The status of each court varies with the status of the presiding judge. And in terms of jurisdiction the customary courts were now arranged in hierarchies with powers in their own sphere varying according to grades and on the same lines as the magistrates' court. Just as no magistrates' court has appellate jurisdiction over the other magistrates' courts, the new courts headed by lawyers look towards the High Court for corrections.[2]

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1. Edict No. 15 of 1972. This was to have retrospective effect from April 1, 1971.

2. The grades 'B' and 'C' courts headed by laymen could still send appeals to the customary courts headed by legal practitioners provided such are constituted as courts of appeal for them.

By section 10 of Edict No. 15 of 1972, it was stipulated that:

> save as may be provided in any other enactment provided which expressly confers jurisdiction on a customary court, the maximum fine and the maximum imprisonment which may be imposed by each grade of customary court in criminal causes by each grade of customary court in criminal causes or matters shall be as set out in the second schedule to this law.

TABLE 2

The new customary court structure and jurisdictions in Western Nigeria

Status of Court President	Grade equivalent	Civil jurisdiction	Criminal jurisdiction
Chief customary court president	Grade 'A'	Unlimited in all customary civil cause and/or civil suit to the tune of ₦1000	₦1000 fine or 5 years imprisonment
Senior customary court president Grade I.	Grade 'A'	Unlimited in all customary civil cause and/or civil suit to the tune of ₦600	₦600 fine or 3 years jail
Senior customary court president Grade II	Grade 'B'	Unlimited in all customary civil suit and/or civil suit to the value of ₦400	₦400 fine or 2 years jail
Customary court president Grade I, Grade II, Grade B	Grade 'B' " " " " " "	Unlimited in all customary civil cause and/or civil suit to the tune of ₦200	₦200 fine or 1 year imprisonment
Grade C	Grade 'C'	Limited to ₦100 in all customary civil suit	₦100 fine or 6 months jail

Source: Second schedule to edict No. 15 of 1972 (customary courts (Amendment) Edict).

The power conferred is at par with the existing English type courts. The two can be arranged in hierarchies which also represents the varied powers wielded by them.

TABLE 3

Jurisdictional comparison of English type courts and customary courts

English type	Customary courts	Jurisdiction	
		Civil	Criminal
Chief magistrate	Chief customary court	₦1000	5 yrs. jail
Senior magistrate Grade I	Senior customary court Grade I	₦600	3 years "
Senior magistrate Grade II	Senior customary court Grade II	₦400	2 years "
Magistrate	Customary court	₦200	1 year "
	Grade B customary court	₦200	1 year "
	Grade C customary court	₦100	6 months "

The powers of the reconstituted courts are the same in monetary value as the magistrate's courts on the same levels. However these powers are wielded in different spheres, except in criminal matters. The customary courts dominate the "traditional" sphere whilst the magistrate courts deal mostly with enacted laws. The significant differences between the customary court and the English type courts is in the types of cases in which their powers are exercised.

The changes that have resulted since regionalisation had increased the spheres of influence of lawyers in the customary courts. Since the creation of courts with legally qualified presidents, lawyers now appear for litigants. The procedure of the courts have followed closely the procedure in the English type courts. May be this is what led Ajayi[1] to comment that the courts were "native" only in the sense that their personnel and a part of the law which they administered were indigenous to the Region. By the introduction of state control on the courts, the personnel gradually changed from local chiefs to legal practitioners from other areas.[2] The condition and reason hitherto adduced for the establishment of the customary courts therefore became secondary.

The practice before this reform had been to appoint people versed in the custom of a people and area. How this works now that customary court presidents are appointed like civil servants and transferred from place to place like the latter requires some examination. By the various changes, described in this section, the typically English forms of civil action such as actions for "declaration of title," for "damages for trespass," and for "injunction" became, by adoption, the common

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1. Ajayi, F.A. Interaction of English law with customary in Nigeria. In Journal of African law vol. 4, 1960, p. 40.

2. Ajayi said "The judges of these courts were almost entirely local chiefs who by virtue of their traditional office are regarded as so well versed in customary law that no formal proof of that law was required in their courts as is the case in the superior courts. ibid., p. 41.

feature of cases in customary courts. The effect of these appear to have been "the integration of the dual system of "English" and customary courts. Emphasis on diversification of culture was relaxed in favour of assimilation of culture. Customary court presidents now use experience acquired elsewhere in handling cases in other areas. The changes also resulted in the situation which customary court presidents were no longer men of custom but were appointed like civil servants and were transferred from place to place.

Summary

In this chapter, I have discussed the events which led to the regionalisation of the judiciary and to the establishment of the Western State judiciary. I have identified the sources of power of the various tribunals and have shown the impact of constitutional changes and the political awareness of the people on the judiciary. The dual systems which we discussed in the last chapter are seen to be fusing into one.

The tendency has been towards assimilation. The customary court system is gradually fusing into the English system in both theory and reality. I have analysed the factors that led to the changes. It has been shown that the structural changes that had taken place in our judicial processes had been shaped by our political aspiration and that the system of governments from time to time has shaped and reshaped our

legal system. Thus at the end of the period covered by this study, there are in existence in Western State of Nigeria a chain of courts with appellate and coordinate jurisdictions. The Court of Appeal constitutes the highest court in the State with the High Court being a court of record with both appellate and original jurisdictions. Its powers are unlimited and holds sway of control over the inferior courts. There also exists a relationship of equality between the customary courts and magistrates courts depending on the statutory provisions that created them.

The judiciary as presented in this chapter, represents the formal organization which the rational model postulates. This formal structure is purposely worked out in accordance with the need of the political and social climate. The hierarchical arrangement, the division of responsibility among the units of organization, the technical competence stipulated for the incumbents are seen to be in the interplay in these arrangements. The structure also ensures continuity since mechanisms are provided for replenishment of lost members and a tradition to be followed is clearly worked out. Our focus in this chapter has been the static organization which has been evolved through a number of experiments, by statutory provisions and dictated by the political atmosphere. The dynamic structure is left for later discussions.

CHAPTER FIVE

THE ORGANIZATIONAL STRUCTURE OF THE JUDICIAL DEPARTMENTS

In the preceding chapter, we examined the development of the judiciary of the Western State of Nigeria including the laws establishing the various courts. In this chapter, we shall describe the organizational structure in terms of internal arrangements designed to ensure the smooth operations of court processes. This will be described as the non-adjudicatory aspects of the judiciary. A discussion along this line will enable us to perceive the judiciary as an arm of government which for our purpose, and for the present we call 'the judicial department'.

The implication of this is that we are attempting a distinction between the Judiciary[1] and the Judicial Department.[2] The non-adjudicatory aspect is the function of the judicial department while the judiciary enjoys independence in adjudicatory sphere.

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1. The judiciary is that arm of government that is charged with interpretation of law and which is independent of government in the discharge of its functions.
2. The judicial department is that arm of government establishment that is civil service-like and forms the necessary paraphernalia for the smooth functioning of the judiciary. In functions, recruitment and internal structural arrangements, it is governed by the rules governing other arms of government.

The distinction will enable us to perceive the bureaucratic elements in the judicial department in terms of its hierarchy of office, division of labour, recruitment based on competence and the espirit de corps. It is intended to elucidate the extent to which professionalisation has encouraged fractionalization and produced sub-groups in the system with different authority structure. We also intend to show that the existence of multiple groups is a product of tripple-standards in recruitment, orientations and functions.

The judicial department as an arm of government

The judicial department is an arm of the government of the Western State of Nigeria.[1] Its personnels are civil servants and are subject to the ethos of the civil service. The judicial department is subject to the constraints and directives of the government because like other government departments, it receives government subvention annually. Its finances come from the government even though it is a non-ministerial department, it is subject to the same public accountability in terms of management of funds and staff discipline.

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1. The civil service regulagions as contained in the public service manual and all other government directives affect the administration of the judicial department in the same manner as they affect other ministries and departments.

The regionalization of the judicial department in 1954 led to accelerated Nigerianization. Regionalization provided the opportunity for the expansion in professional and non-professional staff of the judicial department and other arms of government. The admixture of professionalisation and the routine nature of the functions of the department have tempted scholars to describe it as non-civil service. In effect, the judicial department consists of professional and non-professional staff. The distinction often made between "judicial officers"[1] and "judicial staff"[2] corresponds to the distinction between professionals and non-professionals. The judicial officers, in the performance of their judicial functions, are not civil servants.[3] While the judicial staff are civil servants in all its ramification.

The laws creating various courts specify how their personnels are to be recruited and the statutory functions to be performed by them.

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1. The term " judicial officers" is often used to refer to judges and magistrates.

2. The judicial staff are the non-professionals like the principal registrar, senior registrar, higher registrar, registrars, etc.

3. The magistrates are civil servants in terms of appointment, conditions of service and discipline.

The Court of Appeal[1] and the High Court[2] are creatures of the constitution while the magistrate courts[3] and customary courts[4] are creatures of statutes. For the Court of Appeal, the law provides for the office of the president, and four (as amended seven) Justices of Appeal, the office of the Chief Registrar, and other officers designated as Registrars by different nomenclature depicting hierarchies and charged to perform specific functions.

The High Court law provides for the office of the Chief Justice and other Judges in addition to other officers designated as Registrars of various grades who perform specific functions as the exigencies of service may dictate. Similar provisions were made by the magistrates courts law as well as the customary courts law. By the extension of

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1. The constitution of Western Region of Nigeria as incorporated in the constitution of the Federal Republic of Nigeria of 1963. Sections 48-54 make provisions for the judiciary. Section 52 was invoked for the establishment of the Court of Appeal vide edict No. 15 as amended by edict No. 22 of 1967. Sections 3-7 provides for the appointment of officers.

2. Western Region High Court Law 1954 (W.N. No. 3 of 1955, sections 5-9, and 59 (1) and (2) incorporated into the Western Region Laws of 1959 as cap. 44.

3. The magistrates' courts laws cap. 74 of Western Region of Nigeria 1959 (the original act was 1954, No. 5 of 31/1/55 sections 7 and 15, 16 and 17).

4. The customary court laws of Western Nigeria cap. 31 laws of Western Region 1959. Sections 3-5 and 12 of W.R. No. 26, 1957.

power of control and supervision exercised by the Chief Justice, these other courts are administered in the same establishment as the High Court as if they were created by the same law. Thus when reference is made to the High Court of Justice in this context, it includes the magistrate's courts.

The "independence" of the judiciary does not mean that it is completely divorced of governmental influence. Government may influence the judiciary through administrative and financial policies. The wave of change that characterised the civil service affected the administrative structure of the judicial department and the judiciary in general. Thus it is argued that the government dictates the structure, the law to be administered and the viability of the department.

The distinction being made between the judiciary and judicial department is for purposes of analysis. The judicial department is the establishment which is essentially civil service oriented and keeps the administration of justice running whilst the judiciary is the body charged with execution of law, i.e. performance of judicial functions. The judicial function has been defined as the sequence of steps taken in disposing of legal controversies. It is the judicial department that we are about to describe as part of the civil service.

The personnel and administrative set-up of the Western State public service had been extensively dealt with by Coker[1] whose view is that the definition of the concept "civil service" does not include the judiciary.[2] Either the non-integration of the judicial department in ministries or the notion of an independent judiciary may have been responsible for Coker's view.[3] Consequently, he examines the development of the civil service in Western Nigeria without reference to the judicial department as an integral part of the public service.[4] It appears more meaningful therefore to adopt the definition of the civil service as contained in the Nigeria constitution and endorsed by Nicholson.[5] There

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1. Coker, Tony. Public personnel administration in Western Nigeria (Ibadan) Unpublished M. Sc. dissertation submitted to the department of political science. (1968).

2. Coker has adopted the definition as given by Gladden, E.N. In Civil service or bureaucracy. Rechester Kent Staples Printers Ltd. (1959).

3. The judicial department is one of the few government departments with no connections with politicians as heads and no ministerial control whatever.

4. See the organization chart of the machinery of government in Western State of Nigeria in appendix B. (reference op. cit.).

5. Nicholson, I. The machinery of the federal and regional government. In John Machintosh: Nigerian government and politics (London) George Allen and Unwin Ltd. (1966) p.141. (See also section 165 of the constitution of the Federal Republic of Nigeria.

is one and only one public service in Western Nigeria and the position of the officers of the judicial department is subject to rules of appointment, discipline, and conditions of service as they apply to other segments of the public service.[1]

The Public Service of the Federation means "service in civil capacity" and it excludes the President of the Senate, Deputy President of the Senate, Senators, Speakers, Deputy Speakers, Members of the House of Representatives, Ministers, Parliamentary Secretaries, Members of Councils and Commissions established by the constitution. This definition leaves the judiciary within the scope of the civil service. Although the functions of the judiciary are separate, as argued by Nicholson and endorsed by Coker,[2] the personnel administration and financial arrangements are basically the same as in the other departments of the civil service. Other arms of the civil service like the Treasury Board,[3] Ministries of Finance and Establishment, the Head of the Civil Service and the Public Service Commission do affect the

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1. The only exception is the appointment of judges which is the function of the advisory judicial committee with the approval of the supreme military council.

2. Coker, Tony. Preface to op. cit., p.v.

3. Public administration law No. 29 of 1959. The function of this body has now been taken over by the executive committee of the State.

operation of the judicial department as an integral part of the service. The judicial department is subject to the control of the Treasury Board[1] since the latter actually regulates its finances by approving expenditures as contained in the "Advanced Proposal." The proposal in addition, contains facts about appointments and their financial implications. The Ministry of Finance in collaboration with the Ministry of Establishment can prune down the demands of the department on the ground of "unreasonableness." However, it is the duty of the Chief Registrar as the Accounting Officer to justify the demand of the Department. This single action of withholding approval for financial proposal is an effective weapon against financial mismanagement and undue disregard of Treasury circulars and financial regulations.[2]

The Ministries of Finance and Establishment have complimentary functions with regard to finance and personnel matters. Whilst the former collects revenues, controls expenditure and acts as the accountant of the government with overall responsibility for financial policy, the

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1. The treasury board was established in 1959 for the control and management of the public finances of the Western Region. It is also charged with the duty to make provisions in relation to auditing of accounts and for the regulation of the public service and matters relating thereto.

2. Financial instructions and the public service manual make elaborate provisions for financial management. The latter also states legitimate spending.

Ministry of Establishment controls the organization of government departments, makes policies on service conditions and on development and departmental establishments. While the Ministry of Finance is to ascertain the justification for proposed expenditure, the Ministry of Establishment ensures that the number and gradings of staff in any department reflect the volume and complexity of work that is to be done.[1] From these two Ministries, circulars emanate from time to time regulating the activities of the judicial department.

Other organs of the public service also have implications for the judicial department in their day-to-day activities. The Head of Service and the Secretary to the Government[2] coordinates the activities of the various ministries on public administration in the state. His functions include leadership of the service, management of the public service, and laying down of standards of conduct, the direction and supervision of

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1. Sometimes in 1969 the judicial department asked for increase in its staff complement in the clerical cadre of its staff. Men of the organization and methods unit of the ministry of establishment were sent to evaluate and make recommendations on whether or not to grant the request. The judicial department was allowed, consequently, an increase of 21 clerks in its establishment. See ministry of establishment file. Report of the organization and methods unit.

2. Coker, Tony. op.cit. p.39. The origin and functions of this office has been dealt with by Coker and it requires no further discussion here.

training schemes and, Nigerianization.[1] Similarly, the Public Service Commission wields some power with respect to appointment of certain cadre of staff - the magistracy and the Registrars cadre. For political reasons and allegation of irregularities in the appointment and promotion[2] of the Senior Civil Servants, it became necessary to centralize appointments into this cadre in the civil service generally. However, the appointment and promotion in the junior cadre continued to be a departmental issue with the proviso that the Public Service Commission could call for details about any appointment or promotion.

Since Nigeria became independent, the judicial department has continued to be affected by the wave of structural changes in the public service of the state and the federation at large. Successive governments have been concerned with improvement of the service with regards to efficiency and indigenization.[3] Several attempts were made to

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1. For an exposition of the functions of the Head of service see Peter Odumosu. "Leadership in the public service of Nigeria" In Quarterly Journal of Administration. vol. II, No. 2, 1968. Institute of Administration, University of Ife.

2. Judges of the higher court are not appointed by the public service commission. The supreme military council does on the recommendation of the advisory judicial committee.

3. The first positive step towards Nigerianization was the recommendation of the Foot's committee of 1948. This was followed by the Adebo-Philipson commission on Nigerianization. In fact the Western State (Region) government had adopted the policy as far back as 1952 in the "frigidaire" policy.

restructure the Judicial Department and these have resulted in changes in nomenclature as well as gradings. Gone were the days of the District and Divisional Registrars. The changes in structure have resulted in having groups of courts rather than the magisterial districts. There has also been a concomittant change in the status of officers. The tendency has been towards raising the status of establishments as well as the status of the officers. A comparison of the existing structure with what used to be is presented in Table 4.

TABLE 4

A comparison of former titles of office with present titles of judicial staff

Former Title of office	Present Title of office
Deputy Chief Registrar	Principal Registrar
Senior Registrar	Senior Registrar
Registrar	Higher Registrar
Divisional Registrar	Registrar
District Registrar	Assistant Registrar

The changes in nomenclature has also been reflected in the type of courts headed by these officers. The equivalent of the District Registrar is now virtually subordinated to the Higher Registrars and

in its stead, the Registrar which is higher in status takes charge in the magisterial districts.

TABLE 5

A comparison of statuses of officers in charge of courts previously with the present statuses related to the statuses of courts

Status of Court	Officer previously in charge	Officer now in charge
Group of High Courts	Registrar	Senior Registrar
High Court	Divisional Registrar	Higher Registrar
Chief Magisterial group	Registrar	Higher Registrar
Magisterial district	District Registrar	Registrar

There has also been efforts at wage revision commensurate with rising cost of living and new needs.

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1. Notable among moves to restructure and improve the civil services were the Gorsuch commission of 1954; Morgan commission, 1959; Morgan commission 1964; Adebo commission 1970-71; Elwood regrading team 1966 and latest the Udoji commission 1974.

The point which is being emphasized is that the judicial department is an integral part of the civil service and is subject in its day-to-day activities, to the civil service ethos and tradition.

The three bureaucracies of the judiciary

Having established that the judicial department is an integral part of the civil service, it is necessary to demonstrate how it has fared in the situation of rapid social change and expansion. The concept "judiciary" as used in this context includes three courts - the Court of Appeal, the High Court of Justice[1] and the customary courts. Because of the semblance of the structures of the three bodies, it is not necessary to describe them as distinct bureaucratic organizations but as an entity. By the annual estimates of Western State of Nigeria, the Court of Appeal and the High Court of Justice are treated separately but under the omnibus title "judiciary." The "separateness" is for administrative convenience which does not blur the fact that they are two entities in one. Their separate identity is further strengthened by the fact that their personnels are recruited independent of each other, the promotion system, though the same in terms of qualifications and procedure, is controlled by different establishments. In financial and related matters, they are

1. The magistrates courts are treated in this context as part of the High Court of Justice.

regarded and they regard themselves as different bodies. The common links which the two organizations have are manifested in their similarity of functions which have resulted in the tradition of exchanging personnels. Justices of Appeal are invariably recruited from among the Judges of the High Court of Justice.[1] For instance, the first five Justices of Appeal and subsequent Justices of Appeal were recruited from among the High Court Judges.[2] Also the foundation staff of the Court of Appeal - the Chief Registrar, the Senior Registrar and other Registrars - were all former staff of the High Court. In spite of the fact that the Court of Appeal now recruits and promotes its men, in recent time, a Registrar of the High Court was seconded to the Court of Appeal. Thus it can be seen that the interconnections are still strong even though emphasis is on the separateness of the two bodies.

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1. Nothing prevents the executive from appointing an outsider to the Court of Appeal. The appointment of the federal Chief Justice from the official bar is a case in point. It is not prohibited by any law.

2. A former president of the Court of Appeal was appointed from among the justices of the Supreme Court and therefore tends to falsify the generalisation made above. It should however be noted that he was a judge of the High Court of the Western State before he transferred to the Supreme Court under the old arrangement that states be represented at the Supreme Court. His appointment has not violated the practice already discussed.

The third institution is the customary court whose functions are similar to the other two arms of the judiciary although the customary courts have very close affinity with the local government councils. Their men were hitherto appointed by the Local Government Service Board while the judicial functions were subject to the scrutiny and control of the Ministry of Justice. This has now changed as we discussed previously. The only segment of the customary court regarded as part of the West Public Service and is subject to its control is the upper echelon i.e. the legally qualified court judges. The auxiliary staff remain part and parcel of the various local government councils. In short, the only administrative involvement of the public service in customary court affairs is in terms of finance[1] and conditions of service of the Judges. By recent changes,[2] it is now possible to apply the civil service code of conduct in appointment and promotion of the customary court judges.

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1. In the days when the local councils pay salaries of the judges the judges were more susceptible to doing the wishes of the councils which most of the time were more of political vendetta than justice in the true sense of the word.

2. Customary court edict No. 15 of 1972. For sometimes now the customary courts came under the strict surveillance of the High Court. The legally qualified presidents are required to render monthly returns of their judicial activities and like the magistrates they are now transferred by the Chief Justice of the High Court.

If the Court of Appeal, the High Court and the Customary Courts perform similar functions, though at different levels, it is expected that their organizational set-up would be similar and this is the situation in spite of the different nomenclature. Table VI shows the similarities among the three organizational structures.

TAPLE 6

Hierarchies in the three bureaucracies

Court of Appeal	High Court of Justice	Customary Courts
President	Chief Justice	Customary Court Judges
Justices of Appeal	Judges	
Chief Registrar	Chief Registrar	
	Deputy Chief Registrar	
	Magistrates	
	Principal Registrar	
Senior Registrar	Senior Registrar	
Higher Registrar	Higher Registrar	
Registrar	Registrar	Registrar
Assistant Registrar	Asst. Registrar	
Others	Others	Others

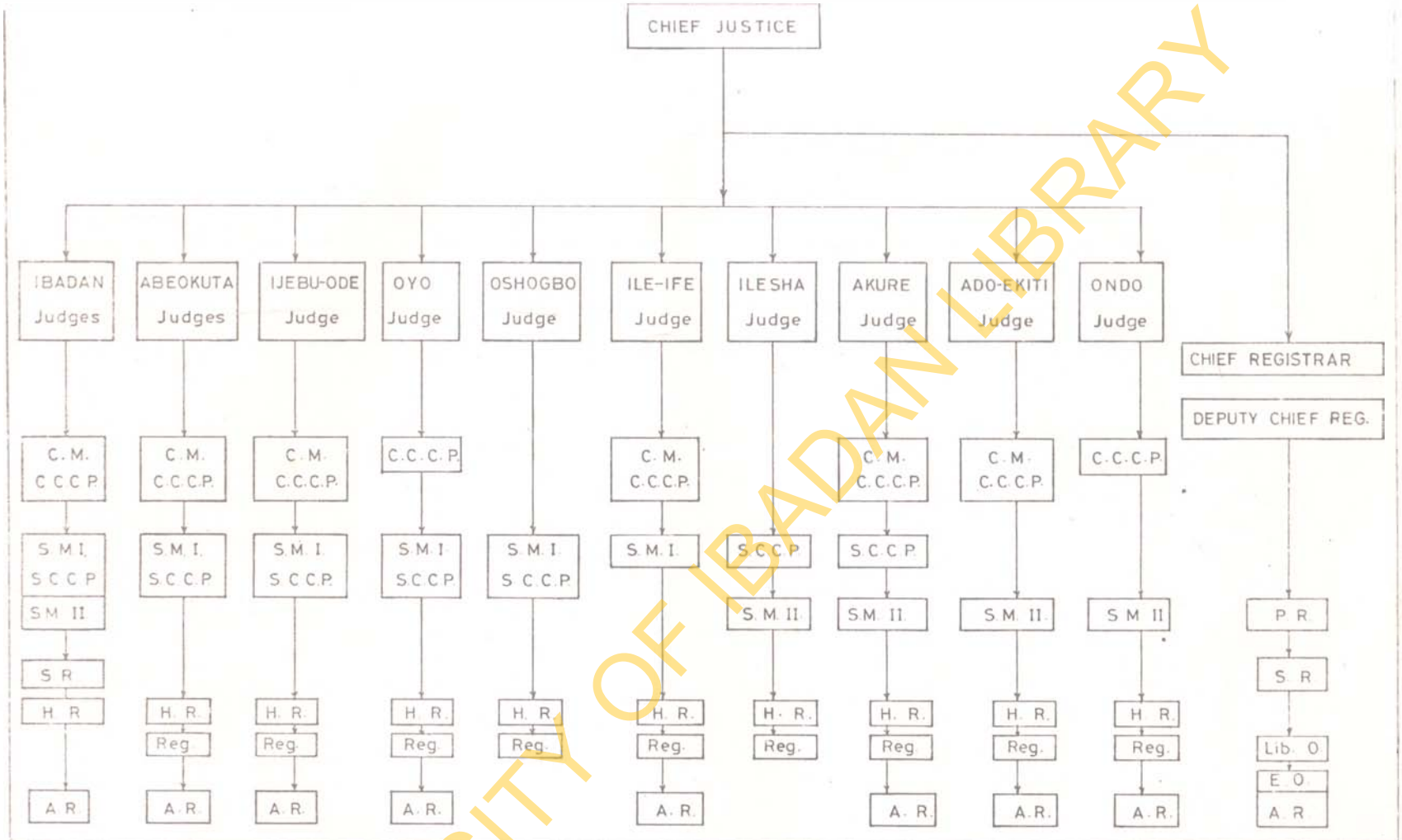

Fig. 7. The Organisation Chart of the Western Nigeria Judiciary — 1973

The organization chart of the High Court of Justice is presented herewith as typifying the admixture of professional and non-professionals in a prefabricated hierarchy.

TABLE 7

Distribution of officers of the High Court of justice of Western State

	PROFESSIONALS						NON-PROFESSIONALS										
Judges		C R	C M	SM.I	SM.II	MAG	P R	S R	H R	E O	C S	REG	A R	CO/A	TYP	Bail-iffs	Others
1968/69	13	1	7	7	9	5	1	1	13	1	10	7	11	129	53	28	86
1969/70	15	1	8	7	9	5	1	1	14	1	13	7	13	135	53	30	88
1970/71	17	1	8	7	9	5	1	2	14	1	13	7	17	145	56	29	90
1971/72	17	1	8	7	9	5	1	2	15	1	14	7	18	159	61	31	93
1972/73	18	1	8	5	8	5	1	2	15	1	15	8	16	159	63	39	92

Key to Abbreviations

C R - Chief Registrar
C M - Chief Magistrates
SM.I - Senior Magistrate Grade I
SM.II - Senior Magistrate Grade II
MAG - Magistrate
P R - Principal Registrar
S R - Senior Registrar
H R - Higher Registrar
E O - Executive Officer
C S - Confidential Secretary
REG - Registrar
A R - Assistant Registrar
CO/A - Clerical Officer/Clerical Assistant
TYP. - Typist

From the hierarchical arrangements thus presented, it is seen that the customary court structure does not compare with the other two structures except that the three institutions have both the professionals and the non-professionals. In fact, it seems there is nothing worth describing about the customary court staff with dual and divided loyalty. The judges of the court look to the State's public service for control and conditions of service while the terms of appointment, remuneration and transfers of Registrars emanate from the Local Government Councils.

In the Court of Appeal and the High Court, the professionals and non-professionals are interdependent. The professional class is further polarized into two - the higher Bench and the lower Bench.* Their service conditions also vary according to this division. The members of the High Bench are appointed through the recommendation of Advisory Judicial Committee by the Supreme Military Council and therefore a necessary adjunct of the constitution but the members of the Lower Bench are appointed by the Public Service Commission and therefore civil servants simpliciter. In terms of promotion, the magistrates look to the members of the higher Bench for recommendation and this tends to encourage servility. For instance a magistrate cannot leave his station

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* Higher bench - The judges and justices of appeal
Lower bench - Magistrates.

without the expressed permission of the High Court Judge in the area. Similarly, the Registrars appointed like the magistrates, are subordinate to the professionals of both the higher Bench and the lower Bench. In effect, the interaction of the elite-judges, the middle class, the magistrates and the plebians - Registrars in the same organization does not encourage group cohesion. If it is not overtly antagonistic, it is, covertly. The result is individualism of the three groups. In terms of upward mobility, there is no mechanism by which a Registrar can become a magistrate. The Registrar therefore remains perpetually a subordinate officer and subservient even to the least member of the professional class. Even within the professional class, the system of promotion to the higher Bench is not based on seniority and qualification. The law allows injection of outsiders - qualified members of the Bar - to the higher Bench.

Consequently, many a magistrates have retired from the magistracy frustrated with no hope of ever retrieving the chances of becoming a judge had they not joined the magistracy. In fact, the impression one is likely to make from this practice is that most members of the magistracy are never-do-wells. The esprit de corp that is expected to characterize an organization operates in segments and fragments because of this polarization. More often than not, the relationship is that of suspicion

and scorn as well as group hostility. Nonetheless, they constitute a single entity with one goal.

The Court of Appeal sits at Ibadan with no branches outside, this explains the "non-complexity" of its hierarchies. The High Court on the other hand has establishments in various parts of the State. The administration in the various stations replicates one another and the personnel are a people with a common tradition, training and outlook. The hierarchical arrangement shown above may appear misleading to the extent that it presents a situation of upward and downward mobility for all. The personnels are professionals and non-professionals. Because of this, the administration is polarized if only implicitly. The professionals and the laymen have separate channels/lines of vertical mobility.

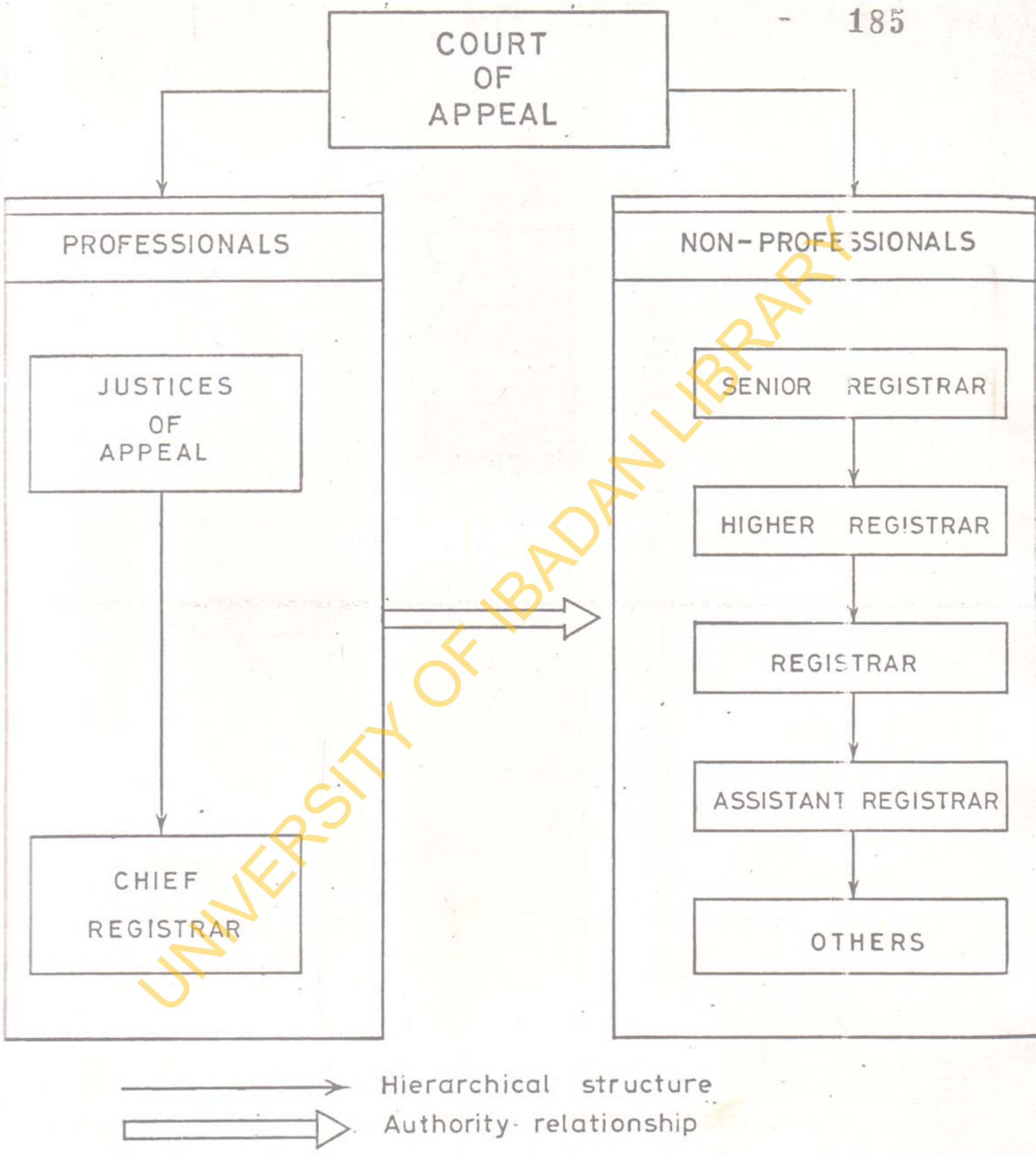

Fig. 8. Relationship between professionals and non-professionals in the court of appeal

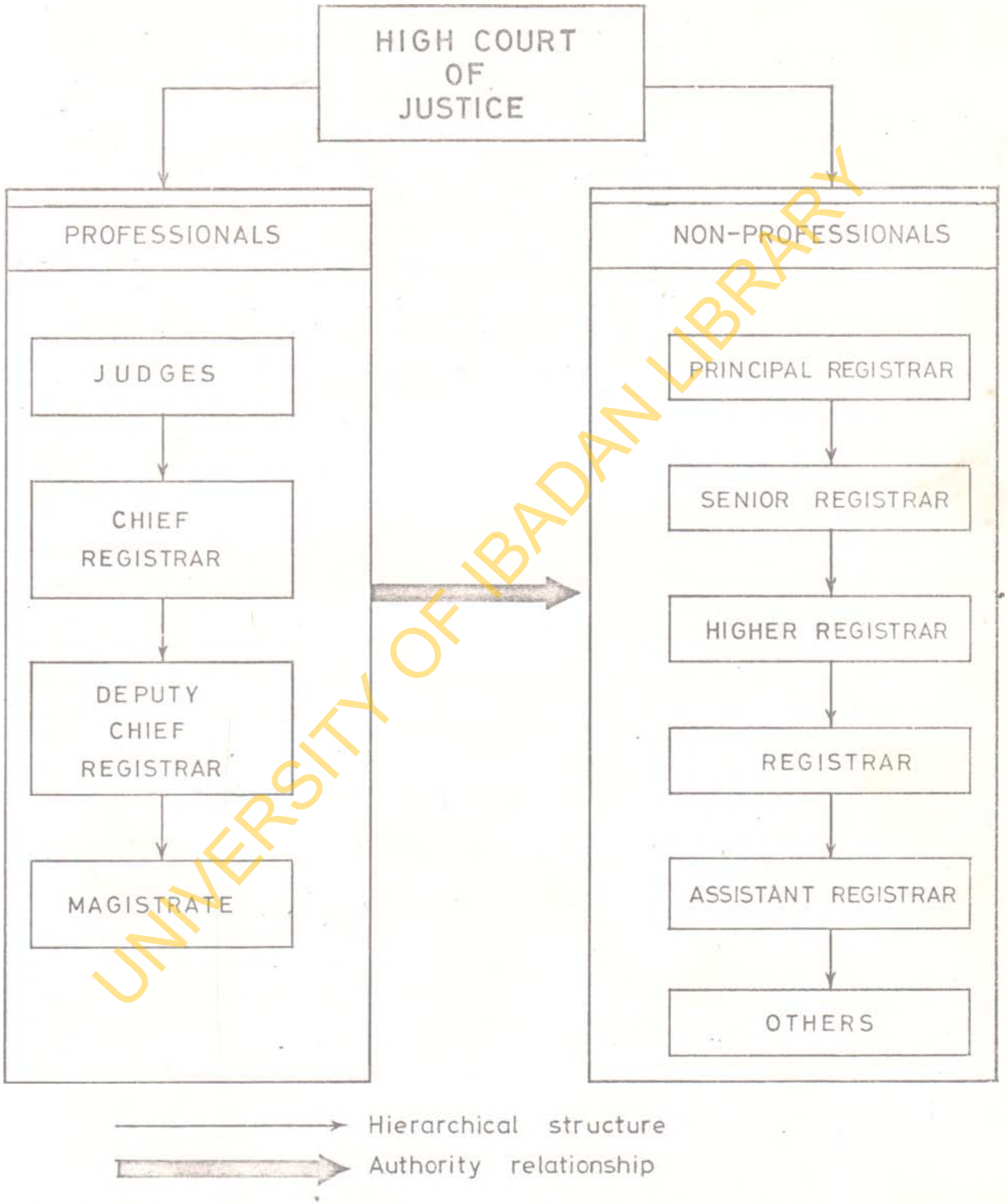

Fig. 9. Relationship between professionals and non-professionals in the high court of justice

It is pertinent to explain, professionalism. Fulton Report[1] defines professionalism as including two main attributes - skill in one's job as a result of training and sustained experience, and the fundamental knowledge of and deep familiarity with a subject that enables a man to move with ease among its concepts. Thus in the judicial departments the professionals - called "judicial officers," belong to the legal profession and their function is essentially professional.[2]

Although the professionals belong to the Bench, they remain bona fide members of the Bar. Although the Bar is non-bureaucratic because of its members on the Bench it is amenable to bureaucratic ethos and traditions. The extent to which the Bar is bureaucratic will be discussed later.

The distinction between the two segments of the professionals in the judicial department is further epitomized in the mode of dressing and of address when performing judicial functions. The members of the higher Bench, always dressed in their full robe are addressed "My Lord" while those of the lower Bench dressed in ordinary suit are addressed "Your Worship." Those of the customary court are addressed "Your Honour" while the mode of dress may be the English suit or the complete national costume.

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1. See W. G. Harries: The role of professional in civil service. In Public Administration. vol. 47 (1969), p. 33.

2. This does not rule out the possibility of performing some administrative duties as ancillary to the main functions.

The conditions of service of the members of the higher Bench are as set out in the constitution. There is no adherence to strict hierarchical arrangement for upward mobility. Outsiders, provided they belong to the Bar and have satisfied the constitutional prescriptions, are appointed. Generally, the post is not advertised and no application is required from prospective candidates. Appointment is a recognition of successful and reputable practice at the Bar or proven ability at the lower Bench. Thus, there are three sources from which appointments are made - serving officers of the lower Bench; members of the official Bar and the Bar. By the constitutional prescription, a foreigner may be considered for appointment provided he has practised law for ten years or has held judicial appointment in a superior court of record in some parts of the Commonwealth. In fact, the Nigerianization policy has never been extended in theory to this branch of the public service.[1] As a matter of fact, non-Nigerians continued to serve on the High Court Bench till after independence.

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1. Even when the Western Regional (State) government entered agreement with the United Kingdom government in 1957 for the creation of a special list of Her Majesty's Overseas civil service (and still mindful of the Nigerianization policy) the posts reserved for Nigerians did not include that of the judges of the high court. Western Region: Nigerianization of the public service of Western Nigeria, December 1960.

TABLE 8

Appointment to the High Court bench of Western Nigeria 1956-1973: sources of appointment

Year	Bar	Lower Bench	Official Bar	Transferred from other services	Total
1955	0	2	0	3	5
1956	0	1	0	0	1
1957	0	0	0	0	0
1958	0	2	1	3	6
1959	0	0	0	0	0
1960	0	1	2	0	3
1961	1	0	0	0	1
1962	1	2	0	0	3
1963+	0	0	0	0	0
1964	1	2	1	0	4
1965	1	0	1	0	2
1966	0	0	0	0	0
1967++	4	2	0	0	6
1968	1	1	2	0	4
1969	1	1	0	0	2
1970	1	0	0	0	1
1971	1	2	0	0	3
1972	1	0	0	0	1
1973	0	1	1	0	2
Total	13	17	8	6	44

+ Creation of the Midwest Region and loss in area of jurisdiction.

++ Establishment of a Court of Appeal and the creation of the Lagos State. Some of the judges went with the new states in which they were serving. Some of the serving judges went to the newly established Court of Appeal.

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1. Some of the judges have transferred to other courts or retired. This frequency of appointment includes those inherited from the old supreme court Nigeria. This list is compiled from the staff list of Western Nigeria.

TABLE 9

Nigerianization and its effect on the judiciary: judicial officers 1955-73

Year	Total No. of Judges & Nationality		Total No. of Magistrates & Nationality	
	Nigerian	Non-Nigerian	Nigerian	Non-Nigerian
1955	2	3	17	1
1956	2	3	17	1
1957	4	3	23	1
1958	5	4	27	1
1959	4	5	28	1
1960	4	5	28	1
1961	6	4	28	1
1962	10	3	31	1
1963	10	3	37	1
1964+	9	2	30	0
1965	13	0	29	0
1966	13	0	29	0
1967++	17	0	32	0
1968	18	0	24	0
1969	20	0	24	0
1970	19	0	25	0
1971	22	0	23	0
1972	21	0	27	0
1973	21	0	26	0

Source: Staff List of Western State of Nigeria 1955-1973.

* This includes the Chief Justices and Justices of Appeal.

\+ The Midwest Region was carved out of the Western Region. So there was a reduction in its territorial jurisdiction as well as staff.

++ The Court of Appeal was established in the Western State and the Colony Province of the old Western Region was made part of Lagos State. These also resulted in diminution of territory and staff.

The High Court of Western Nigeria which started with 5 judges has increased in personnel to about 21 (inclusive of Court of Appeal) and there has not been any need to import foreigners into the country with the avowed aim of filling vacant positions. The two tables have falsified the fear that it will be difficult to get the right calibre of people for recruitment into the High Court Bench.

Once appointed, the members of the revered Bench enjoy security of tenure and elaborate arrangements are made for their discipline and welfare. Apart from serving in the sub-stations of the establishment which may involve them in minor administrative functions, their duties are essentially adjudicative. Magistrates performing within their judicial divisions are subject to their control/supervision. The supervision is however statutory and therefore indirect.

The Chief Justice is the only person among the ranks of judges that have deep involvement in administration. He is the executive head of the Department and it is only in this administrative capacity that he ranks higher than his brother judges. He is "primus inter-pares." The need for this administrative involvement results from the position of the Chief Registrar who is the administrative head of Department but at the same time a junior officer to the judges. The nature of the functions of the organization requires that its administrative functions must be intricately related to adjudicatory functions. Co-ordination is

also necessary in view of the geographical area covered. The Chief Justice is statutorily empowered to determine where a judge of the High Court or any judicial officer should perform.

Apart from the internal administrative involvement, the Chief Justice speaks for the Department on executive matters and initiate changes from time to time. He determines whether or not a new court should be opened after he shall have satisfied himself that there are sufficient reasons[1] for such action. The latter action is carried out only if the Government approves and makes fund available.

The second sub-division of the judicial officers consists of the Chief Registrar and the Magistrates of all grades. Although they are professionals, yet in terms of experience at the Bar or at the lower bench, they trail behind the judges. The fact that they are rarely appointed to the higher bench is not a reflection of their limited ability. More often than not, it arises from the fact that there are many more qualified individuals than are vacancies to be filled. Some however, get appointed to the higher bench even though there is no rigidline of promotion towed. Private practitioners also get appointed. For instance Table VIII shows that out of the 44 Judges and Justices of Appeal ever

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1. These reasons are based on statistics of cases from the area in addition to the availability of facilities to make the functions of the court run smoothly and the court staff comfortable. The presence of the police also helps in determining this.

appointed in the state, 38.6% were appointed from among the members of the lower Bench; 29.5% direct from among the members of the Bar; 18.2% from among the members of the official Bar and 13.6% were either transferred from other services or were foreigners appointed direct.

Our concern in this is only to show that a hierarchical arrangement is virtually impossible, especially among equals such as the judges since outsiders can join the rank right at the top. Seniority among magistrates does not guarantee automatic upward mobility or elevation to the higher Bench. It is only pertinent to point out that the chances of magistrates becoming Judges becomes bright as soon as a magistrate ascends the Chief Registrar's chair.[1]

The judicial officers are more concerned with adjudicatory functions rather than with office administration. However, they report their activities to the Chief Justice or the Judge in their respective judicial divisions from time to time as the nature of work may dictate. In administrative matters, they can be regarded as "caretakers." The furthest they can go is to demand explanations from erring junior officers for onward transmission to the Chief Registrar with recommendations

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1. At the time of writing there had been 11 Chief registrars (including the current one) since the inception of the High Court of Western (Region) state. Only two have failed to become judges of the High Court. One died and the other retired.

for disciplinary action. Thus, in terms of cohesion or esprit de corp, the division within the rank of the staff of the department is doubly pronounced. The professionals are not "true bureaucrats" for the nature of their work does not admit of rigid adherence to bureaucratic principles of the classical type. Nevertheless, the degree of commitment varies from group to group - the non-professionals being more bureaucratic in outlook and practice than the professionals. The functions of the non-professionals are more of a routine nature while that of the professionals are "technical." Thus, the bulk of the administrative functions belong to the Chief Justice and his Chief Registrar assisted by a band of non-professionals while the professionals spend their time judging cases. Circulars originate from the Chief Registrar containing directives on administrative matters. Even in adjudicatory matters, the Chief Justice or his representative the judge in the division, gives directives and in matters of this nature, the Chief Registrar is a force to be reckoned with especially that he coordinates the various activities.

But because courts are arranged in groups known as Magisterial groups, and Judicial Divisions, a Chief Magistrate in charge of a magisterial group co-ordinates the work of his group and he reports to the Chief Justice through the Chief Registrar. The Chief Magistrate does not interfere with adjudicative processes but reports the work condition in his group to the Chief Registrar. However, he does the

distribution of cases among his fellow magistrates. There is hardly any need for coordination within a judicial division where invariably there is only one judge. (Exceptions are found in Ibadan, Abeokuta and Ijebu Judicial Divisions where there are seven, two and two judges respectively according to the volume of work).

In these cases, the judges appointed earliest are deemed to be senior (for administrative convenience only) and thereby takes on the duties of distributing the work in the station among his brother judges. Besides, every judge reports his stewardship directly to the Chief Justice who is also senior for administrative purposes only.

In terms of administration therefore, the professionals constitute an insignificant group. Their condition of service are not harmonized with the non-professionals in the Department. In fact, they belong more to an external body such as the Bar and their colleagueship of the Bench of other states albeit of Nigeria as a whole. Rather than stress internal well-being, the professionals are more inclined to fight group and professional causes which extends beyond the boundary of the judicial department. For instance, annually the Judges of Superior Courts in the Federation hold conferences where far-reaching decisions about their conditions of service and the judiciary as a whole are deliberated upon and taken, with recommendations. The magistrates too have their own association which holds annual conferences on state as well as national

levels. More often than not the Magistrates associations deliberate on matters affecting the magistracy while the judiciary becomes secondary. Thus we see that the professionals - the elite of the judicial department are committed more to the profession than to the internal organization.

Apart from the peculiarities described above, the general administration of the judicial department is just like the administration of any other government establishment. Udoji[1] as well as his predecessor, Elwood,[2] claims that the non-professionals of this department perform identical functions as their counterpart in other ministries. Both however conceded that there is bound to be peculiarities which in the case of the judiciary is dictated by the nature of its functions.

The Chief Registrar

The Chief Registrar is the administrative head of the department recruited from the rank of Chief Magistrate and has behind him little administrative experience. Usually the holder is an aspirant to the higher bench. His and that of the Deputy Chief Registrar[3] are the only

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1. Public service review commission 1974.
2. Elwood regrading team 1966.
3. This position used to be held by a layman. But in 1964 the post of assistant chief registrar was created and that of the deputy chief registrar passed on to the professionals. It has suffered series of instability and most often abrogated. The post was resuscitated in 1974.

professionals in the purely administrative hierarchy. As the chief administrator his functions are multifarious. He deals with the other arms of the civil service in terms of finance, personnel management and appointment. He is responsible to the Chief Justice for the smooth running of the department. In effect, the Chief Registrar is the link between the Department and the outside world.

He is both the personnel officer and administrative adviser to the Chief Justice. He is statutorily the Probate Registrar and the Sheriff. But these functions are delegated to the junior officers of the department.

As the Accounting Officer for the Department, he has responsibility for collection of revenue and expenditure in accordance with the financial instructions and treasury circulars. On revenue collection, he must ensure that appropriate fees are collected and when fines are imposed that they are collected if the convict can afford to pay. It is in this sphere that his public accountability is most pronounced. Periodically, a return is sent to the Treasury informing it of the financial conditions obtaining in his department. This is done to facilitate approval for future spending. Because of the specialist nature of financial management, a specialist of the centrally deployed class (Executive Officer (Accounts)) is present on the spot to guide the spending. While performing for the judicial department, the Executive Officer (Accounts) is responsible to the Chief Registrar. The salary and allowances are channelled through this

office. The imprest kept for witnesses allowance is also controlled from this office and regulations about their administration and disbursement emanate from there also.

The Chief Registrar is also the personnel officer for the judicial department. His personnel management involves him in making policy about staff complement and service conditions. From his office is directed the general welfare of the officials of the department in accordance with the Public Service Manual and related regulations in terms of appointment and promotion- leave and leave allowance- and the overall conditions of service. His policies regarding structural changes and filling of vacancies in the department is done with the approval of the Ministry of Establishment in collaboration with the Public Service Commission. The Chief Registrar also acts as the liaison officer between the staff of his department and other public establishment.

In his capacity as the Probate Registrar, he has responsibility for ensuring that estate matters in intestacy pass on to the right hand. He is also to ensure that the right persons benefit from the inheritance of deceased person where a will exists. Before granting letters of administration, he ensures that the right person comes forward to administer the estate of the deceased. These functions are supposed to be performed by the court but since cases of dispute are very rare, the exercise invariably terminates at the purely administrative level.

Where there are contentious issues, the Administrator-General takes an action in court to establish the validity of a will or urge the court to decide who should claim letters of administration or to procure the revocation of probate or letters of administration if granted to a wrong person or improperly issued.

As the Sheriff, he ensures that all legal execution[1] are carried out. Services of summonses and notices to litigants are carried out under his surveillance. In capital cases he is to ensure that the order of the court is implemented by arranging execution after all the ceremonies about prerogative of mercy are over.

He is himself a professional and his tenure of office is temporary in the sense that he has his eyes on the higher bench. The bulk of the administration is thus the efforts of his subordinates scattered all over the state and in stations where courts are established.[2] His is the extent of participation in administration by the professionals. Thus it

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1. This is a technical term used for enforcing a judgment of court. R.M. Jackson. The machinery of justice in England: Cambridge University Press (1967) 5th edition, p. 77.

2. Only few months back the chief registrar was a chief magistrate pre-occupied with adjudication of controversies. His claim to the chief registrar's chair is based on his leadership of the magistracy and not determined by his administrative prowess. In some quarters, the chief registrar is regarded as a "bird of passage."

can be seen that the administrative functions of the judicial departments devolves to a large extent on the non-professionals.

The non-professionals in the judicial department

The presence of professionals in administrative sphere may contribute to lack of fit by the judiciary into the classical organization theory of bureaucracy. The structural arrangement is made to accommodate two "incompatibles" - the professionals and non-professionals. For instance, the administrative functions of the professionals are very much subordinate to their professional functions. The partial involvement of the professionals in administration accounts for the reliance of the organization on the non-professionals who are civil servants simpliciter. They are public servants with an unalloyed loyalty to the department. In other words, they are "company men." They compare favourably with the civil service structure. Although they have unsuccessfully claimed professionalism, Elwood and Udoji reports unequivocably declared them non-professionals. They are said to belong to the general administrative organ just in line with any government ministry. Although they may differ in nomenclature, essentially they are said to be performing similar duties as their counterparts in other ministries. They belong to the generalist class in terms of function and pay.

TABLE 10

Comparison of civil service generalist class and the judicial staff (non-professionals)

General Executive Class	Non-professional Hierarchy of the Judiciary	Pre-Udoji Salary Scale	Udoji Grouping
Principal Executive Officer	Principal Registrar	Gr. 8	Gr. 10
Senior Executive Officer	Senior Registrar	C(E) 6	Gr. 09
Higher Executive Officer	Higher Registrar	C(E) 5	Gr. 08
Executive Officer	Registrar	C(E)2, 3&4	Gr. 07
Assistant Executive Officer	Assistant Registrar	C(E)1 & 2	Gr. 06
Assistant Executive Officer in-Training	Assistant Registrar in-training	C(E)Training	Gr. 05
Clerical Officers	Clerical Officers	D1, 2, 3	Gr. 04
Clerical Assistant	Clerical Assistant	F1, 2, 3	Gr. 03
Others	Others	G1, 2 & 3	Gr. 01&2

Source: Compiled by the author and see.

Public Service Review Commission Report on Grading and Pay vol. III, 1972-74, p.177.

This table shows that the non-professionals in the judicial department constitute the "true" civil servants of the department. Within this class of officers Nigerianization has never been a problem since this seems to have been the preserve of Nigerians and has never attracted the expatriates.

These officers have no professional qualification, and it appears no special training is designed to equip them with the type of job they are supposed to do except where it is possible to call experience acquired on the job training. It is true that the Ministry of Establishment has training scheme for civil servants the number of people who participate are very few and the training received is merely to equip them with general administrative technique which does not relate to any particular Ministry, albeit a specialist department of the judicial type.

In spite of the absence of training and training scheme, the non-professionals still remain the life-wire of the department. They assist in court proceedings and also issue of court processes. Their professional over-lords are versed in law, they are versed in administrative and pre-adjudicatory processes. These untrained 'learned' men constitute a sine qua non to the effective administration of justice. I shall show later how they affect the law enforcement processes.

In spite of their close affinity with the general civil service, they regard themselves as a special class of the several categories. Their

abortive aspiration to become technical has influenced their non-identification with the other segment of the civil service. They do not belong actively to the civil service union because they are of the view that they are a specialist class. At various times (when a wages commission is in progress) they gave the impression that a union - the judicial staff (non-professional) union - exists to present their case. The union has never been virile and apart from this, it has never enjoyed the support of the junior staff. The lack of support is caused by the suspicion that the union caters for the members of the higher echelon to the detriment of the junior ones. One reason for this non-challant attitude is the fact that these junior officers are birds of passage and invariably do not wait to benefit from the agitation of any union.

Their non-unionization does not mean total absence of trade unionism. Their inability to present strong cases for their welfare is an offshoot of their inability to unionize. However, their conditions of service have not been made worse than their counterparts in the civil service. Invariably, Review Commissions have always considered their case along with other segments of the civil service. Thus, the judicial staff have always benefitted from the agitation of the Civil Service Union. Whenever there is an industrial action, the court staff does not normally participate. Some categories of staff - typists and messengers nevertheless belong to unions outside the judicial department. In fact the

typists union has a journal called "The Machine." Messengers also have a state-wide union. How much these unions have achieved for their members is not a matter for this study. The significance to us is that they exist and that it depicts the fragile nature of the esprit de corp which characterises the judicial departments.

The registrar and the registry

The dispersion of the judicial officers all over the state also affect, the dispersion of the non-professionals. As the judiciary is divided into judicial divisions and magisterial districts, so also are these functionaries. These officers perform similar functions wherever there are courts. These similarities are manifested in the structural arrangements of court registries. The only significant difference is that the status of the auxiliary staff vary with the statuses of the professional men. Thus, in the High Courts and Chief Magistrates' Courts, there are attached Higher Registrars (except in the case of Ibadan Registry where there are about six judges and thereby required the status of a Senior Registrar to cope) assisted by Assistant Registrars and other grades of clerical and messengerial staff. On the other hand, the Senior Magistrates' Courts have attached to them officers of the Registrars grade assisted by clerical and messengerial staff. Apart from these differences based on hierarchy of courts there are basically no differences in the duties performed.

The Registrar is the liaison officer between the public and court in his area. He also mediates between the judicial officers in the station and the other members of staff. He receives instructions on staff and related matters from the Chief Registrar and takes steps to ensure proper execution of court functions and facilitates issuing of court proceedings, collection of revenue and disbursement of imprest. Generally he is responsible for the effective administration of his registry and assists in the smooth performance of court duties. He is an ambassador of the judicial department to the extent that he keeps the organization going by attending to the public, maintaining internal order and coordinating the activities of his staff.

Every court registry has sub-divisions which perform specific functions for the effective functioning of the court. Sections like the Finance, Process/Litigation, court duties and Exhibits are typical of most court Registries. In some large registries there are libraries. The duties performed by each section is stated in appendix C.

From time to time, the non-professional staff are called upon to perform various duties ranging from issuing of hearing notices or subpoena to receipt of motions and motion Ex-Parte. It is from the Registry that the issuing of court orders are prepared and sealed. And when a case is finally decided everything connected with enforcement originates from the Registry.

Thus in this single department, there are three distinct classes of officers. They do not constitute a group, rather the emphasis has been on sectional solidarity. The only bond of unity is the formalism of their appointment and the recognition of the indispensability of one segment to another.

Summary

In this section, I have discussed the general structural arrangements and the personnel aspect of the judicial department. I have also focused my attention on the interconnectedness of the judicial department with other government ministries in terms of financial and personnel management. I have also shown how professionalism has reinforced segmentation in the staff relations of this department. The way in which professionalism has aided the smooth functioning of the organization has also been discussed. Whether or not the end of the organization is achieved is a matter for later discussion.

The description thus far gives the impression that professionalism tends to inhibit bureaucratization. The esprit de corp that is expected of any bureaucratic organization exists in fragments to the extent that the professionals, while performing their professional functions, enjoy unlimited freedom. The freedom is unlimited to the extent that no order is taken on how cases are to be decided. In effect, the degree of

formalization found in the organization reflects the non-routine nature of its activities. This implies that professionalization and bureaucratization are inversely related. The professionals generally prefer utilizing procedures that they themselves develop on the job or through their professional training. It will amount to interference if the Chief Justice should issue more than rules of court to inferior courts.

Concluding this section, it can be said that professionalization is formalization in another garb to the extent that both are designed to regulate the behaviour of members. If the professionals in the judicial department adhere to their professional ethics, and I suppose they do, it means that they have accepted formalization implicitly. Thus in the judicial situation, professionalism and formalism have learnt to live together. There has been no overt evidence of friction between professionals and non-professionals and an industrial peace can aptly be said to have prevailed.

Our discussions in this chapter are centred on the formal structure of the judicial department as a bureaucratic organization. It seems that Gouldner's view that a bureaucratic type and the degree of bureaucratization is a function of the environment in which the organization exists, the type of persons employed in it, and the goal to be attained by the organization is borne out with particular reference to the link between the professionals and non-professionals. The authority

structure even though vertical has been tainted to accommodate the various groups in the hierarchy. In this context, we have shown that the bureaucratic model is not a master key that opens all locks because bureaucracy and professionalism have been shown to be inversely related. The divergence between the judicial department in static form and the judicial department in dynamic context supports the view that a bureaucracy in conceptualization differs markedly from a bureaucracy in operation. Even though the judicial department is a formal organization, it has been shown that there are other organizations - formal and non-formal - within it and the hierarchies which obtain in the organization exist in fragments. Thus it can be concluded that in certain respects, the bureaucratic model helps to explain the structure and functions of the judicial department and in some respects, there is marked lack of fit.

CHAPTER SIX

THE JUDICIARY AS A SYSTEM OF INTERRELATED ORGANIZATIONS

In the preceding chapter we have demonstrated that the judiciary cannot be adequately understood if viewed only from the perspective of the organizational theory of bureaucracy. Court administration is not easily adaptable to the usual bureaucratic governmental pattern because of the peculiar nature of its functions. The administrative pattern of the judiciary derives from their greatly valued independence in purely judicial matters. The discussion is intended to show that this independence is not unlimited as the functions of the court can only be discharged effectively if the other bodies involved in adjudication perform their duties. In view of this, the court cannot be examined as a close system.

Because of its peculiar characteristics, court administration has been defined as "the making of all arrangements for staffing, servicing, time and location of courts and their operations."[1] According to Baker, courts administration like other forms of public administration, is not a simple matter of any one authority deciding what

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1. Baker, R. J. S.: The new courts administration: a case for a systems theory approach. In The journal of the Royal Institute of Administration, vol. 52, Autumn (1974), p. 285.

to do and directing and controlling it, but rather a complex series of interactions between various individuals, groups, authorities and institutions.

Implicit in this argument is that organizational effectiveness or ineffectiveness is not a matter for intra-organizational relations per se but depends on inter-organizational relations. The court is therefore seen as a 'stage' where actors act out their roles in scenes. These actors are either individuals or individuals representing groups and organizations. The various people on the scene at any point in time have separate autonomy and it is this autonomy that the court is called upon to blend. Courts processes, to a large extent, depend on fluctuating demand and flow of traffic beyond the control and partly beyond the prediction of the actors in the court's scene. The courts system is more dependent on its customers and their professional advisers for effectiveness than on its internal structural arrangements. This does not imply that we are denying that the court is a system in its own right - one which has evolved through statutes and practice over time. Our argument is that the court can be conceptualized as a system whose operations and effectiveness depend on other outside systems like the police, the prison, the bar, the litigants, etc. The interdependence results from the nature of judicial functions which can

be defined as "adjudication of controversy according to law." Roscoe Pound claims that the function of the court involves three steps:

(a) Finding the law, ascertaining which of the many rules in the legal system is to be applied, or if none is applicable, reaching a rule for the cause (which may or may not stand as a rule for subsequent cases) on the basis of given materials in some way which the legal system points out;

(b) Interpreting the rule so chosen or ascertained, that is, determining its meaning as it was framed and with respect to its intended scope;

(c) Applying to the cause in hand the rule so found and interpreted.[1]

The steps are themselves governed by law in the same manner as the controversies to be resolved. Law can generally be regarded as the formal use of rules that are interpreted, and are enforceable by the courts of a political community. To Pound, law means:

(a) the legal order or "the regime of adjusting relations and ordering conduct by politically organized society";

(b) the authoritative materials (including rules) that guide administrative and judicial decisions; and

(c) the judicial process.[2]

The courts are called upon to administer whatever law is infringed. The nature of problems which the courts have to grapple with

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1. Pound, Roscoe: An introduction to the philosophy of law. New Haven, Yale University Press (1922) (Revised 1954), p. 48.

2. Pound, Roscoe: Social control through law. New Haven. Yale University Press (1942), p. 25, pp. 49-53.

determine the type of actors on the stage. Generally, the situation is a three-cornered hearth. If the issue involves violation of private right, the dramatis personae will be the court, or rather the judge/magistrate, the plaintiff and the defendant. In public offences it is a relation between the prosecution and the accused/defendant with the court as the umpire.

The above situation is an oversimplification of reality. The three-cornered picture may be too narrow if it is realized that courts decisions have consequences for many more people than actually take part in the contest. The inference we are drawing from this is that the court depends on other social institutions for effective performance of its functions. These social institutions often exert controls over their members and often over non-members. These institutions are also influenced by the judiciary. It can therefore be argued that this interdependence is the cornerstone upon which court processes are built and it is mutual. This mutual dependence may not characterize the entire network of relations which obtains in a court scene, since by nature, the scene is a "trial" and therefore adversary. Our contention is that the antagonism is mutually accepted as the normative pattern. The court operates in a situation where conflicting demands are made upon it but its own norms are specific. It is presumably the

confidence that these institutions or individuals have in the efficacy of the court and the finality of its decisions that is responsible for the extensive power endowed it in the spheres of arbitration.

Court decisions are influenced by factors other than the normative requirements. They are not made in vacuum and the judges are sensitive to the environmental demands in handing down judgments. Even though legal decisions are made by persons who occupy formal roles, their role obligations restrict judicial behaviour and pressures of particular situations place limitations on a court's discretion. In spite of these, cases are still decided by men who have feelings, preferences and ideas. All the judges organized experience to date is reflected in his judicial reasoning. The judge is a product of innumerable group experiences, and these are reflected in his work. His role is played in a particular organizational setting but each case has its pattern of group pressures.

The situation of the judge has been described by Jessie Bernard in the following language:

> For a solitary justice in his chambers pondering facts and mulling over implications is not actually alone. Seated about him are all the men - alive and deceased - whose opinion he values. The justice evaluates his own thinking in terms of how it is reflected back to him by the men he respects and admires - great teachers, predecessors, colleagues, scholars, commentators.[1]

1. Bernard, Jessie: Dimensions in axes of Supreme Court decisions. In Social forces. vol. 34, No. 1, October 1955, p. 27.

According to Davis and Foster,[1] the result of this looking glass process is, that the personal views of the justices tend to reflect the prevalent views at about the time they joined the court. This notion has also been confirmed by Lasswell and McDougal[2] when they stated that "the response of any court is affected by two sets of factors; "environmental and predispositional." Elaborating upon this, they claim environmental factors is "what goes on when cases are tried" and that predispositional factors means "how matters stood before the case is opened." To these learned authors, briefs, oral arguments, testimony and exhibits are typical environmental factors while the biases of the judge is included as a predisposing factor.

The complexity of the duties of the judges becomes glaring if it is realised that the conflicting parties usually bombard the court with irreconciliable environmental factors. The judge would require more than the ordinary human ingenuity to grapple with these factors or distil the truth from falsehood. More often than not, his decisions are predictable because of his constant reference to previous experience.

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1. Davis, F. James & Foster, Henry H. Jnr. The judicial process and social change. In Davis et. al (1962), op. cit. p. 131.

2. Lasswell, Harold & M. McDougal. Legal education and public policy. In 52 Yale Law journal (1943), p. 238 quoted in Davis F. J. et al. ibid., p. 131.

Commenting on predictability, Cohen said:

> Actual experience does reveal significant body of predicdable uniformity in the behaviour of courts. Law is not a mass of unrelated opinions, nor a product of judicial belly-aches. Judges are human, but they are a peculiar breed of humans, selected to a type and held to a service under a potent system of governmental controls.[1]

Cohen added that a truly realistic theory of judicial decisions must conceive of every decision as

> something more than an expression of individual personality, as concomittantly, and even more importantly a function of social forces, that is to say, as a product of social determinants and an index of social consequences.

This personal element is omnipresent because a court must always dispense its own notion of justice yet rarely is it "personal" in the sense of being arbitrary and capricious. Rather, it is 'personal' in the sense that the choice between rival and tenable alternatives inevitably is determined by the particular court's concept of social utility and public welfare. Apart from the statutory limitations on the powers of the judges, they themselves appreciate that legal rules, to be effective precepts for human behaviour, must be in reasonable accord with the basic postulates of the culture of which the law is a part.

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1. Cohen, Felix. Transcendal nonsense and the functional approach. In 35 Columbia Law Review (1935). p. 842-847 quoted in Davis F. J. et. al. p. 132.

Much as the ethics of justice demands freedom to interpret the law the way judges see it, it must also be stressed that the judicial system is endowed with powers that are contained in the instruments that established them.[1] This means in effect that the various courts are tribunals of limited jurisdiction, narrow processes and small capacity for handling mass litigation. They have no force to coerce obedience and are subject to being stripped of jurisdiction or smothered with additional justices any time such disposition exists and is supported strongly enough by public opinion.[2] The court cannot overcome this limitations, a psychology which may explain its apparent yielding to expediency. Even though the independence of the judiciary is stressed, it has to take cognizance of the trends in public opinion and the wishes of the government of the day as enacted in law. The implication is that the legislature can declare null and void previous

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1. Jurisdictions of the courts have been described in chapter four.

2. A good example is the report in the New Nigerian of 8th July 1974 that the attorney-general of the Western State announced that jurisdiction of all chief magistrate's courts in the Western State is to be extended to enable them to try manslaughter cases caused by traffic offences. This is aimed at reducing the congestion and delay in the court. This has been given effect by edict 4 of 1976 (The reckless or dangerous driving (summary trial and punishment) edict).

decisions of the courts.[1] Thus a legislation that is valid today may be declared non-valid by the future Act of Parliament.[2] This then limits the ability of the courts to follow precedents.

The judges are therefore not as free as they have been portrayed earlier on. The only independence they enjoy is the right to inte pret the law the way they see it (except for the doctrine of stare decisis) and irreducible salary (except by taxation and inflation). Ideally, and in accordance with the tradition of the Bench judges are not expected to write their predilections into law in disregard of constitutional principles or legislative or executive edicts which they interpret. They are not expected to quaver or retreat before impending crisis of the day and resort to finding in dialectics of weasel words or surrender their own conviction for a passing expediency if they should

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1. This does not mean that courts take dictations directly from the government at all times.

2. A case where the legislature clearly used this power is the case of Akintola v. Governor of Western Region and Adegbenro (FSC 187/62). The Supreme Court, by a majority decision, ruled that the removal from office of chief Akintola as the premier of Western Region was wrong. Dissatisfied, an appeal was lodged to the Privy Council (then the highest court of appeal for Nigeria) which reversed the decision of the Supreme Court and found for the Governor and Adegbenro. The reaction of the UPP/NCNC coalition government to this was to amend the constitution of the Western Region making it categorically clear that a premier of the Region should not be removed without a vote to ascertain his popularity having been taken on the floor of the House of Assembly. In order to nullify the decision of the Privy Council the amendment was made to have retrospective effect from October 2, 1960.

legitimately claim their right to the woolsack. The duty of the courts is to balance the conflicting interests of litigants and thus to ensure social order. These conflicting interests bring into the court scene men of divergent views represented by opposing counsel.

There are two broad types of cases in the courts. The 'civil' and 'criminal'. The civil aspects always involve two counsel and their clients. The criminal involves the Policeman/Prosecutors or lawyers of the office of the Director of Public Prosecutions depending on the seriousness of the case, and the defendant/accused who may or may not be represented by a legal practitioner. These various interests then form the cornerstone of the controversies the court is called upon to arbitrate upon.

In addition to the contending parties, their relations are sometimes in the court. These are people whose cherished rights have been trampled upon and have resorted to litigation to redeem the damage done. These could be individuals, families, companies or statutory bodies. Such violation of rights do not necessarily constitute public offence. The issues at stake may pertain to land, contract, matrimony and other injuries that require redress. When any of the parties to a matter refuse to perform their obligations, the opponents have a right to institute an action against them/him before a supposedly neutral

body for determination. This means that their private wrongs are transferred to the court for redress. For as long as the case lasts, they remain virtually 'enemies'. The court thus becomes the battle-ground where the enmity between the parties is acted out. Money and time are ploughed into the crisis and the importance of the issue at stake is manifested in the amount spent and the type of counsel employed. However the resources of an individual would dictate his degree of involvement and commitment to the case. The implication of this is that justice may be denied to a citizen because of his lack of resources which prevents him from pursuing justice. If this type of 'justice' relates to such society values like 'freedom', 'right' etc., the entire society, it could be argued, is involved.

A criminal proceeding will bring into the court groups or individuals who have violated public law. Such crimes may be that which threatens the very existence of a society or it may be injuries done to individuals which require public redress (to serve as deterrence to others). Because of this, societies usually define what is proper conduct and provide rewards in terms of punishment or compensation for non-compliance or compliance as the case may be. In criminal cases, the prosecutor, representing the state, bring to the court the offender with a charge containing the statements of offence, and the witnesses

to prove the guilt of the accused. This does not mean that every prosecution is aimed at securing conviction at all cost. In fact, in serious cases, the office of the Director of Public Prosecution exercises some quasi-judicial functions to determine whether there is a case that should go to court at all. And where the matter is of a less serious nature, the police authorities, as a result of their investigations, decide whether or not to prefer a charge against the suspect. All these exercises normally precede the presentation of a case before the court.

The accused, on the other hand, may come with the intention of denying the allegations. In that wise, he might come with witnesses and relations to support him. But if he likes, and he can afford it, he may have a counsel to defend him in the case. If the allegation amounts to possible alienation in the society, he puts up a bold resistance in order to either reduce the seriousness of the matter or to prevent alienation from the society. The prosecution and defence engage in verbal war and the judge is there to maintain a balance, by constraining the parties to keep to the rules of the game.

The position of the police in the situation is significant. The police is generally regarded as an arm of the law with the main responsibility for preventing disorder, detecting crime and seeing that offenders are brought to trial. Apart from its close relations with

the court, the police performs other functions which brings it into close contact with the members of the public. Its place and functions are well expressed in the Police Act.[1] The Police is responsible to the Federal Government and its control is independent of the judiciary. Apart from their court duties, the police have other duties to perform. These out of court duties are so overwhelming that court duties such as prosecuting or witnessing are peripheral to them. In effect, the police is a public entity with its own unique bureaucratic structures and tradition. To the extent that both the judiciary and the police are collaborators in the law enforcement processes, all that can be expected is cooperation rather than control. The court has no direct means of enforcing its decisions and it relies on the police for this purpose. In fact the commencement of a criminal proceedings is the exclusive preserve of the police and the Director of Public Prosecutions.[2]

The lawyers are as important to the judicial process as the police. The judicial process is mediatory in substance. It is a contest

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1. The police act. cap.154 Laws of the Federation of Nigeria 1958 section 4 stipulates "the police shall be employed for the prevention and detection of crime, the apprehension of offenders, the protection of property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or without Nigeria as may be required of them by, or under the authority of this or any other act."

2. Citizen have right to put up private prosecutions in criminal matters.

according to rules, with the expectation that each contestant will present his version of facts and law before an impartial judge. This presupposes a division of labour as well as professional ethics which imposes the duty upon counsel, within the uncertain bounds of fair and reasonable advocacy, to make the strongest case possible for his client. It is not the advocate's job to seek objectivity but to present his client's case in partisan manner to afford the neutral judge a choice between meaningful alternatives.

The impartial judge relies for most of the time on the advocate to bring the substances of the cases out clearly with the necessary legal intricacies. Both lawyers are supposed to have prepared well so that the work of the court is simplified. This function of advocacy sometimes presents the lawyers to outsiders as purveyors of falsehoods. To the ordinary man, the lawyer is always proving the innocence of the obviously guilty person and he is perceived as a perverter of truth. This conception of the role of lawyers is based on a misunderstanding of reality since the decision of the courts depend on the power of advocacy and ability of lawyers to present matters in lucid manner.

The importance of the lawyers' functions has been acknowledged when the Western State Court of Appeal remarked in the case of Commissioner of Police, Western State v. A.M.F. Agbaje that:

> We have been treated to some very interesting arguments by counsel on both sides. We commend their efforts to assist us reach a just and correct decision in this appeal.[1]

The point has also been made in the case of Nathaniel Adamolekun v. Dr. Kenneth Dike when the presiding judge remarked,

> The issues involved are important and must acknowledge the tremendous help of both counsel for the applicant and for the respondent and for their research in this matter.[2]

Although the overt function of the lawyer is that performed in the courtroom, they have functions outside the courtroom. They are counsellors, draftsmen, negotiators and spokesmen for their clients. In these roles they influence the judicial processes. How well these functions are performed would influence the court situation in terms of congestion and effectiveness. If lawyers give proper advice, only concrete cases such as knotty and intricate ones will be presented before the courts and compliance with court's orders will not be problematic for their clients. This will also enhance the smooth running of judicial processes.

The social organisation of the lawyers outside the court has serious consequences for the court and is worthy of explanation. Clients have absolute discretion in their choice of counsel, lawyers

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1. Nigerian monthly law reports. vol.1, 1969, p.180.

2. Nigerian monthly law reports, 1966, p.396.

also have uninhibited right to or not to accept briefs from clients. They cannot however accept briefs from two contending parties in a case.[1] The successful practitioners invariably have more than enough to cope with that they require assistance of other lawyers. This may be achieved by way of partnership or corporation. But in this country, most lawyers practise on their own and are therefore professional equals. Bureaucracy is possible among unequals and since lawyers are related equals - learned friends - it will be difficult to organise them bureaucratically. This does not however prevent the initial pupilage of the new lawyers under experienced ones and the partnership of equally experienced ones. Thus the legal profession consists of 'solo' lawyers, partners and lawyers employed by organization.[2] The first two categories are independent (private) practitioners, i.e. they are not

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1. Rule 7(a) of the rules of professional conducts in the legal profession in Nigeria made under section 2 of the legal practitioners act 1962 reads: Every person accused of crime has a right to a fair trial including persons whose conduct, reputation or alleged violations may be the subject of public unpopularity or clamour. This places a duty of service on legal profession and where particular employment is declined the refusal of the brief or the refusal to undertake a defence may be justified merely on account of belief in the guilt of the accused, or repugnance towards him or to the crime or offence as charge.

2. This third category is often called kept counsel-salaried lawyers or 'house counsel' in industry or elsewhere.

employed within organisations whose ultimate goals are other than law practice. Of the two major categories, 'solo' lawyers are in the majority.

It is this individualism that is brought into the court. Their competence measured by effective presentation of cases and cross-examination is reflected in the activities of the court. The dominance of the solo practitioners affects adversely the court system. This is because there are problems in terms of physical presence when lawyers have cases simultaneously in two or more courts. Such a situation slows court process. Thus, it can easily be deduced that the private professional commitments of the legal practioner inhibits or inhances the effective functioning of the court.

The importance of the lawyer to the court has been described by Reisman in the following words:

> Lawyers and how they act interest me. . . Lawyers bend the system they enter and are bent by it; some stay and others leave carrying the bent with them. Hopefully, one can begin to understand the law through the men, as well as vice versa.[1]

Karl Llewellyn seems to be making similar point when he defined law as "the behaviour of lawyers and officials involved in the process of dispute settlement. . ."[2]

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1. Reisman, David. Law and sociology: recruitment, training and colleagueship. Reprinted from Stanford Law review vol. 9, No. 4, 4 July, 1957, pp. 669-670.

2. Llewellyn, Karl. The bramble bush (N. Y.) Oceania Publications (1951), p. 12. quoted in American Sociological Review vol. 28, pp. 47-54.

There is a segment of the legal profession which is significant for our purpose. This is the "Official Bar." The lawyers so described are the professional staff of the Ministry of Justice. This comprises the Attorney-General and Commissioner for Justice as the Chief Law Officer assisted by a Solicitor-General, and State Counsel.[1] They are law officers of the State and as such ex-officio barristers, advocates and solicitors of the Supreme Court. They represent the State in certain matters - civil and criminal. Their functions in the former position is just like any other legal practitioner except that they represent the State in any torteous matter in which the latter is involved either as a plaintiff or defendant.[2] Apart from this, the members of the official bar give legal advice to the government on matters that concern it as a corporate body and they are also responsible for drafting laws, amending laws and repealing existing ones. Law reporting is also part of the functions of the Ministry of Justice.

The sub-divisions of this Ministry that touches more upon our subject is that headed by the Director of Public Prosecutions. In fact, all criminal prosecutions are done on his behalf. Theoretically, he

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1. Up to 1960, the attorney-general and solicitor-general were civil servants but since independence the former has ceased to be. Elias, T.O. op.cit. p.355.

2. The state is a corporate body, it can sue and be sued.

initiates all criminal prosecutions but in reality he gives advice to the Police on most criminal cases. He has the prerogative to carry on the prosecution of any case and may discontinue[1] prosecution if he so desires. His band of lawyers performs the bulk of these duties and handle the prosecution of the very serious ones.

Generally, when lawyers appear in court (be it from the official bar or the private bar) they behave alike. They feel alike and they are committed to the course of justice to the same degree although they vary in terms of individual ability. They determine the cause of action in most cases and the court that has jurisdiction in the particular case. Their day-to-day activities influence the activities of the judiciary and are influenced by the latter.

These three-cornered ordered battle does not exclude other social relations. The parties to disputes have external connections, and in fact they are products of these external ties. They are part of the society and the result of any judicial decision invariably affects more than the people directly involved in the matter. More often than not, relations of the litigants and members of the public exhibit their connectedness with any issue going on in court by their presence in

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1. The director of public prosecutions can proceed with criminal prosecution until final judgment and he can withdraw any charge before judgment by a "nolle prosecui."

court and through the publicity accorded it in the press. This becomes noticeable if a sensational case is in progress. A case may be sensational because of the position of the persons involved or because of the seriousness of the case. The opening of an Assizes is typical of such scene for it draws people from all walks of life to the court. Most people in the court either have sympathy for any of the parties or they belong to the press. Some are mere observers with no stake in any matter. The choice of counsel, whether or not to go to court, financial assistance if and when occasion arises, are few of the functions performed by the relations/spectators for the litigants. At times, the courtroom is like a classroom where the judge is the teacher and the rest - lawyers, litigants, spectators and the press - are students. Judges make far-reaching statements explaining the law, putting the parties to order and ordering relations.

Among the spectators are pressmen representing different Dailies or periodicals. Since the events in the court have implications for events outside the court, the role of the press cannot be over-emphasized. Objective reporting is the ideal, sensation is the practice. The press has no formal ties with the court but it is recognized as necessary adjunct to the court.

The functions of the judiciary have been described as settlement of controversies. It has also been asserted that the processes invariably pull together people of divergent views into a situation where a common norm obtains. Cases get to court because rights conflict, and negotiations for concession or compromise have failed. The court has no way of controlling the number of matters that should be submitted to it for arbitration. The police cannot predict the influx of matters that would require judicial settlement and lawyers can also not forecast the number of controversies and the rate at which they come in. All of them cannot predict the number of cases that will not admit of any other settlement but the court's. The implication is that the influx of cases are definitely outside the purview of these bodies or individuals connected with adjudication. Their actions are for most of the time unpredictable because cases occur so frequently and at an unregulated pace that excludes precise timing.

It is being argued that what obtains in the court is partially dictated by events in the larger society. Whether there will be controversies for settlement or not, is a matter for the society or rather, members of the society to decide. It is also the prevailing conditions in the society that will determine the nature of cases coming before the courts. For instance during the political crisis in the Western

Region of Nigeria in 1962, there resulted a proliferation of cases on constitutionalism. Among these are Alhaji D. S. Adegbenro v. Attorney-General of the Federation and 2 others;[1] Chief F.R.A. Williams v. Dr. M.A. Majekodunmi;[2] Hon. S.L. Akintola v. Sir Adesoji Aderemi and another[3] Chief S.L. Akintola v. Sir Adesoji Aderemi and Adegbenro[4] and Adegbenro v. Akintola and Sir Adesoji Aderemi.[5] It is the social situation that determines the attitude of the law enforcement agencies to the cases. In the case of Alhaji D. S. Adegbenro v. Attorney-General of Federation and 2 others, the Supreme Court of Nigeria held:

> (1) That as it appears that one of the causes of the public emergency in Western Nigeria was that there were two persons, of whom the applicant is one, claiming to be the lawful Premier, the court will loth at this stage to make an order for interlocutory injunction as it is likely to worsen the situation already created.
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> (2) That the court is unable to say on the argument before it at this stage that the Emergency Power Acts, 1961 and the Regulations made thereunder are invalid in their entirety or that they are unconstitutional.

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1. Western Nigeria law report 1962 Part I-IV, p.156.
2. Western Nigeria law report 1962 Part I-IV, p.174.
3. Western Nigeria law report 1962 Part I-IV, p.185.
4. Western Nigeria law report 1962 Part I-IV, p.195.
5. Western Nigeria law report 1962 Part I-IV, p.205.

> (3) That it is impossible to say in the present that there was no ground to justify a declaration of emergency as it is not for this court to go outside the provisions of section 65(3) of the constitution of the Federation of Nigeria.[1]

The societal perception and approval of the outcome of cases are all functions of the prevailing social circumstances. The social circumstances will also suggest what is legally actionable and what constitutes offences. All these are the peripheral social situations that will make for effectiveness or ineffectiveness of the judiciary.

The interrelatedness of the various organizations and institutions is not necessarily harmonious. In fact, the atmosphere can be described as that in which an uneasy peace prevails. Parties to a case disagree, and for that purpose their legal representatives disagree. There are however cases in which both counsel agree. For instance, both counsel in the case of Awobokun and another v. Toun Adeyemi: In re Toun Adeyemi, agreed on basic issues. According to the Western State Court of Appeal:

> It was agreed by counsel on both sides that the 'order' of the learned Chief Justice amounted to a 'conviction'. They both relied on Izuora v. R(1) in support of this submission. It was also agreed by counsel on both sides that an appeal therefore lies to this court under section 53(5) of the Constitution of Western State of Nigeria.[2]

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1. Western Nigeria law report part I-IV.
2. Nigerian monthly law reports (1968), p. 293.

Neither party is absolutely satisfied with the court's decision because they shall have suffered loss in terms of time, money and the injury which is the cause of the litigation and these are not likely to be adequately requitted. At the end of the struggle, if they are not exhausted financially and physically, they may express the dissatisfaction by way of appeal. Cases in which both the Plaintiffs and the Defendants have appealed against the decision of a court are not uncommon. A close observation of the way matters are prosecuted in court gives the unbiased observer the impression that such matters actually touch on the relationship between the contending parties.

This atmosphere has been aptly described by Lon L. Fuller as "The Adversary System."[1] This concept has been used to describe certain philosophy of adjudication, a conception of the way the trial of cases in courts of law are conducted, a view of the roles that are to be played by advocates and by judge and jury in the decision of a controversy.

If the judiciary is interested in normalization of controversy, it seems this goal will not be shared by all the contending parties. It is not expected that the goal of an organization be shared to the same degree by all the participants, nevertheless certain aspects of the

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1. Fuller, Lon L. The adversary system. In William N. Evan (ed.) Law and sociology. The Free Press of Glencoe (1962), p. 30.

goal are to be shared. As a matter of fact, the goal is not created by the individuals but laid down by the collectivity that established the judiciary and the goal is a desired state of affair which the judiciary attempts to realise. For the attainment of the goals, the judiciary is structured in such a way that the contending parties are able to recognize the interrelationship that obtains. Controversy is a normal way of life in the court scene.

This relationship is recognised and actors anticipate the reactions of other actors. Although the actors are individuals, they nevertheless represent groups which may or may not be bureaucratic. The internal structures of such groups determine their relationship with the judiciary. In the judicial situation therefore, we cannot actually talk of an organization chart because the participants seem not to be permanent but rather have a temporary and ephemeral ties with the focal organization.

People come to court when cherished rights are violently eroded and disappear from the scene when their business are over. This transitory nature of relationship does not mean total absence of organisational pattern which can be charted. Such a chart will show patterns of authority and communication; a manual of procedures[1]

1. These are as contained in the rules of court and the instruments which established the courts as described in chapter four.

and rules specifying the extent to which positions and tasks are predefined for the incumbents. The unstable interpersonal relationship complicates the structure of the organization in the sense that a continuing sense of belonging is conspicuously absent. It does not only complicate the work of the courts, it also complicates the relationship among its members. Hall, et. al.[1] claim that complexity of an organization makes an important difference to the behaviour of its members as the various units have not imbibed the norm of the organization to the same degree. Other structural conditions, processes within the organization, and relationship between the organization and its environment are sources of tension for the organization. Thus, we are contending that the performance of the judiciary is a function of structural complexity as manifested in the lawyers' social organization, the dispersion of the litigants, the structural autonomy of the various elements involved in the court millieu. In other words, organizational performance is a function of organizational interdependence which is manifested in intra-organizational and inter-organizational relations. In addition to Hall's claim that external conditions and internal processes are the dominant factors determining the form of an organization, we are contending that organizational goals tend to complicate its structure.

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1. Hall, R. H. et.al. op.cit., p.140.

And in the case of the judiciary, the goal itself is complex. It is our view that the judiciary is an entity whose social structure is determined by the very nature and purpose of its existence.

"Complexity" has been defined to mean that complex organizations contain many sub-parts requiring coordination and control. It has also been claimed that the more complex an organization is, the more precarious the issues of coordination and control become. In the case of the judiciary, control and coordination are problematic. What form of control is appropriate? The relationship is both formal and informal, and where relationship is formal it varies in degree depending on those who are involved at any point in time.

A chain of actions and reactions culminates in court processes for it brings into the scene actors and reactors whose positions are determined by the type of controversy. Even though our focus is on the court, all these other organizations have some kind of ties with one another. It is the extent of involvement of these organizations in any particular matter that will determine the degree of formalization of relationship. For instance, what happens in the society affects the court, and the events in the court attract approval or disapproval from the public. This relationship has enever been formalized but it is recognized. Understanding this relationship requires looking at the relationship between the public and the press, or the press and the

court. Both recognise these relationships and react to the situation accordingly. These represent non-formal ties.

For the formal relationship, the relationship between the Bench and the Bar, the interconnectedness of the Police with the Director of Public Prosecutions; the interrelationship between the police and the court are typical. But these also have varying degree of formalization which enhances or inhibits the judicial processes. It is our thesis therefore that in the judicial situation there is a varying degree of formalization and that this varying degree of formalization has serious implications for judicial activities. The implication of this varying consequences is that the degree of commitment to organizational goals and amenability to control vary according to the degree of formalization.

There is a strange group which has no formal relationship with the court or any of the other organizations but yet operates as if it were an integral part of the system. The group consists of "touts" or "charge and bail." More often than not, they parade the courts' premises; police stations and lawyers' offices as "lawyers' clerks." Generally they tend to affiliate with Barristers to function undisturbed by law enforcement agencies. They carry about lawyers bail form and job cards which they utilize as occasions dictate. The members of the Bar[1] themselves recognize the activities of these people but they

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1. The Nigerian bar journal. vol. 1, No. 1, p. 4.

complain only when they work against individuals. They act as liason body between the clients and the lawyers, the police and the accused; and the court and the customers. They tend to forment trouble for all by engaging in clandestine activities such as obtaining money under false pretences, preventing settlement of cases where possible and blackmailing judicial process itself. Litigants are confused, the struggling lawyer finds the touts unbearable except he can cooperate with them, the police are exposed to blackmail through their activities yet it seems there is no law that proscribes their existence. Not infrequently they run into the claws of the law when they stand as sureties for accused persons and the latter jump the bail. In such a situation, an offending surety, who has no blood relation with the accused, is asked either to forfeit the value of the bond or go to jail in lieu.

The organization of the group is loose nevertheless it is cohesive enough that some lawyers succumb to their pressures by allying with them. They are taken as "clerks." As they parade the court premises, police stations and lawyers' offices, they also visit the neighbouring villages encouraging litigation and canvassing for their "masters." They claim to have knowledge of good lawyers and that the officials of the court must be appeased to have justice. Through these mechanism

they lure the innocent litigants to part with their money with a view to securing justice. Most of the money that pass into the hands of the touts invariably do not get to the hands of the counsel or to court officials even though they are 'meant' for them. The touts are very verse in court processes and procedures. Most have behind them wide experience in the prison. They know the techniques of the police, the court and the lawyers. At the entrance to any court, one finds them loitering and making signs to visitors to ascertain the purposes of their visits to the court and whether they will fall prey of their clandestine activities. They know the psychology of the ignorant litigant who, when he approaches the court premises hesitates, and then asks questions. In the process, he gets into the wrong hand who pretends to know every nook and corner of the court as well as the authority structure. He then becomes a liason person between the intending litigant and the court. He gives the impression that the court is not easily penetrable and for that reason one requires someone who knows the workers.

The genesis of this dates back to the colonial era when the judicial officers (D. Os.) were expatriates. The courts went on circuit and required the service of local 'literates' to function. Itinerant lawyers also needed them. When the court was not in sessions, the

touts took the floor ensuring that the court as well as the lawyers were kept busy when in sessions. Thus the tradition became established that one needed to consult some lawyers' agents to secure their services. The establishment of permanent courts has not eliminated them. It is my view that their continuing existence can be linked with the general apprehension people have about the court, the lawyers' continuing relationship, the ignorance of the litigants and the police unfriendly attitudes to accused and witnesses.

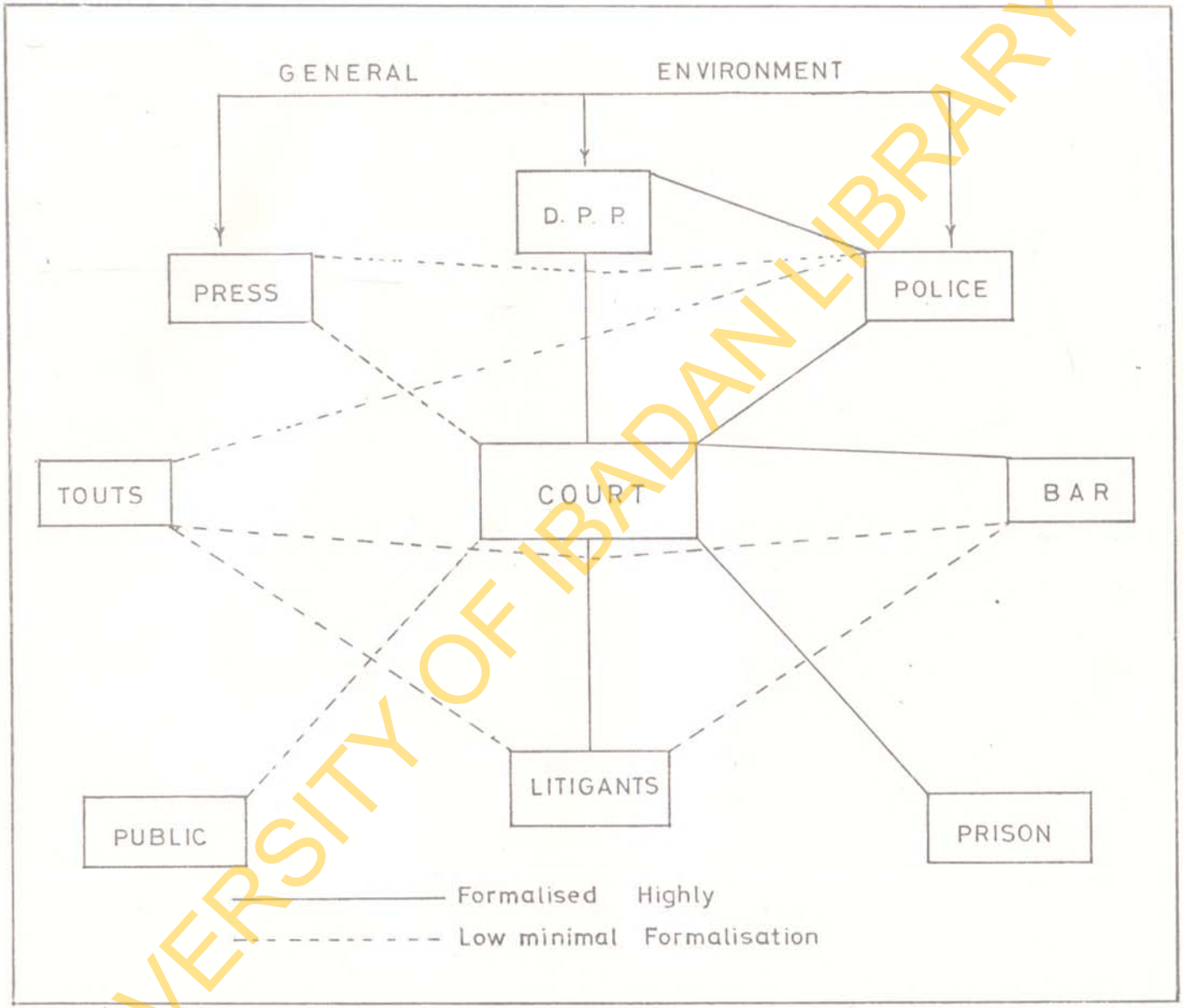

Fig. 10. Organisation-Set and Formalisation of Relationship

Thus far we have emphasized complexity because of the inter-dependence of the divergent organisations within the judiciary and that these organizations have varying degrees of loyalty and formalization. The relationship between an organisation and its environment may appear chaotic despite the inevitability of interdependence. External conditions are vital for inter-organization relationships for they impinge upon a focal organization and affect the manner in which it interacts with organizations or individuals. Internal conditions may also be a contributory factor. The development of a new organizational activity might bring the organization into contact with other organizations whose members have substantial extra-organizati nal loyalty.[1] By the very function of the judiciary - intervention in controversies - its contact is diversified. The diversification of issues produces diversification of dispositions and diversification of reactions.

It is our view therefore that inter-organizational relationships, like all social relationships, take a variety of forms. These forms can

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1. Michael Aiken and Gerald Hage have found that occupational diversity and professionalization of staff members are related to the presence of joint programmes among social welfare agencies. It is their view that organizations with a wide range of activities are likely to have more inter-organizational relationships than those with only a few activities. American Sociological Review. vol. 33, No. 6 (1968), pp. 912-930. Organizational interdependence and intra-organizational structure.

be placed on a continuum between conflict and cooperation. This implies that total war or conflict in inter-organizational relationship is an ideal. Most inter-organizational relationships probably fall somewhere near the middle of this continuum. Hall[1] claims they take the form of bargaining and exchange relationships with little in the way of positive or negative emotional connotations. According to him, most relationship occur at the organization's boundaries, often with personnel specifically designated for the purpose.[2] Quite often, supra-organizational units are established to regularize relationship.[3]

The judiciary is enmeshed in a network of social relationship. The organizations involved in this relationship are numerous. Those who are alienated in other spheres of life transfer their hostility to the judiciary. Their unwillingness to accept its decisions without misgiving is a manifestation of the hostility that generated the relationship. Some organizations actually work against the very court system.

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1. Hall, R. H. op. cit., p. 319.

2. Hall has in mind the use of officials such as the receptionists. The peripheral relationship of the court is manned by men who belong to other organizations but feed it with cases.

3. In the case of the judiciary, the only supra-organization that regulates the relationship among the units is the law itself.

The relationship among member organizations can be seen in the same light. For instance prisoners look at the court with suspicion. Similarly, the litigants have no confidence in the court - they are skeptical.

The Press maintains both cooperative and conflicting relationships with the court. The Bar have both conflict and cooperative ties with the court and the police. Similarly, the relationship between a focal focal organization and its allies may be cooperative. Whether cooperation is the order depends on the degree of formalization of relationship and the social characteristics of the other actors. The relationship between the court and the police is very formal and therefore cooperative. This cooperation might have resulted from a condition of super-subordination because by the very set up of the two bodies, the police seems to be an appendage or rather an inferior ally in the law enforcement system. The relationship between the police and the Bar presents an entirely different picture. This relationship is alienative because of the absence of formalization of relationship and also that the two bodies only meet in a situation of fundamental conflict.

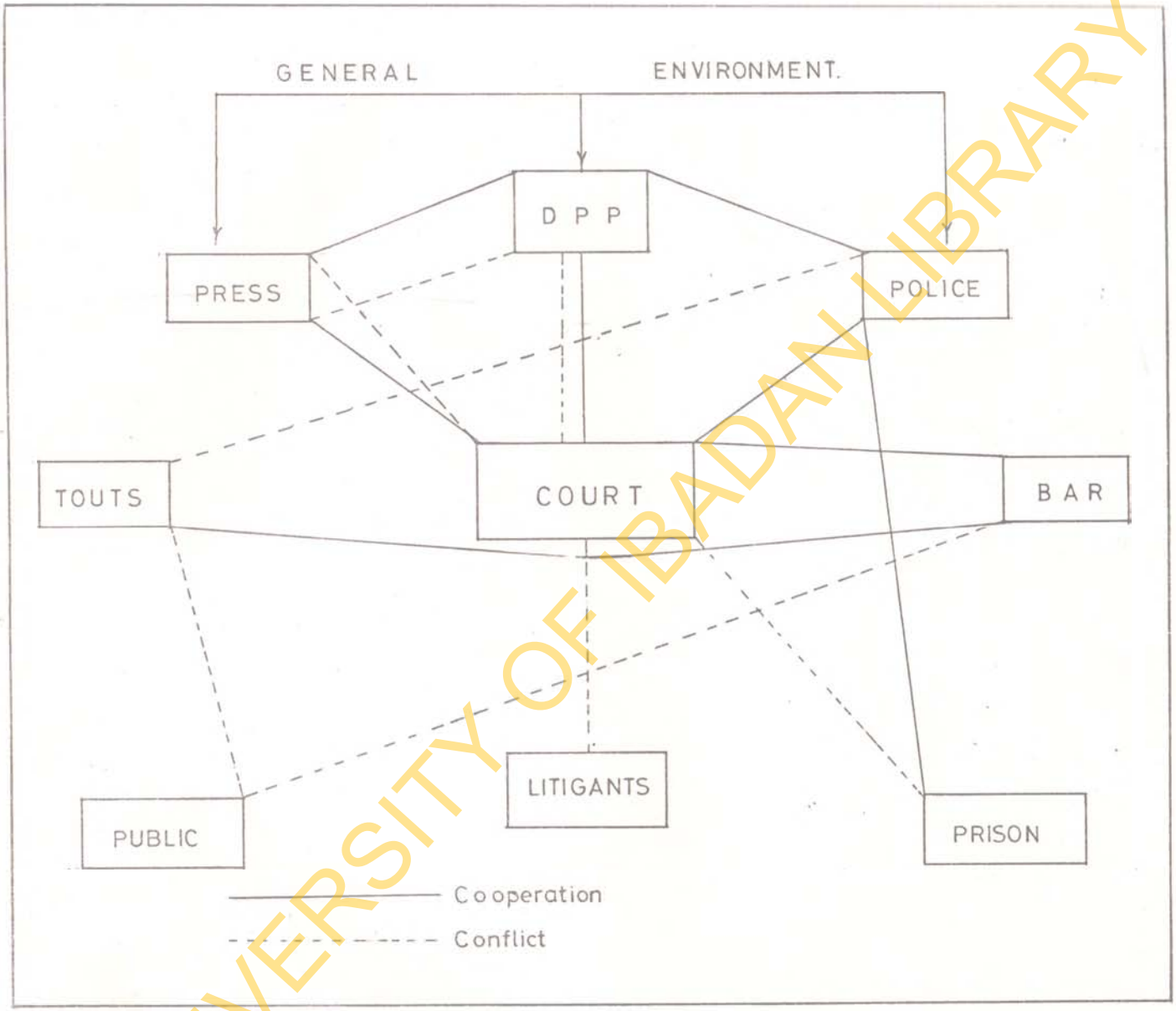

Fig. 11. Organisation - Set and Conflict - Cooperation

Summary

We have portrayed the court scene as a battle-ground. The norms of the situation admit of both conflict and cooperation. Whichever obtains out of the two alternatives, at any particular time, depends on the degree of formalization and the social characteristics of the actors in addition to the nature of the case. The social relation is a double-edged sword that cuts both ways.

Frequency of interaction may be another factor to be considered in inter-organizational ties. This may have consequences for the performance. The court, the Bar and the Police are constant actors on the judicial scene. The prison is on the receiving end. The litigants, the Public, and the Press are always in close relationship with the court. However, the relationships among the units vary in their degree of frequency. Some are frequent because there are problems which only the courts can solve whilst some are infrequent because the actions of the court only indirectly affect them. Our thesis is that the frequency of interaction is a function of factors internal and external to the judiciary and that these factors affect the performance of the organization.

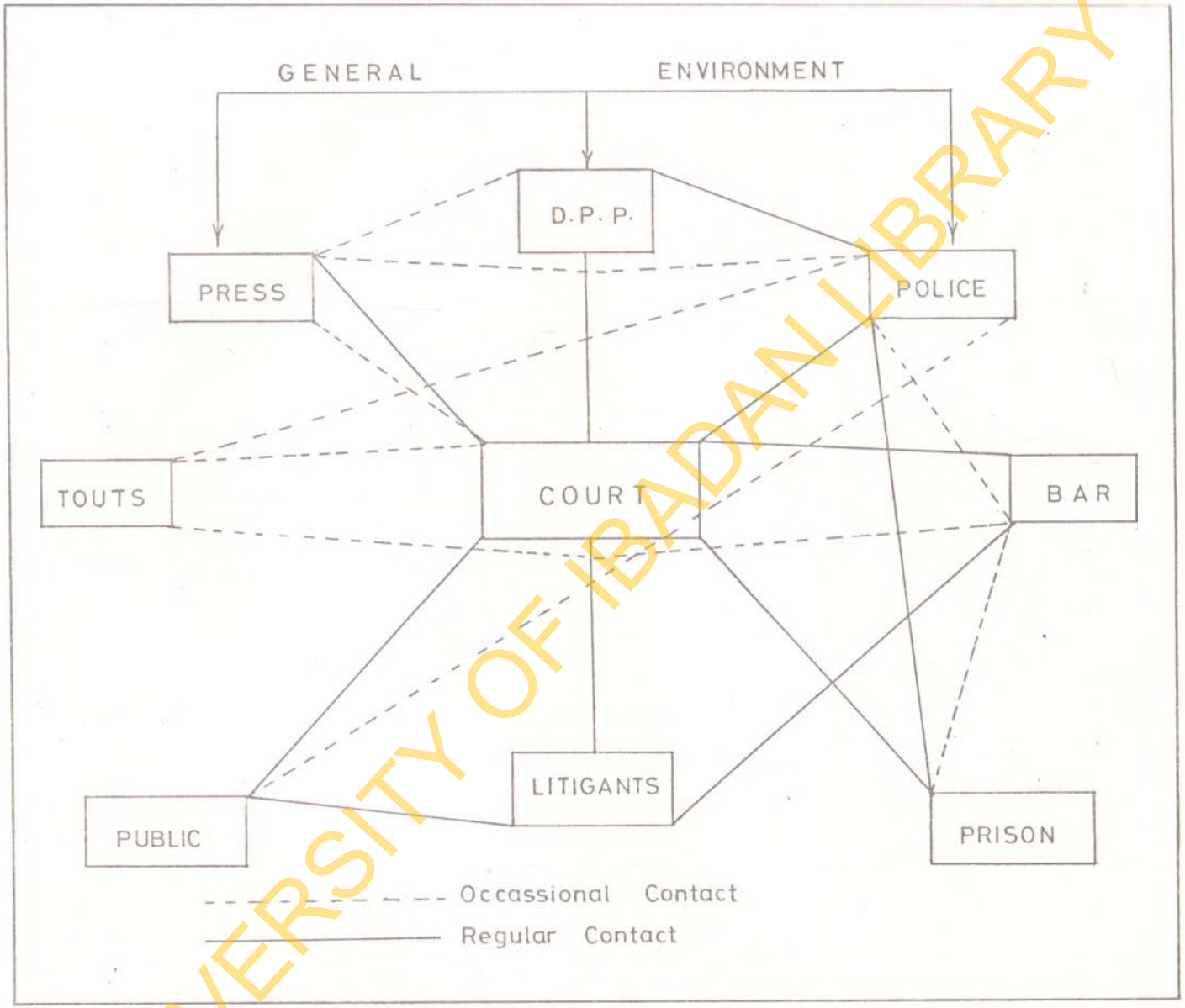

Fig. 12. The Organisation - Set and Interaction Frequency

At first glance, the court structure may appear as a classic example of rigid authoritarian structure and processes. In reality the opposite is the case. We have claimed that what happens in the court does not depend simply on authority and direction from one point at the top (the judge) but on the interaction of various groups (litigants, counsel, witnesses, policemen, etc.) subject to an accepted pattern or rules and conventions and the arbitration of the judge. They bargain for use of time and the dispensation of justice. The relationship is not that of super-subordination in its entirety. It is a mutually arranged antagonism if only to arrive at equitable justice. Confidence in the system will only result if the system as arranged work smoothly with the participants appreciating the roles they are expected to perform. Problems in the performance of its functions may not mean inefficiency, it may be a built-in structure to enhance the quality of performance.

CHAPTER SEVEN

PROCESSES AND PROCEDURES IN CRIMINAL AND CIVIL CASES

In the preceding chapter we claim that the court arbitrates in issues and controversies which are the cumulative effects of issues hatched outside the court forum. We also claim that these controversies fall under criminal and civil laws. These two broad categories are however not mutually exclusive since torteous acts may also have criminal implications and vice versa. The distinction is however necessary in order to understand and appreciate better the differences in procedure and to account for the varying attitude of court personnels and the organizations involved in adjudication. The way in which criminal and civil cases are initiated, prosecuted and arbitrated are basically dissimilar, and this is the basis of the two sessions commonly observed in the court - criminal and civil sessions. The procedure of the court changes with the nature of controversy to be resolved. However, criminal and civil wrongs are not mutually exclusive.

In this chapter, we shall discuss the procedures and processes involved in the adjudication of the two types of cases enunciated. In

addition, we shall examine how the two categories are initiated, prosecuted and determined by the various types of courts. We shall also discuss the similarities and dissimilarities in the procedure as well as the problems that are encountered in it. In the discussion, we shall stress the varying attitude of courts to the two broad types. This procedural discussion is to enable us to perceive court processes within the framework of its normative requirements which the rational model approach postulates.

SECTION I

The criminal processes

Writers[1] have contended that not all illegal acts[2] not all legal wrongs[3] are crime and punished as such, neither are all (illegal acts and legal wrongs) civil wrongs which can be remedied by mere adjudication between the individuals concerned. Whichever way one looks at crime depends on the procedure that one adopts. This does not mean that there are no statutory offences as well as offences for which no punishment is prescribed as a matter of course. Such are left to the individuals injured for redress. However imprecise the distinction

1. Aguda, T.A. Principle of criminal liabilities in Nigerian law. (Ibadan University Press (1965) p. 3.
2. An illegal act is an act proscribed by law.
3. A legal wrong is an act defined as wrong by law.

between criminal and civil wrongs may be, it is desirable to make it if only to conform with practice and procedure. A classical definition of crime according to Blackstone is as follows:

> Crime is an act committed in violation of a public law forbidding or commanding it, a violation of the public rights and duties due to the whole community considered as community.[1]

This definition is not all-inclusive. It does not include punishment as a phenomenon. This appears to have been taken care of when Stephen said that

> Crimes are acts which are both forbidden by law and revolting to the moral sentiments of a society. They are acts forbidden by the law under pain of punishment.[2]

This distinction between civil and criminal matter is stronger in the definition by Kenny: "Crimes are wrongs whose sanction is punitive and is in no way remissible by the crown alone, if remissible at all."[3] The mark of criminality of any act therefore is as epitomised in liability to punishment and the procedure adopted in settling it. But because the definition of crime varies from society to society, it is

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1. Blackstone, Sir William. Commentaries on the law of England vol. 4 London (15th ed.) A. Straham (1809), p. 5.

2. Stephen, H.J. A general view of the criminal law of England. p.3-4. quoted in Aguda op.cit. p.3.

3. Kenny, C.S. Outlines of criminal law (16th ed.), p.530 quoted in Aguda, ibid. This definition seems to have excluded private prosecutions.

pertinent to claim that the legislature of a nation or state has the unfettered prerogative of declaring that which is criminal and that which is not. This is not problematic in Nigeria since our criminal law is codified. Section 2 of the Criminal Code says:

> An act or omission which renders the person doing the act or making the omission liable to punishment under this code or any order-in-council, Act, or Law or statute is called an offence.[1]

An offence appears to be a more appropriate concept than a crime if only to accommodate other criminal acts not contained in the criminal code but which are nevertheless offences against the public and punished as such. That offences are categorized into felony, misdemeanour and simple offences is suggestive of differences in the procedures followed and the jurisdiction to which they are subject.

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1. Section 3 of the criminal code defines the three categories of offences:
   (a) A felony is any offence which is declared by law to be a felony, or is punishable, without proof of previous conviction, with death or imprisonment for three years or more, e.g. robbery con. sec. 402 cc. of Western Nigeria and stealing con. sec. 331 c.c. etc.
   (b) A misdemeanour is any offence which is declared by law to be misdemeanour or is punishable by imprisonment for not less than six months but less than three years, e.g. affray con. sec. 76 c.c.
   (c) All other offences other than felonies and misdemeanour are simple offences. Traffic offences or tax evasion.
   A catalogue of what are deemed to be offences are also contained in the annual abstract of statistics published by the Federal Office of Statistics which is reproduced here as appendix D.

Every offence involves a complainant and at least a suspect. It is an offence because the act has been proscribed by law and punishable under law. The victim of any criminal act is ordinarily a member of the public who does not make the act an offence. Because of this he merely reports to a law enforcement agency which is empowered to effect an arrest and set in motion machinery to bring the culprit to book. A criminal case is usually denoted by the title, "The State v. AYC" at the High Court, or "The Commissioner of Police v. STY" in the Magistrate's Court.

The arrest and police investigation

Offenders can be apprehended in three ways. He can be arrested following a report to the police by the victim, he can be arrested if seen at the commission of the crime and he can also report himself to the police having committed an offence. The arrest can be with or without warrant[1] depending on the statutory provisions. Private

1. Section 10 of the criminal procedure act, chap. 43 laws of the Federation of Nigeria 1958 stipulates conditions under which arrest without warrant could be effected. A police officer may, without warrant, arrest any person whom he suspects upon reasonable grounds of having committed an indictable offence unless the written law creating the offence provides that the offender cannot be arrested without a warrant; any person who commits an offence in his presence; any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody; any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing, etc.

citizens[1] can also effect arrest provided that such arrested person shall be handed over to the police soonest.[2]

Thus, a criminal proceeding begins with the arrest and investigation. These are followed by decisions to charge or not to charge to court. Before these are done, the police shall have collected all relevant evidence which may be in form of statements, documents or any other material that may help in the proof of the offence. Criminal cases are usually seen as inimical to the well-being of the society. Everybody seems to have aversion for it because the consequences are usually unsavoury for the culprit. This creates some problems for the police in their investigations since very few people want to be identified with actions that would send another to jail except where the offence affects the individual very seriously. It is not always easy to get witnesses to testify except cases in which the victims feel that most cherished right has been infringed upon and that the offender must be brought to book at all costs.

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1. Section 12 C.P.A.
2. Section 14(1), (2), (3) C.P.A.

Problems affecting police investigation

The time lag between first arrest and drawing up a charge against the suspect is subject to no law but where the suspect cannot be granted bail or he cannot secure sureties to take him out on bail, the case must go to court within twenty-four hours of arrest.[1]

There are several reasons for this lag. The first source of the lag is the organization of the police force itself. The Police in Nigeria is a unitary system with only one central control though there are states' commands. The Western State command is divided into Ibadan, Ijebu, Abeokuta, Oyo/Ilesha, Ondo and Ekiti Provincial police commands. Within each provincial unit are Divisional contigents which lack autonomy of action except in very minor cases, while the provincial commands are also dependent on the State command to take major decisions on police activities. The State's command itself also functions according to the directives from the Central command. In serious matters therefore, there is a chain of hierarchical clearance before a case can go to court. For the Divisional unit, the Provincial unit must approve prosecution or direct otherwise. In cases that require the advice of the Director of Public Prosecutions, it is the duty of the provincial command to transmit the case file to the Director of Public Prosecutions. This invariably involves a protracted process in exchange of correspondence.

1. Section 17 of the C.P.A.

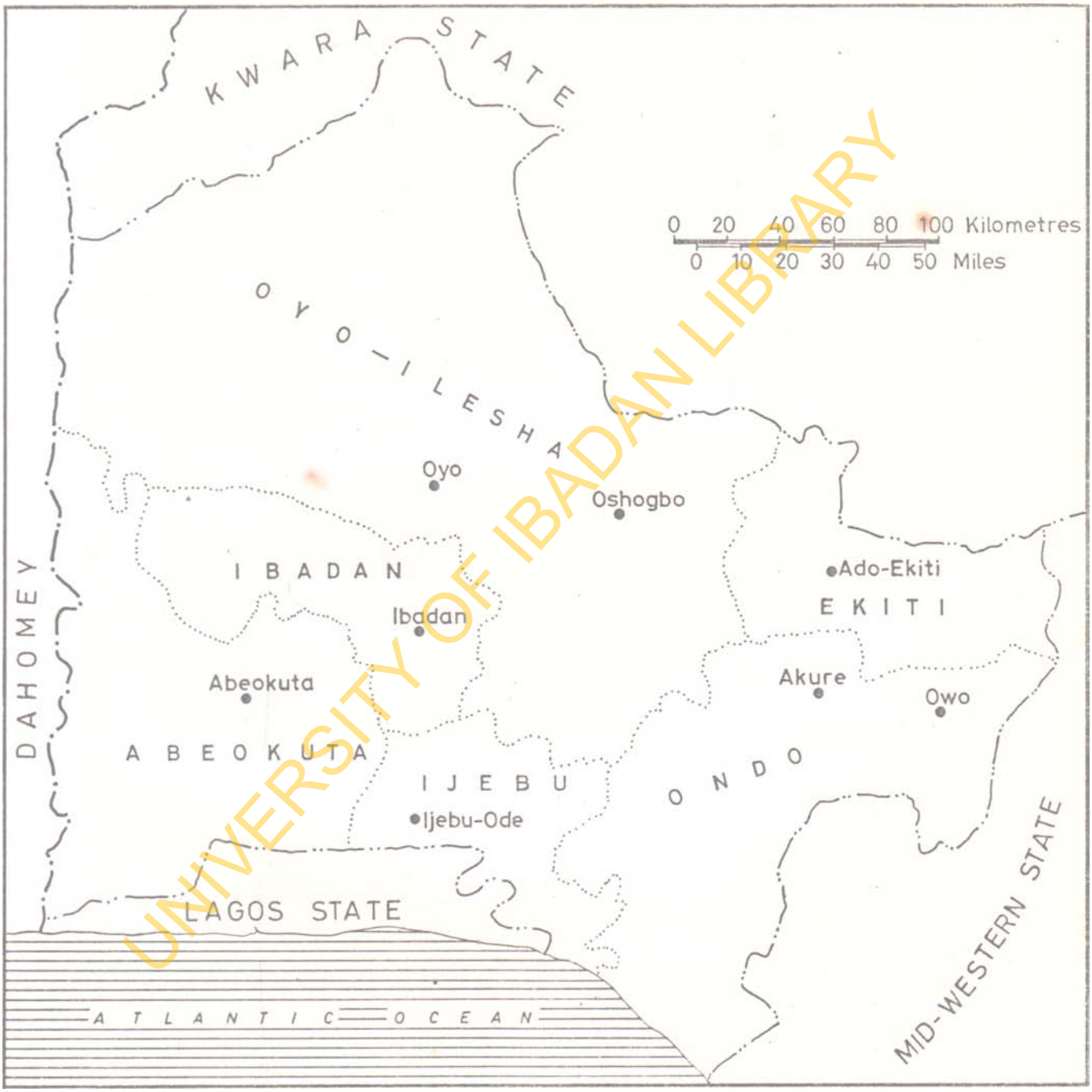

Fig. 13. Western Nigeria: Police Provincial Structure, 1974

Another reason for this lag is the lack of cooperation between the public and the police. This stems from the fact that the public feels that crime prevention is the exclusive preserve of the police. It is forgotten that in traditional societies, whose characteristics are still with us, every member of the community was practically a police officer - each and all participated in keeping law and order in the community, e.g. age-grade systems in some segmentary societies like the Nayakusa, Wappa Wanno, etc. For instance in an article published in the Sunday Post, the Editor remarked:

> We do not seem to like the police until we are wronged. In fact we treat the police with suspicion. We tend to forget that we can help police to do justice to the society by fully cooperating with them in their day-to-day discharge of their onerous duty.[1]

The public attitude cannot be wholly condemned. The non-cooperation is a by-product of some police officers' attitude to prospective witnesses/complainants and of the nature of their job. Some are swollen-headed because of the special power given them by the criminal procedure Act.[2] Most often, they have abused this power

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1. Sunday Post. August 28, 1971.

2. Section 3 and 5, 10(1)(1) - (j) stipulate the conditions under which the police can effect arrest without warrant.

and have in the process scared away those who would have helped them.[1] An apt illustration of this assertion can be found in an incident which the writer witnessed on 29/12/73. At Dugbe, at about 7 p.m., a policeman was going in mufty. As he got to the minibus park, a taxi-cab pulled up and a passenger came out from the back seat. As he opened the door of the car, the policeman alleged that the door hit his wrist watch and then accused the driver of dangerous driving. The policeman insisted on taking that driver to the police station and the people around started to beg him, especially when he brought out his identity card to confirm his membership of the police force.

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1. Public service review commission: main report (September 1974) discusses in paragraphs 372-380 the police image and public relations. Paragraph 374 shows that "290 cases involving allegations of corruption by police officers have been dealt with and, as a result 74 members of the rank and file were dismissed from the service. The vast majority of the cases concerned officers who accepted or demanded money on the grounds that they would either prevent the institution of proceedings for traffic offences or facilitate the granting of bail. At paragraph 375 the report says: "It is easy to allege corrupt practices. Quite often such allegations come from those who have a grudge against the police and who are not averse to making unfounded and malicious charges to further their own ends. . . . Regretfully the public generally appear apprehensive about reporting instances of corruption by police for fear of being intimidated by them. . . . The police must make every effort to counteract a wide-spread belief that he who sincerely tries to be of assistance is somehow involved in the offence. . ."

I intervened and urged the policeman to separate his private life from his official life. On this score the policeman threatened to arrest me for obstructing him while performing his lawful duties. Not infrequently, genuine members of the public who have gone to the police to give information have been denied the elementary courtesies demanded by civilized behaviour. To some policemen, "the functions of the police are clearly to bully and to intimidate."[1] This tends to impair the police-public relations. The worries the police give the ordinary witness (the category to which a complainant belongs) are such that many would prefer abandoning their rights to seeing the police for assistance. This may be one of the reasons for saying that people do not go to law unless it becomes necessarily inevitable.

Some policemen are terror. It appears people regard them as enemies rather than protectors. The relationship between them and the public is unfortunately that of fear and hostility and this is so because the police are regarded - and sometimes tend to regard themselves - as agents of the government rather than as servants of the people.

Other factors responsible for the hostility and the uncooperative attitude can be traced to the isolated life the police force enjoys. They

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1. The Renaissance, 30th January 1974.

Another factor is that the future of the average policeman in the force is uncertain. There is no steadily worked out system of promotion. Policemen who have spent over twenty years in the force without promotion to the officer cadre are many. Even though there are refresher courses for most of the men, the end product is not promotion. The length of time it takes to climb from the ranks to the officer cadre is appallingly long and unpredictable. It is in this situation of uncertainty that policemen are expected to maintain a high standard of efficiency and committedness to the service. In effect, the promotion is slow and unsystematic and this naturally affects the productivity of the individual officer.

This is not to say that measures were not taken to rid the force of the undesirables. The police force has its own technique of eliminating misfits from the force. Table 11 shows the number of people who were disciplined during the period 1955 to 1965 - all in an effort to improve the standard of the force.

TABLE 11

Force disciplinary action 1955-1965*

YEAR	Total No. of Police	Nature of Punishment					
		Discharged as unfit for the office of constable	Discharged as unlikely to become efficient constable	Reduced in rank	Reprimanded	Otherwise punished/ fined	Dismissal
1955/56	9926	38 (0.4)	-	55 (0.6)	198 (2.0)	1521 (15.3)	129 (1.3)
1956/57	11048	41 (0.4)	-	41 (0.4)	257 (2.3)	1982 (17.7)	118 (1.1)
1958	11097	60 (0.5)	65 (0.6)	75 (0.7)	265 (2.4)	2708 (24.4)	89 (0.8)
1959	12054	55 (0.5)	82 (0.7)	-	-	-	73 (0.6)
1960	12788	12 (0.1)	57 (0.5)	48 (0.4)	373 (2.9)	1924 (15.0)	88 (0.7)
1961	13113	38 (0.3)	96 (0.7)	84 (0.6)	255 (1.9)	2488 (19.0)	34 (0.3)
1962	14561	29 (0.2)	117 (0.8)	47 (0.3)	569 (3.9)	2068 (14.2)	53 (0.4)
1963	15487	49 (0.3)	102 (0.7)	67 (0.4)	386 (2.5)	3501 (22.6)	84 (0.5)
1964	16877	46 (0.3)	81 (0.5)	19 (0.1)	452 (2.7)	2924 (17.3)	91 (0.5)
1965	17815	24 (0.4)	64 (0.4)	9 (0.1)	179 (1.0)	3562 (20.0)	42 (0.2)

* Compiled by author. Source: Nigeria police annual report 1955-1965.

The table nevertheless elicits symptoms of inefficiency in the police system. This may be a by-product of other phenomena such as meagreness of income that makes it impossible for some policemen to resist illegitimate income literarily "pushed into his pocket." It may also be due to the living conditions of the subordinate officers as manifested in appallingly uncongenial accommodation facilities provided for them. These appalling conditions cannot but have adverse consequences for the officers and their attitude to work.

Another factor inhibiting efficiency in the force is the lack of qualified personnel. Until very recently, there existed policemen who are illiterates. Those who are literates are less educated than the literates in other walks of life. This claim can be supported if we look at the literacy level of the police force for the period 1955 - 1965. The minimum level of education had been the first school leaving certificate. The Annual Report 1965 contained inter alia the following comments: "The educational requirement for recruitment has been raised to a minimum of Government Class IV and this makes recruitment difficult." The Nigeria Police Service Commission in its report for 1972 acknowledged the need for men of high standard of education and integrity but regretted that "such men are not easy to find particularly as they often prefer to work in firms and other

institutions that offer bigger salaries."[1] In fact, it was still being advertised in 1970 that men with "First School Leaving Certificate" could still be recruited into the force.[2]

Although this educational standard can be said to have improved, the bulk of the members of the force are still of this poor stuff. Efforts are however being made to raise the educational standard of the force. It was reported that the Police Commission was processing a large number of applications from University graduates who have applied to join the police force.[3] Encouragement is also being given to serving officers of the Federal and State public services to join the force. As of now, the officer cadre still comprises to a large extent people who joined as recruits. A look at the composition of the middle officers cadre of the Force will make the picture clearer.

TABLE 12

The middle officer in the Nigeria police establishment 1972

Total No. of police	Middle officers	Others	Middle officers as percentage of total establishment
40,000	1,154	38,846	2.8

1. Nigeria police service commission. First annual report. January-December 1972, p. 4.
2. New Nigerian. December 11, 1970.
3. Nigeria police service commission. op.cit., p.5.
4. Nigeria police service commission. op.cit., p.5.

The proportion of the middle officer[1] is so low and therefore cannot make much impact on the police population. This is one of the factors inhibiting police efficiency. The Police Commission Report adds:

> Another very important fact is that the bulk of this category of officers is made up of men who had joined the force as recruits. Although they have been able to reach their present ranks by dint of hard work, they would have found it a lot easier to perform their duties and would radiate more confidence if they had the benefits of a higher education.

Members of the public also misunderstand the role of the police as well as the modus operandi of the force. This often results in mistrust in the efficacy of the machinery of justice. Generally, people prefer instant justice to protracted remedies which law enforcement requires. Many enlightened, not to say the rural people, would not appreciate the fact that an impartial tribunal should hear or try a case before judgment is given. To them, most of the disputes are open to quick decision. From this point of view, they feel that justice is not done when a police officer, instead of satisfying them there and then, carries on the criminal investigation of the offence (if it is a torteous cum criminal offence) and he does nothing at all

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1. Composition of the middle officer cadre:

Chief superintendent	106
Superintendent	145
Deputy superintendent	210
Assistant superintendent	693

but asks them to take the civil aspect to court. For instance, a man has just purchased some goods and they were stolen by a thief. It will not satisfy that man when the thief is caught to be told to go to court for the recovery of his property especially when the property cannot be recovered wholly or in part. In fact where the property is recovered, he would prefer and be happier if all other available evidence is taken to bring the thief to trial. The complainant appears not to be interested in the punishment per se but in his own material benefit. The system does not provide for this.

In my view, if the force is to attain the high standard expected of it, the service conditions of its men could and should be improved, or else, enforcement of law and administration of justice will always degenerate in its standards of efficiency and satisfaction. Apart from this, the improvement of its academic qualities should be stepped up as well as improve the relationship between the police and the public. It is also hoped that the malpractices of the police will be reduced to enhance the confidence the people have in it and ensure smooth performance in its functions.

These are the reasons for the slowness in taking criminal cases to court. These reasons breed apathy and disinterestedness amon y witnesses. It is true that they can be compelled to attend if

witness summonses[1] are issued. This will only have the backing of law if the witness can be served. In several instances, cases are taken to court when investigation had not been concluded if only to fulfil statutory provisions.

The case in court

Not all cases reported to the police eventually find their way to court. The police, in obvious trivial cases, at times drop prosecution either on the advice of the Director of Public Prosecutions or owing to non-availability of evidence to support a charge. Whether there is an offence or not, every reported case must be investigated. Processes of investigation may be hampered by inadequate transportation and communication facilities. The processes of determining whether a charge can be sustained on the face of available evidence require more than the ordinary police skill to tackle. This requires some legal expertise which is not easily available in the police force. The framing of the charge is a routine but technical since it requires wading through law books to know which section of the law it contravenes. A typical police charge at the magistrate's court reads:

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1. Sections 186-193 C.P.A.

Commissioner of Police vs. BYC.
That you ABC on the . . . day of . . . . . 19. . . at . . . . . -. unlawfully assaulted XYZ and caused him bodily harm and thereby committed an offence contrary to section 296 of the criminal code of Western Nigeria 1959.
(Sgd.) Police Officer.

Once a charge is preferred the ball moves to the courtroom. On submission of the charge (statement of offence), the court admits it by giving it its own number which is entirely different from the police number. This also involves some administrative scrutiny for not all criminal cases can be handled in the same way. Cases requiring summary trial can go to any court except it is otherwise provided for as in the case of mandatory punishment. In felony, the concurrence of the accused/defendant is required if a magistrate were to handle it summarily. The locus in cuo is another factor that will determine the court that has jurisdiction in a particular case. But once the accused/defendant submits to the jurisdiction of the court the trial is not a nullity. Exceptions can be found in misdemeanour and simple offences. They are cases with less serious consequences for the society. These take the form of petty stealing, common assault, motor offences, etc. These do not require the concurrence of defendants before court can assume jurisdiction if technically it can do so. This does not preclude the objection of the accused to the particular person hearing the case. On reading the statement

of offence to the defendant, he is asked to deny or admit the offence. If guilt is admitted, the case is disposed of immediately by imposition of punishment which may take any or a combination of the following: (1) Imprisonment; (2) Fine; (3) Caution and discharge; (4) Binding over to be of good behaviour for a specified period. Many factors determine which of these is inflicted. If he is a first offender, the court may be extremely lenient. But if he is a regular, the punishment may be serious. Whether binding over is necessary or not depends on how the matter affects the peace of a community or the prevailing social conditions. Generally if an offender is to be fined, the court puts into consideration the ability of the offender to pay the fine. Thus the practice of sentencing is: "₦50 fine or 3 months, I. H. L." etc.

If the defendant does not admit the offence, a trial ensues. This may prolong the case since it now has to compete for time with other cases already pending in the court. In effect, the volume of work in the court may dictate whether the case is heard immediately or it is adjourned till a later date. The speed with which the case is disposed of is a function of certain factors which we will discuss later.

The second type of crimes - felonies - is the one that requires a cautious and more careful handling by the police and the court. Not all courts can adjudicate on all felony cases. Some cases require

that preliminary investigation must precede the trial.[1] Other felonious offences do not require preliminary investigation except the defendant demands it. In effect, the two broad categories require two types of procedures.

In other cases, the accused may opt for a preliminary investigation in answer to the charge. The choice becomes known to the court when the accused is asked whether he "elects summary trial." If he rejects summary trial, a preliminary inquiry is commenced. The implication of this plea for the accused is that the higher court may impose maximum punishment if at the hearing the accused is found guilty. A plea of autrefois acquit or autrefois convict[2] may be the answer to the charge. The onus is on the accused to prove this plea.

When a case cannot be proceeded with on its first appearance owing to factors of congestion, non-completion of investigation or absence of witnesses, question of bail would be tackled. The offence

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1. Sec. 340 (2)(b) C.P.A. permits trial without preliminary investigation if the judge of the High Court consents.

2. Sec. 181 C.P.A. These are special pleas that the accused has been acquitted or convicted previously of the offence for which he is now indicted. This is based on the principle that a man must not be put in jeopardy of his trial for the same offence twice.

may be bailable or not.[1] All these are statutorily determined, the court may however refuse bail, exercising its discretion and having considered the extenuating circumstances of the offence or having considered whether the uninhibited liberty of the accused would hamper the investigation of the case. In such circumstance the issue of bail is contenteous. There are, on the other hand, cases in which the accused cannot take advantage of the bail granted because he cannot fulfil the requisite conditions.

The consequences of the above is that the accused is detained in a prison or in a police custody. There are three types of offenders awaiting trial in custody: (1) Those who cannot take advantage of the privilege; (2) Those who are refused bail for reasons stated above; and (3) Those who cannot legally be granted bail. The most commonly used custody is the prison and the length of time specified is unregulated by any law, except that the accused must be presented before a court or Justice of Peace every seven days for renewal of his detention.

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1. Sections 118 (1) and 119 C.P.A.
   Section 118 (1), (2) & (3). No bail is allowed in offences punishable with death but on all other felony the court may, if it thinks fit, admit to bail except that bail shall not be refused for a misdemeanour.

TABLE 13

Comparative figures of persons awaiting trial in Nigeria as of 23rd May 1974*

State	Male	Female	Total
East Central	1,204	39	1,242
South Eastern	581	30	611
Western	688	26	714
Midwestern	701	34	735
Rivers	277	11	288
Lagos	1,046	5	1,051
North Central	596	37	633
Benue/Plateau	689	17	706
North Eastern	909	15	924
Kano	525	11	536
North Western	458	14	472
Kwara	179	1	180
Total	7,952	240	8,092

* Source. Public Service Review Commission. Main Report. p. 96.

The table above includes offences for which bail is provided and those for which no bail is provided. The Review Commission's Report made a further breakdown of the figure by showing the proportion for which no bail is provided with special reference to murder and suspected homicide and the duration of detention of offenders.

TABLE 14

Duration of detention of persons awaiting trial for murder/suspected homicide in Nigeria as of July 1974*

STATES	Under 1 year	1 - 2 years	2 - 3 years	3 - 4 years	4 - 5 years	5 - 6 years	6 - 7 years	7 years	Total
East Central	93	24	3	-	-	-	-	-	120
South Eastern	65	22	13	-	-	-	-	-	100
Western	88	10	1	-	-	-	-	-	99
Midwestern	117	18	1	-	2	-	-	-	138
Rivers	20	1	1	-	-	-	-	-	22
Lagos	37	13	2	-	-	-	-	-	52
North Central	31	5	4	3	4	1	1	8	57
Benue Plateau	98	5	2	-	-	-	-	-	105
North Eastern	196	29	8	1	1	-	-	-	235
Kano	150	10	2	1	-	-	-	-	163
North Western	101	10	1	-	-	-	-	-	112
Kwara	17	12	-	-	-	-	-	-	29
Total	1013	159	38	5	7	1	1	8	1232

* Source: Public Service Review Commission. Main Report p. 97.

Table 14 shows that 15% of the total number of people in custody cannot be bailed. The bulk of the custody cases therefore belongs to the bailable class of offences.

Most criminal cases - be it felony or misdemeanour - begin at the magistrate's court (or customary court). In cases which require preliminary investigation any grade of magistrate may preside. But if it requires summary trial, the punishment attached to the offence will determine whether a Chief Magistrate, a Senior Magistrate or a Magistrate should handle it.[1] Whatever is the situation, the bulk of the cases are handled at the magistrate's court level. A comparison

TABLE 15

Comparison of the criminal cases filed at the High Court and Magistrages' Courts of Western Nigeria 1969 - 1973*

Type of Court	1969	1970	1971	1972	1973
High Court	128	216	119	116	126
Percentage of total	2.24	4.18	2.95	1.85	1.93
Magistrate's court	5,593	4,955	3,912	6,164	6,392
Percentage of total	97.76	95.82	97.05	98.15	98.07
Total	5,721	5,171	4,031	6,280	6,518

*Source: Compiled by the author from quarterly returns of cases - Magistrates' courts and monthly returns of cases - High Courts.

1. The jurisdictions of the courts have been discussed in chapter four.

of the High Court and Magistrates' courts figures depicts that only an insignificant number of criminal cases go to the High Court either in the form of committal or trial by information.

The trial

The trials at the magistrates' courts take the three-cornered structure already discussed. The accused may or may not be represented by a legal practitioner depending on his ability to engage one or the seriousness of the case. If he is represented by a counsel, the competition for time becomes more intricate because of the lawyer's other engagements. If and when the case is eventually heard, the prosecution calls its witnesses who are cross-examined by the defendant/counsel while intermittently the court asks questions to clarify ambiguities.[1] At the close of the case for the prosecution, the court may of its own volition rule that there is a case to answer or there is no case to answer. This step may also be taken as a result of "a no case submission" made by the defendant's counsel. If the court rules that no case is made out against the accused, the accused is discharged and this discharge has the force of an acquittal.[2]

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1. Sec. 222 of the Evidence Act.

2. Section 286 C.P.A. This section should be construed with section 301 C.P.A.

But if otherwise, the counsel may proceed as he wishes but when the accused is not represented he will be informed of his right under section 287 (1) (i), (ii), (iii) Criminal Procedure Act thus:

(i) he may make a statement, without being sworn, from the place where he then is, i.e. the dock, in which case he will not be liable to cross-examination, or

(ii) he may give evidence in the witness box, after being sworn as a witness; in which case he will be liable to cross-examination, or

(iii) he need say nothing at all, if he so wishes.

Which of the options the accused chooses depends absolutely on him. After his defence the court may give judgment but if he has a counsel, the counsel addresses the court before judgement pointing out the weakness and strength of the cases for the prosecution and defence respectively. Thus, a criminal process in the magistrate's court is concluded when the court makes its pronouncement which can take the form of "Guilty" or "Not Guilty." If the accused is found guilty, sentence follows. If not guilty, he is discharged and acquitted.

The procedure is different in the case of preliminary investigation. In this type of cases, the plea of the accused is usually not taken even though the charge (statement of offence) is read to him. Evidence in this type of cases is called "deposition" and the deponent is made to sign every page of his deposition. At the end of a

deponent's deposition, a jurat[1] to the effect that he gave the evidence is attached signed by the magistrate[2] and the interpreter (if accused is non-literate) after the deposition has been read back to the maker. At the close of the case for the prosecution, and upon the address of the court by the counsel, if any, the court does not give judgment, rather it gives a ruling to the effect that either a prima facie case has been made sufficient to call the accused to make a defence at the trial or that the evidence does not disclose a prima facie case and the accused is discharged under sec. 325(1) C.P.A. This is not tantamount to an acquittal.

If the former decision is taken, the charge - statement of offence - is read again to the accused who will be required to decide whether to make statement or reserve same till the trial. The accused will also be enjoined to indicate his intention to call witnesses at his trial after which a committal order is issued.

> I commit you, ..., to the High Court of Justice of the ..... Judicial Division, there to be tried for the offence of ..... con. sec.... of the criminal code.
>
> (Sgd.) Magistrate

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1. A jurat is a certificate that the deposition has been read over and interpreted to the maker and that he has accepted it as his own statement.

Section 326 C.P.A.

The accused is either granted bail or refused bail at the end of the preliminary investigation. If the latter, he is committed to the custody of the prison in the area.

The criminal sessions at the magistrates' courts is daily. For convenience, individual courts may set aside certain days of the week for civil matters. But generally criminal cases seem to be the main pre-occupation of the magistrates' courts. It is a daily event for even the so-called civil days still give allowance for the hearing of fresh criminal cases usually called "over-ights."

The assizes

The criminal sessions of "The Assizes" is periodical and only criminal cases are tried as listed in the calendar of prisoners.[1] It is more ceremonial than the criminal sessions of the magistrates' courts. This practice is a colonial heritage - a tradition inherited from the medieval ages when British judges went on circuit and the ceremonies were designed to inform the generality that the Justice was around. The Assizes is more often than not preceded by a Guard of Honour usually mounted by a congingent of Police. To add

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1. See appendix "E" for a typical calendar of prisoners.

pageantry to it, a church service may be added.[1] And when the sessions begin it is preceded by the citation which the Registrar of the court chants thus:

> Oyez! Oyez!! Oyez!!! His Lordship the Justice of the Assizes of the ..... Judicial Division holden at ..... will now proceed to the plea of the state and the arraignment of prisoners upon their lives and deaths.
>
> All persons having anything to do before His Lordship the Justice and General Goal delivery, draw near and give your attendance. And all persons bound over to prosecute and to give evidence let them come forward and they shall be heard. May the Federal Republic of Nigeria endure for ever and God save my Lord, the Justice of the Assizes.

Probably, the essence of this, is to remind the audience that the Assizes session is unlike the ordinary court sitting and to warn the people of the consequences of their non-compliance with court's commands. It is also intended to assure the witnesses of the court's protection over them and the willingness of the court to accommodate them to say what they know about matters in court. The need for these assurances and reassurances seems to have emanated from the charged and tense atmosphere of the court which unusually is packed

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1. This is not prescribed for in any law. Justice B.O. Kazeem of the Lagos High Court was reported to have skidded it even in Lagos where the tradition is established. Most of the time, no church service precedes the Assizes.

full with armed policemen in attendance, at least during the opening sessions. It is usually a day when the Bar is filled to capacity and the gentlemen of the press struggle to record the events of the day. It is also a day when cases almost forgotten, even though important, are re-echoed to the world.

After the citation, the court settles down to the business of the day and cases are mentioned in their turn and pleas of the accused obtained. The difference between the Assizes and the criminal sessions of the Magistrates' courts is manifested in the officials and mode of dress. Traditionally, the Judge of the Assizes is in scarlet robes while the lawyers are in their full barristers' dresses. The Registrar of the court is also in full barrister's robe while a superior police officer in ceremonial dress sits near the judge. Usually the outward appearances of most of the actors depict the beginning of the Assizes. Secondly, the officials differ. Instead of the usual police prosecution in the magistrates' courts, a state counsel represents the State. The title of the case also shows the difference. Instead of the police making the complaint, it is "The State vs. XYZ."

Most of the cases in the Calendar of Prisoners have undergone the process of preliminary investigation. However, cases can begin

in the High Court direct by way of information filed by the Director of Public Prosecutions having obtained the consent of the Judge so to do.[1] In that case the information to be filed shall be accompanied by the proof of evidence upon which the prosecution intends to rely at the trial. This procedure can still be adopted even where the magistrate refused to commit for trial at the P.I. In the circumstance, the deposition at the magistrate's court shall be sufficient proof of evidence upon which the Director of Public Prosecutions shall rely to obtain the judge's consent. At the High Court, "Information"[2] are used instead of "charges." A typical information takes this form.

> The State vs. XYZ
> In the High Court of Justice Western Nigeria
> In the .....Judicial Division holden at .....
> The -.....day of..... 19.....
> At the sessions holden at ..... on the ..... day of...
> ..... 19.... the Court is informed by the Director of Public Prosecutions Western State that .....
> is charged with the following offence.
>
> STATEMENT OF OFFENCE
>
> Murder contrary to section 257 of the criminal code cap. 28 vol.1 Laws of Western Nigeria, 1959.
>
> PARTICULARS OF OFFENCE
>
> XYZ (m) on the ..... day of ..... 19.... at ..... in the ..... Judicial Division murdered TYZ.
>
> (Signed) DPP/State Counsel

---

1. Sec. 340 (2)(b) C.P.A.

2. Information are statements and particulars of offences.

Apart from these peculiarities, the processes of taking evidence and cross-examination are the same. Already the deposition in the magistrates' courts or the proof of evidence have been transmitted to the High Court and the accused and/or his counsel have been served before the commencement of the hearing. This gives the court of trial opportunity to know the evidence the prosecution is relying upon, and the accused and his counsel will also have the opportunity to know the type of evidence that is likely to be adduced against them.

In cases where all the witnesses who gave evidence at the lower court cannot be located to attend the trial and to give evidence, the prosecution applies to the court to allow admission of his/her deposition at the lower court as evidence at the trial.[1] Apart from this, the trial is in no way different. The trial follows the same procedure as in the magistrates' courts. The decision of the court is also handed down in the same manner except in the case of murder which requires special treatment.

If a murder accused is convicted, the procedure changes. At the conclusion of the hearing and if the accused is found guilty, the Registrar will recite the following before the pronouncement of the death sentence:

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1. Section 34 of the evidence act cap. 62 laws of the Federation 1958.

> His Lordship the Justice of the Assizes doth strictly charge and command all manner of person present to keep silent and remain standing upon pain of imprisonment whilst the sentence of death is being pronounced upon the prisoner at the Bar.

A report of the sentence is immediately transmitted to the Governor and an appeal automatically lodged for the convict.[1]

Immediately the pronouncement of 'guilt' is announced and before sentence is passed on the offender, the court usually demands to know the antecedents of the offender. All that the trial judge/magistrate asks of the prosecuting counsel or prosecutor, as the case may be, is whether anything is known about the accused. If nothing is known about the accused, the prosecuting counsel or prosecutor will say so, but if something is known he will recite a catalogue of the accused's previous convictions which until then (unless he has put his character in issue during the trial) are unknown to the presiding judge or magistrate. If these convictions were admitted, the court proceeds to pass sentence after asking the accused for allocutus - a plea for mitigation of punishment. After the accused has said his piece which consists mainly of either still protesting his innocence or adverting to mitigating circumstances, this is followed by the usual plea of leniency

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1. Procedure followed in murder cases after conviction is in appendix "F" and sections 367-371 part 40 of C.P.A.

by his counsel if he is defended by one. If the convictions are denied, which is not unusual, they must be proved by further evidence by the prosecution. If not so proved, they are ignored. If proved they will, in all probability, if found to be similar to the offence for which he has been convicted, affect the quantum of his punishment. Very occassionally, evidence of the accused's good character is called by the defence before sentence is pronounced.[1]

The end of the Assizes is equally ceremonial. The Registrar will also pronounce the following sentences.

> Oyez! Oyez!! Oyez!!! The Assizes of the ..... Judicial Division which opened on the .....day of..... ..... 19.... is now closed. All witnesses bound by recognizance are hereby discharged. May the Federal Republic of Nigeria endure for ever and God save my Lord the Judge of the Assizes.

Criminal appeals

Criminal appeals are handled alike at both the High Court and Magistrates' courts. The Appellants and Respondents, as usual, present their case through their counsel for a reversion of the decision of the lower court. Mostly appeals are usually against alleged wrong conviction based on contradiction, misdirection and

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1. Justice Fatayi-Williams: "Sentencing as seen by appeal court judge. in Elias, T.O.(ed.) The Nigerian magistrate and the offender. (Benin-City) Ethiope publishing corporation (1972) p.35.

excessive sentence. There is usually no evidence taken because evidence is already in the form of records of proceedings. The arguments are usually based on the obvious contradictions in the proceedings. In rare cases, evidence is adduced to clarify ambiguity and usually it is by a special application. The decision of the court is either a confirmation of the existing decision or a reversion. It may also be a substitution for the decision of the lower court. In the former case, if successful an outright dismissal is pronounced. This is an indication that the previous decision is on trial and the court is called upon to correct an alleged wrong. It is also evidence of dissatisfaction with court processes. It may also be an evidence of lack of confidence in the decision of the lower court.

The human factor in criminal processes

Court's attitude to criminal cases is usually the same, be it in the Magistrates' courts, the High Courts and the Appeal Court. It is that of haste or speed. The urge for speed is increased when the accused is in custody. More often than not, there is a clash between the court and either the prosecution or the defence in an attempt to finish a case speedily. For instance, it was reported on 27th August 1973 that a Chief Magistrate warned policemen not to be "persecutors." This warning was sequel to an application for adjournment by the

prosecution which the defence counsel opposed.[1] Another facet of this counter-allegation was reported when the Commissioner of Police C.I.D. accused a Lagos magistrate of delaying a case of Indian hemp for more than 15 months.[2] Since the length of time it takes to complete a case is a function of several factors observable in the peculiarity of each case, the court cannot always have things done its own way. The justice of the case may demand that the court should make allowance for the complications that exist in the case. For example, the number of witnesses are usually not the same for all cases, the work condition in the court at the material time; the availability of witnesses as well as other factors external to the court determine how speedily criminal cases are disposed of.

The courts' preoccupation usually is to safeguard the interest of the common man. It is only in glaring cases of guilt that criminals are sent to jail. It is a cardinal principle in law that the slightest doubt in the mind of the court about the guilt of the accused should be resolved in his favour. It is on this score that the accused whose guilt is glaring to the ignoramus is let off, since the whole machinery of justice is tuned towards fairness and equity. The courts are more

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1. Daily Sketch, August 27, 1973.

2. Daily Times, March 4, 1974.

TABLE 16

The sententing pattern of courts in Western Nigeria 1969-1973

YEAR	Total No. of cases	Total No. of convicted offenders	Total No. of first offenders	Offenders under 21 years of age	Imprisonment without option of fine	Sentence with option	Recidivists
1969	5,721	2,861	2,468	304	1,005	1,856	393
1970	5,171	2,433	2,232	277	647	1,786	201
1971	4,031	2,769	2,534	248	556	2,213	235
1972	6,280	2,816	2,635	246	621	2,195	181
1973	3,518	2,114	1,956	282	574	1,540	158

Source: Compiled by writer from Monthly Returns of Adult Probation, Western State.

TABLE 17

Comparison of total number of cases and number convicted

	Total No. of cases	Total No. of convicted offenders	Percentage of convicted offenders of total cases
1969	5,721	2,861	50.00
1970	5,171	2,433	47.05
1971	4,031	2,769	68.69
1972	6,280	2,816	44.84
1973	6,518	2,414	32.43

Source: Compiled by the writer from Monthly Returns of Adult Probation.

Our assertion that courts are more inclined to use fines than imprisonment seems to have been borne out by the tables 16 and 17 above. All the five years except 1971 indicate that less than 50% of the criminal cases before the Western Nigeria courts ended in conviction. It is not however easy to deduce from the tables that the other cases were groundless or that they were without merit as several factors may have been responsible for the non-conviction of a case. These factors vary from legal technicality to contradiction in the evidence. Some of them would have been cases in which the

accused were found guilty but instead of the jail or fine sentence, they were cautioned and discharged.[1] A binding over could have been another alternative.

Another deduction we can make from Table 16 is that the courts are more inclined to give option of fines against offenders than the jail terms. The penalty of a fine has always been available at common law crimes and the amount is at the distrection of the court. It is only in cases with mandatory punishment that discretion is excluded. An example of such mandatory punishment is the Indian hemp decree or the punishment for murder. An example of cases where discretion can be used are found in cases of stealing and assault. The language of the law for mandatory sentence is "shall" while for non-mandatory it is "may." However a court may impose a fine[2] even where it is not provided for except that the fine shall not exceed the jurisdiction of the court and shall not exceed the maximum fixed in relation to the amount of the fine by the scale specified in section 390 (2) C.P.A. thus:

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1. This is a form of conviction.

2. Sec. 382 (1), (2), (3) C.P.A.

TABLE 18

Scales of imprisonment and fines

Imprisonment Scale	Fine scale
7 days I.H.L.	Does not exceed 10/- (₦1)
14 days	10/- (₦1) - £1 (₦2)
1 month	£1 (₦2) - £10 (₦20)
2 months	£10 (₦20) - £30 (₦60)
4 months	£30 (₦60) - £50 (₦100)
6 months	£50 (₦100) - £100 (₦200)
1 year	£100 (₦200) - £200 (₦400)
2 years and above	£200 (₦400) and above

However, the law may allow a longer period of imprisonment or fine depending on the nature of offence. The prison alternative is always with hard labour except otherwise directed. The exercise of this discretion is little regulated but the penalty should not be excessive. It is left for the court to determine what in its view is reasonable discretion. If a fine is very heavy and is not statutory, this indicates that a sentence of imprisonment would have been more appropriate. Statutes do, of course, fix minimum fines for certain offences and may prescribe special punishment not including a fine. In the latter

case, the right to fine is abrogated. Thus, for example, if the punishment is fixed by law as in the case of murder, there is no power to impose a fine. But where a fine is imposed, the court may allow payments by instalments and/or in the alternative it may fix a term of imprisonment which the offender will serve if he fails to pay according to the terms of the order. It is pertinent for our purpose to point out that the superior courts have wide powers at common law to punish offenders in the absence of statutory limitations. Where the crime is the creation of the statute, the statute itself will actually fix the maximum (though not the minimum).

There are apparently no limits to the power to imprison at common law provided that the term is not excessive having regard to the gravity of the offence. Where there are multiple offences, heavy sentences can be imposed by ordering them to run concurrently[1] or consecutively.[2] The courts, in addition, have the power to impose

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1. This means the longest term will absorb the other terms and/or if the accused is already serving a jail term, the present term shall start to reckon and the existing one forgotten provided it is likely to end before the new term.

2. When terms are consecutive, they add up to one another i.e. none absorbs the other. If the accused is already serving one jail term, the new one will commence at the expiration of the existing one. Sec. 380 C.P.A.

what is known as a sentence of life imprisonment.[1] This is theoretically a sentence of indeterminate length terminating on the death of the offender and it is infrequently imposed because offences demanding this punishment are very rare. They are cases like homicide or any other offences for which such punishment is prescribed.

The courts still have discretion to exercise in determining which punishment should be imposed in a particular offence especially where the punishment is not mandatory. There is a large room for discretion and courts have tended to use this to the advantage of offenders.

TABLE 19

Comparison of imprisonment and fining of offenders in courts of Western Nigeria 1969-1973

YEAR	Total No. of convicted offenders	Percentage sentenced to jail term	% given option of fine	Total
1969	2861	35.13	64.87	100.00
1970	2433	26.59	73.41	100.00
1971	2769	20.08	79.92	100.00
1972	2816	22.05	77.95	100.00
1973	2114	27.15	72.85	100.00

Source: Compiled by writer from the Monthly Return of Adult Probation.

1. The magistrates' courts do not have the power except where such power is specially conferred and such sentence is mandatory. The case of armed robbery which was first headed by magistrates in the state is an example.

It is clear from the above that the courts make use of fine more than the imprisonment as punishment. Many factors may be responsible for this. It may be that some of the offences were minor or that the crimes were not rampant. The age of the offender might also determine whether a jail term or fine would meet the justice of the case. More often than not, notorious offenders do not enjoy the favour of the court and invariably they receive the maximum provided for any offence. This may be because they have not made use of previous opportunities afforded them to reform, therefore the court is stricter with them. All these factors may be responsible for the types of punishment imposed.

TABLE 20

Comparison of convicted offenders: adult and young persons

YEAR	Total No. convicted	Adult convicted	Adult convicts as % of total	Convicted under 21 years of age	Offenders under 21 yrs. of age as % of total convicts
1969	2861	2557	89.37	304	10.63
1970	2433	2156	88.61	277	11.39
1971	2769	2521	91.04	248	8.96
1972	2816	2570	91.26	246	8.74
1973	2114	1832	86.66	282	13.34

Source: Compiled by the author from the Monthly Returns of Adult Probation.

This table is not intended to show that young people do not commit crimes. They do, but their cases are treated with sympathetic consideration and that they are in most cases ordered to be caned or sent to a Remand Home. Another factor responsible for this lopsided relationship may be the fact that at such a tender age, most people are in school and therefore least exposed to criminality as the opportunities for such may be closed to them.

How effective are the various types of punishment? It is our view that one measure of the effectiveness of punishment will be the extent to which it deters the convicted offender from continuing in his act of criminality.[1] The first crime may be unintended, but a second one may be by design. Evidence of effectiveness can only be measured by comparing the recidivisits with the first offenders. If an accused is punished once, one expects that he would desist from committing crime.

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1. This same view has been expressed by A.A. Adeyemi in Elias, T.O.(ed.) The prison system in Nigeria p.254. He said "In so far as specific deterrence is concerned, the efficacy of prison sentences can only be measured by means of the proportion of first offenders who never go back to prison.

TABLE 21

Effectiveness of punishment measured by level of recidivism

YEAR	Total Convicted Offenders	Total 1st Offenders	% of total Offenders	Total Recidivists	Recidivists as % of total Offenders
1969	2861	2468	86.26	393	13.74
1970	2433	2232	91.74	201	8.26
1971	2769	2534	91.51	235	8.49
1972	2816	2635	93.57	181	6.43
1973	2114	1956	92.53	158	7.47

Source: Compiled by author from Monthly Returns of Adult Probation.

The relationship thus established is that the deterrence motive of our penal system seems to be close to perfection, within reasonable limits. If the data were available it would have been more reliable to relate the length of sentence to proclivity to recidivism. This paucity of data had been examined by Idada[1] when he said: "One then wonders what machinery exists for the assessment of the efficacy of punishments imposed by our courts! "

1. Idada, S. E. Prison officers' assessment of the magisterial use of and attitude towards the prison. In Elias, T. O. (ed.) The Nigerian magistrates and the offenders (Benin City) Ethiope publishing corporation (1972) p. 107.

This question of efficacy seems to depend on the philosophy of punishment. If it is reformatory, it is then that one may begin to think that the efficacy of the system should be measured by the number of people reformed and reprieved. But if it is deterrence, one naturally expects that others may not join in criminality and the offender himself shall have been so incapacitated that he is not likely to engage in criminal act in future. The effect of this is usually alienative since the prisoner now feels rejected. The case of retribution is even more alienative, because more often than not, the accused is made to feel that he has wronged the society and that society has now taken its vengeance. Instead of changing from criminality, he may engage in more destructive crimes than the one for which he was first punished. In effect, he shall have undergone the necessary secondary socialization processes to make him accept crime as a way of life.

An example of this was a case of petty stealing in which the magistrate imposed a sentence of 10/- (₦1) fine or seven days imprisonment. According to Adeyemi,[1] it is difficult to see how this fits into the aims of sentences of imprisonment - deterrence,

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1. Adeyemi, A.A. Sentences of imprisonment: objectives, trends and efficacy in Elias, T.O. (ed.) The prison system in Nigeria. (Lagos) University of Lagos (1968) p. 246-247.

retribution and rehabilitation. Adeyemi argues:

> it can hardly deter; it does not afford any opportunity for reform or rehabilitation,[1] and neither can it be said to effect any real elimination of the offender from society. Unfortunately, in this particular case, the offender preferred the seven days imprisonment to the payment of 10/- (₦1). He continued going back. At his last recorded conviction, he was credited with about eight previous convictions; mainly stealing and breaking offences.

This is an example of the type of disaster which such an aimless sentence of imprisonment can cause (the same can be said of virtually all short-term sentences).[2]

> It might have been best not to have imprisoned him, but, instead to have discharged him absolutely or upon condition, particularly as it was his first offence.[3]

The same argument also holds for the stiff statutory minima, such as Indian hemp cases.[4] Whether laws are severe or humane, their efficacy depends on the mode of enforcement and the societal

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1. This view has also been expressed by Lateef Jakande in the book titled "The Nigerian prisoner" He said: "It is open to question whether short term sentences serve any useful purpose. In an age in which emphasis has shifted from revenge to reform, short term sentences cannot be justice. A person sentenced to three or six months cannot be reformed in that short period. He would hardly have recovered from the shock of imprisonment before he is discharged.
2. Ibid.
3. Ibid. As an aside Adeyemi, op.cit. establishes that the short term sentences are infrequently used. See appendix 11 on p. 315 for a breakdown of the range.
4. Ibid. p. 256.

perception of the existing laws. However brutal a law may be, it will be disregarded if there is no serious and conscientious attempt at its enforcement. And however humane a law may be, if it is vigilantly enforced, the fear of being caught will be sufficient to prevent the vast majority of the people from contravening it; in which case, a severe sentence is unnecessary.[1] It can therefore be suggested that whether severe punishment or a mild one would suffice would depend on the particular case. It is unnecessary emphasizing deterrence if the punishment does not fit the offence. It is apposite to conclude that an extremely short sentence and an extremely long sentence are not necessarily conducive to reformation since it depends on the circumstances in which either is used. If too short a sentence is passed, the reformative work to be done may not be accomplished while the too long a sentence shall have lost the benefit of reformation itself since the prisoner shall have dwindled in his receptivity to reformation. Thus, it can be said that effective reformation lies in a midway point between a short sentence and a long jail term. If the offence does not permit of long sentence that will ensure reformation, then short sentence should be avoided entirely by finding an alternative to jail term be it in terms of suspended sentence or the parole system.

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1. Ibid.

The same argument goes for the long term sentence. It can be abrogated entirely to avoid professionalism in criminality or a mechanism is evolved to ascertain whether the criminal has actually changed. In effect, a break in the jail term should be allowed whereby prisoners serving long terms shall be allowed to stay out of prison for some time while reporting intermittently to law enforcement. It should also be a condition that a commission of similar crime will increase the punishment of the offender. This point cannot be stretched too far for there are some prisoners usually called "ordinary" that have regarded the prison as their home. A prison officer once remarked that such prisoners would attempt escape a day preceding the day of their discharge so that they will quickly return to the prison. His argument is that the prisoner is surer of a means of livelihood in the prison than elsewhere. Whether it is a long term or short term, there are some prisoners who pride themselves as members of the prison community and cannot be reprieved. Thus it can be argued that a point will be reached when a prisoner shall have exceeded the reformatory stage and the result will be deterioration and possibly prisonisation.

Juvenile

This discussion will be incomplete without a description of the juvenile criminal procedure. The procedure is less formal than the ordinary summary trial. In the case of children, the law is prepared to recognize openly that delinquency is only a symptom of a larger social welfare problem. When legal intervention is needed, it is a special tribunal - the juvenile court - that is entrusted with the making of decisions. In the procedure the line between actual law-breaking and being in need of help with personal problems is deliberately kept vague; and as such a single official agency - the Social Welfare Department of the Ministry of Economic Development - is given responsibility for co-ordinating and operating the various remedial services.

It is noteworthy that the criminal law gives the immaturity of children special weight in making decisions about responsibility. Secondly, welfare procedures are intimately related to penal sanctioning in the sense that reformation is stressed. A third point is that juvenile courts adopt special procedures (such as sitting in camera and referring to the accused as subject) for dealing with cases. Finally, since there must always be more optimism about the future behaviour of a juvenile than that of an adult, the methods open to the courts for dealing with juveniles are more obviously slanted towards encouraging their social adjustment than in any other direction. Thus

Thus it can be seen that the attitudes of the law and law enforcement agencies vary according to the physiological and psychological requirements of the individual.

There are three categories of juvenile offenders - child,[1] young persons[2] and young adult.[3] In principle and practice they can be charged with and found guilty of any offence as an adult and could be similarly dealt with. The difference arises from the manner in which cases involving adults and juvenile are disposed of. The criminal code speaks of the liability of the young offender who "had capacity to know that he ought not to do the act."[4] yet the offender is not held in strict liability for the offence. He is accompanied to the court by his/her parents/guardians.[5] Apart from the court sitting in camera[6] the offender is referred to as the "subject."

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1. A child is anyone under the age of 14. This includes infant who is a person who has not attained the age of 7.
2. A young person means a person who has attained the age of 14 but has not attained the age of 17 years.
3. A young adult falls between the ages of 17 and 21.
4. Sec. 30 of the criminal code.
5. Children & young persons law. sec. 9.
6. It is only where there are no established juvenile court that this camera sitting is practised. And in the Western State, the camera court predominates.

Thereafter, the procedure is like all other criminal cases except that in imposing punishment the subject is usually not ordered to go to prison or pay a fine. He may be ordered to be caned or the parents are ordered to pay some amount as penalty for lack of care. More often than not, a conditional discharge is pronounced and the probation officer is ordered to supervise the subject throughout the period specified in the order. He can also be sent to an Approved School.

Some comments should be made about the distinguishing features of juvenile courts as manifested in the method of operation and composition. The Chief Justice appoints laymen to a panel for each magisterial district and a magistrate, together with two lay members constitute the court. Where practicable, the law enjoins that women should be on the panel.

The special procedures adopted in juvenile courts are designed to secure the offender's welfare through a combination of informality and paternal protection. The trial procedure is kept as simple as possible and the court itself has an overriding duty to make sure that the juvenile's interests are safeguarded and that he is kept fully aware of what is happening. The distinctive procedure is matched by distinctive terminology in the orders made. "Conviction" and

"sentence" are not used in relation to juvenile at all, he is "found guilty of an offence" and "an order made upon such a finding."[1]

The power of the state

The State, acting through the Attorney-General, may enter a nolle prosecui at any stage of the trial before judgment.[2] The upshot of this action is a discontinuation of proceedings and a discharge for the accused. This discharge does not amount to an acquittal.[3] In effect, the accused may face the trial in any subsequent proceedings and on the same facts if the Director of Public Prosecutions so decides. Temporarily, this amounts to a capitulation by the prosecution. Even though it is rarely used, it is not used without important reasons. It is not a surrender or an admission as such, it is an attempt by the prosecution either to save an accused person from the ordeal of a trial trial or it is believed that it will not be in the public interest that such a case be prosecuted to its logical conclusion or that certain facts that may implicate the State will be revealed in the process. It is

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1. Milner, Alan. The Nigerian penal system (London) Sweet & Maxwell (1972) p. 350.

2. Sec. 73 (1) & (2) C.P.A.

3. Sec. 73 (3) C.P.A. (See Adedoyin v. The Queen. In Selected judgments of the Federal Supreme Court of Nigeria vol. IV pp. 185-188. Also 13 WACA Sey v. R. p. 128.

also an attempt by the prosecution to solve its own problem where direct evidence to implicate a group of accused persons cannot be got. For instance in the case of The Queen vs. Oladipo Akinwumi Maja and 30 others, the case against the first and the fifth accused persons was withdrawn and the first accused was immediately called upon to give evidence as the first prosecution witness.[1] In such a case the court could not proceed with the trial against the particular accused even if the judge felt strongly against the invocation of the nolle prosecui. It is unlike an "application to withdraw" where the consent[2] of the court is required. But similarly a discharge resulting from a withdrawal shall not operate as a bar to subsequent proceedings against the accused on account of the same facts. Thus, it can be seen that the prosecution has the prerogative whether to prosecute or not to prosecute. By this, it seems that the prosecution also has a system whereby it can acquit offenders it does not want to prosecute if and when such is expedient. Even though it does not serve as a bar to supsequent prosecution, it is nevertheless a halt on the existing proceedings.

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1. Charge LA/68C/62: the Queen v. Oladipo Akinwumi Maja; comments on the case in Jakande, Lateef: the trial of Obafemi Awolowo (London) Secker and Warburg (1966) p. 6.
2. Sec. 75(1) C.P.A. The prosecutor can take this step of his own volition or on the instruction of the Attorney-General provided such action is taken before judgment or committal in the case of preliminary investigation.

A gross misuse of this provision was rife during the Western Region political upheavals of 1962-1965. This is said to have affected the morale of the Police[1] especially that the 1963 Constitution has brought the Director of Public Prosecutions under the control of a political Attorney-General who could directly or indirectly influence the decision to prosecute or not to prosecute. The powers of the Director of Public Prosecutions also include the right to demand the release of any case file no matter at what stage of investigation. If a policeman tries to defy such order the Director of Public Prosecutions may enter a nolle prosecui in the law courts especially in "cases affecting the political offenders in whose fate the regional government showed interest."[2] The consequence of this was that the police officers found themselves embarrassed by the "political functionaries and hirelings" who openly boasted to their knowledge that no legal proceedings could be taken against them for the "blatant crimes" they were known to have committed.

The implications of such an action were loss of confidence in the system of law enforcement since political consideration became

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1. Tinubu, K.O. The dilemma of the police under civilian rule in N.P.M. June-August 1969, p. 9.

2. Ibid.

dominant in deciding to prosecute or not to prosecute. The embarrassment such a practice can bring to the court and the other functionaries are such that the court itself may be disturbed when faced with an unexpected order to halt proceedings. Whether or not the prosecution and trial of cases are to be allowed free hand, the court have no way of knowing it until the end of the case. The police must find it frustrating to apprehend criminals, make charges and find that they cannot prosecute. The court also must experience frustration to start the hearing of a case to discover that the case cannot be disposed of on merit. The public, on the other hand, will be disturbed to witness openly a flagrant violation of law with impunity and to continue to interact with prisoners whose innocence has not been proved in the court of law.

This section of our discussion has focused on the criminal processes from the initiation of proceedings to the end. It has discussed the activities of the police with respect to investigation of cases and we have identified some problems. The processes inside the court have also received exhaustive description. It has been shown that the end of criminal proceedings can take various forms. We have also demonstrated that the courts have a wide range of choice in selecting the punishment for a particular offence and that the severity of such punishment depends on a number of factors.

This aspect has also shown that of the alternative punishments offered an accused that which the accused uses is not within the power of the court to decide. Thus the court has been portrayed as a toothless bull-dog. It is subject to constraints of law and legalized pressures limiting its sphere of influence and operation. It can therefore be concluded that its performance is a function of these factors.

SECTION II

The civil processes

The civil case is a wrong against individuals or jural persons and is as contenteous as the criminal matters. The civil case, unlike the criminal case, is not punishable by a fine or imprisonment, nor is it injurious to public morality, it is an individual wrong demanding individual solutions or remedies. These characteristics show that a civil case only begins when an aggrieved person feels strongly that a wrong needs be requitted and thereby resorts to an action at law.

An action has been defined as "a litigation in a civil court for the recovery of an individual right or for the recovery of an individual wrong."[1] In other words, an action is a civil proceedings commenced

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1. Redman, W.H. Civil procedure. (London) Sweet and Maxwell Ltd. (1958) p.6.

by writ or in such other manner as may be prescribed by Rules of Court, but does not include a criminal proceedings.[1] The beginning of the action is often at the instance of an individual or group whose cherished rights are violated. Its nature is depicted by the title of and parties to, the action and the type of audience it attracts. This apart, the processes and procedures in addition to attitude of parties and judicial officers to the case also give it a distinct outlook different from criminal proceedings. The civil action may be started by consulting a lawyer or it may be started by the individual without the aid of a counsel. Some civil cases are preceded by negotiation between the parties for settlement, the failure of which invariably results in a court action.

Civil cases may be classified into two broad categories - torts[2]

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1. Section 2 of the High Court (civil procedure rules 1958. See also section 2 of the Magistrates' Courts (civil procedure) rules 1958.
2. Torts are civil wrongs, independent of contract, which gives rise to common law remedy of damages. (See Glanville Williams: Learning the law (9th ed.) London. Stevens & Sons (1973) p.15 e.g. damages for trespass or battery.

and contracts.[1] The two differ in terms of the causes of action. However they have the common characteristics of being wrongs against others that are to be redeemed by these others. Torts and contracts are by no means mutually exclusive. For instance, an action at contract may also have some torteous implications and thus two types of claims may result from a single action. The two categories are civil matters, which lack the phenomenon of criminality. However, the proof required of each category also makes for the difference. Different types of claims may result from contracts as well as torts.

A civil suit, more often than not, begins by a visit to the office of an attorney with the report that a wrong has been committed by others or jural persons. This visit may have two alternative aims in view while a combination of both is not unusual. The first aim may be to solicit the help of the lawyer to negotiate on his/her behalf settlement of a wrong. The second may be to seek the advice of the

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1. A contract is an agreement enforceable at law. An essential feature of contract is that of a promise by one party to another to do or forbear from doing certain specified acts. The offer of a promise becomes by acceptance obligatory (see P. G. Osborn: A concise law dictionary (5th ed.) (London) Sweet & Maxwell (1964) p. 87 e. g. damages for breach of promise of marriage or breach of promise to deliver certain goods to another person.

legal practitioner as to the possibility of an action at law in a deal. In such circumstances, whether a litigant goes to court or not depends on three things (1) the seriousness of the matter and the individual perception of the seriousness; (2) the willingness of the lawyer to accept the brief and go to court having considered the possibility of success in the law court and the ability of the client to pay his professional fee; and (3) the non-cooperation of the other party during the pre-litigation negotiation.

Generally, not all consultations with lawyers result in instituting a court action. Some are disposed of at the level of counselling. If a lawyer feels strongly that there is no cause of action in alleged wrong, he may advise his client against taking an action against the wrong-doer. This does not however prevent the client (if he is litigious enough) from going to court in spite of the lawyer's advice to the contrary. Some lawyers may in spite of their advice, if the client insists, help such client to put his case before the court. This depends on the individual lawyers' attitude to his profession and how much he cherishes his reputation. In other cases, the action of the lawyer may, however lead to the settlement of the matter. Lawyers generally do not start an action at law without negotiation, i.e. making representation on behalf of their clients to the other party

who also may consult his/her own lawyer. This may result in a protracted exchange of correspondence between both counsel and if luck attends the negotiation, a compromise is struck. But, most frequently, the court is called upon to arbitrate as deadlock seems common in legal negotiations. Litigation may also begin if the parties are wealthy enough to finance it by payment of the counsel's professional fee and the court charges.

Negotiations need not precede all litigations. Some cases may result from grievances which both parties consider serious enough to warrant action at law. In such cases, the injured party will consult a lawyer and instruct him to take an action against XYZ. Some litigants do not even go to lawyers before starting an action at law.

Whether the aggrieved person goes to court with or without a lawyer is a function of the individual's financial position or the individual's perception of the role of the attorney. The point being made is that the presence or non-presence of a lawyer in a suit depends on one of three factors or a combination of two or the three factors: (1) litigant's preparedness to employ one, (2) lawyer's preparedness to accept the brief on negotiated terms; and (3) ability to pay for his services. Because of the reasons enumerated above, it is not unusual to have cases where lawyers are absent or a party is not represented.

The first crucial matter that an intending litigant must solve is to locate the wrong-doer. Apart from this, it must be ascertained by the aggrieved person that he too has a right to take the action, if not along, in conjunction with others. These are crucial if the action must proceed at all. Thus, in most civil cases, there is a plaintiff and a defendant. In matrimonial cases, the title changes - it is a petitioner, a respondent or co-respondent. But if in a case which begins by way of motion, the parties are applicants and respondents. The appropriate concept to be used in any given occasion depends on the nature of action at hand.

There is no limit to the number of persons who can be joined as plaintiffs[1] in one action if the relief sought is in respect of the same transaction or series of transactions, where if such persons brought separate actions, any common question of law or fact would arise. The court however reserves the right to strike out the names of parties or order separate trials. The court may order that any other person be substituted as the plaintiff or added as plaintiff if the justice of the matter demands it.[2] Similarly, all persons may

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1. Order 5 rule 1 (i) of Magistrates' Court (civil procedure) rules and order 7 rule 1 of the High Court (civil procedure) rules 1958.

2. Order 7 rule 2 of the High Court (civil procedure) rules.

be given against one or more of the defendants as may be found to be liable, according to their respective liabilities.[1]

An intending litigant must ensure through his counsel, if any, that the names of every person who is included or ought to be included as plaintiff or defendant is contained in the writ. He must be careful not to omit parties whose presence is essential, and not to add parties whose presence is improper.

In fact, cases where people sue or are sued in representative capacities are not uncommon.[2] Any person can be made party to a civil cause. It may be the government or the individual. It is only the mode of presentation that is different. For instance, an action by the Government may be commenced by the appropriate authorized Government Department in its own name or by the Attorney-General. Similarly, action against the government may be commenced against the appropriate authorized Government Department or if none of the Departments is appropriate, against the Attorney-General. If it is a Corporation, it can sue or be sued in its corporate title or registered title as the case may be. The infant also occupies a special

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1. Order 7 rule 4 High Court (civil procedure) rules and order 5 rules 2 and 3 of the Magistrates' Courts (civil procedure) rules 1958.

2. Order 7 rule 8 High Court (civil procedure) rules.

position. An infant may be sue through his next friend[1] while an action against the infant may be commenced in the ordinary way. However if he wishes to enter an appearance, he can do so only by guardian ad litem.[2] The solicitor for the infant must make and file an affidavit of fitness with the guardian's consent. The reasons for this different attitude in the case of the infant may be found in the societal notion that the infant cannot be held liable for his act for he is deemed not capable of knowing the consequences of his action. The infant needs be guided and be protected if his rights are trampled upon or if by his act he violates the right of others.

But if the infant does not enter an appearance, no guardian ad litem having been appointed, the plaintiff must, and before he can take any further step in the action, apply to the court for an order that some proper person be assigned guardian to such defendant. The same condition also exists for persons of unsound mind involved in litigation as the infant. Action can be commenced by groups or representatives of groups. Where there are numerous persons with a common interest in the same cause or matter, one of them may sue

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1. Order 7 rule 14 ibid.

2. Order 7 rule 13 ibid.

or be sued, or be authorized[1] by the court to defend on behalf of all the others. In such a case, all members of the group must have a common cause. It is also essential that they must have common grievances and the relief claimed must be in its nature beneficial to all. The implication of this is that all persons who have common right are entitled to join in respect of that common right, although they have different rights inter se.

What we have discussed thus far is the extent of similarity of procedure found in both the Magistrates' Courts and the High Court. In our earlier discussions, we have pointed out the jurisdictional[2] differences which influence the litigant's decision to institute action in a particular court.

All civil actions are begun by a writ of summons. The writ is a document directed to the defendant commanding him to cause an appearance to be entered for him in an action at the suit of the plaintiff and notifying him that in default of his doing so, judgment may be given in his absence.[3] Each writ must contain the Division of the High Court or Magistrate's Courts in which the plaintiff intends to sue,

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1. Order 7 rule 9 High Court (civil procedure) rules.
2. See chapter four.
3. Order 2 rule 1 High Court (civil procedure) rules.

and the names of all parties. On the back of every writ is an endorsement stating the nature of the plaintiff's claim, the relief or remedy he is seeking and the name of the plaintiff's solicitor and the plaintiff's place of residence. The claim at the magistrate's court takes the form below:

> The Plaintiff/'s' claim against the defendant/'s' is for the sum of ..... being .....committed against the Plaintiff on ..... of ..... 19.....
>
> Signed X X X
> Solicitor for Plaintiff/s

After a plaint has been entered, the Magistrate/Judge (or if the Magistrate/Judge so directs), the Registrar of the Court is expected to issue a summons in the prescribed form directed to the defendant requiring him to appear at a fixed time and place not less than seven days from the date of the service of such summons. The summons is in the form below:

Writ of Summons

In the High Court of Justice Western Nigeria

..... Judicial Division

Suit No. .....

Between ..... Plaintiff

To ..... Defendant

To ..... (Defendant) .....

of .....(address)

You are hereby commanded to attend this court holden at

..... on ..... day the ..... day of

..... 19.... at ..... o'clock in

the forenoon to answer a suit by .....

of ..... against you.

Take notice that if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the court may allow the plaintiff to proceed to judgment and exexution.

Signed and sealed this ..... day of .....19....

(Fee Paid)

.....
Registrar

The plaintiff's claim is indorsed on the reverse side hereof.

The endorsement on the writ shall show whether the plaintiff sues, or the defendant or any of the defendants is sued in a representative capacity, the endorsement shall show in what capacity the plaintiff sues.[1] A writ not served within twelve calendar months becomes void but nothing prevents a renewal for six months. In the High Court, every writ must be signed and sealed[2] by the Registrar after the appropriate fees are paid.[3]

Writs can be served anywhere in the country. In cases where people to be served live within the jurisdiction of the court, the writ is despatched to a Bailiff - an official of the court charged with such function - and is ordinarily executed. But, in the case of service outside the jurisdiction of the court, leave of the court is required. This is done by way of motion or application praying the court for an order to serve outside jurisdiction and for such further order as the court may deem fit in the circumstance.

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1. Order 2 rule 2.

2. Order 3 rule 10.

3. It is not in every case that a writ can be obtained as described above. In probate matters, the issue of writ is to be preceded by filing of affidavit made by the plaintiff. No writ is used in matrimonial causes. This is usually commenced by the presentation of the petition and the acknowledgement and answer forms.

The service of the writ is the duty of a special officer of the court - the bailiff - who must serve in person[1] unless the court directs otherwise. Service may however be done by "substituted service" * in cases where the defendant cannot be served personally or he is evading service.[2] Before the order can be obtained, the plaintiff must show evidence that the defendant is evading service or that it is the only expedient way through which the service could be effected. It incumbent on the bailiff to submit a certificate of service as prima facie evidence of service.[3]

The rate at which cases come into the court depends on a number of factors which we would discuss later. The length of time it takes to conclude a case and the readiness of the parties to carry on the litigation are functions of a number of factors ranging from the work

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1. Order 3 rule 3.
2. Order 3 rule 5 (a) - (e).
3. Order 3 rule 17.

* Substituted service is service carried out other than by direct personal delivery of summons. It may be by advertisement, by pasting on the door of the last known place of abode of the evading defendant.

situation in the court, the financial position of the litigant, the preparedness of the lawyer to carry on, etc. The criminal list takes priority over civil list.[1] The bulk of the cases go to the Magistrates' courts because of the jurisdictional limitations already discussed. It is only cases concerning major issues that go to the High Court such as land matters or cases involving large sums of money.

TABLE 22

Comparison of civil cases filed in High Court and Magistrates' Courts of Western Nigeria 1969-1973*

Court	Years				
	1969	1970	1971	1972	1973
High Court	441 (14.15)	517 (17.05)	631 (27.09)	805 (29.27)	844 (20.49)
Magistrate's Court	2675 (85.85)	2515 (82.95)	1698 (72.91)	1945 (70.73)	3275 (79.51)
Total	3116	3032	2329	2750	4119

* Source: Compiled by the writer from the Quarterly and Monthly Returns of cases.

1. There are no separate courts for civil cases. The same judge who attends to the criminal also attends to the civil.

Table 22 is the frequency of cases in court for the years stated. The figures for the High Court is far lower than those for the Magistrates' courts. This does not however mean that the High Court is under-employed. Whether or not the courts are underemployed will depend on a number of factors apart from the nature of cases. Most cases in the High Court are intricate and consume time. The procedure is necessarily made to accommodate intricacies in the cases, and as such a carefully worked out procedure that inhibits speed is a permanent feature of the High Court processes. Furthermore, very few cases ever reach the High Court because of the legally set minima except by way of appeal. Even in appeal cases, certain embargo are still put to prevent frivolous appeals to the High Court. Apart from this, it is more expensive to prosecute cases in the High Court because the nature of cases invariably require the services of an attorney in addition to court fees. These factors account for the smallness in size of the High Court cases.

The trial of cases begins when appearances are entered. The procedure in the magistrates' courts differ in many ways from that of the High Court. In the magistrates' court, any person against whom a plaint has been entered may, after the summons has been served upon him, file a written statement signed by himself admitting, in whole or in part, the claim. The Court Registrar is expected to

send notice of same to the plaintiff whose task of providing the claim will then become unnecessary. According to the law, the court is expected at a subsequent sitting, if satisfied of the signature of the party filing the statement, to enter up judgment for the claim so admitted. Nothing prevents the party from agreeing after the writ has been issued upon terms acceptable to both and it is on this agreement that the court will base its judgment. Very few cases are of this category. Most civil cases are protracted because parties could not reach a compromise.

The first appearance of the parties in the magistrate's court, after the writ has been served, is to determine whether a case will be contested or admitted. Admission of liability is easier in cases where the facts are obviously non-tintenteous. But if agreement cannot be reached, the case enters into the already saturated pool of criminal and civil cases vying for use of time. Courts' attitude to civil cases is more liberal than it is to the criminal. The reason for this is that nobody's liberty is at stake and litigation can be regarded for the parties as a convenient exercise to seek remedy for certain wrong. It may even be an attempt to establish a principle to govern future relations. In effect, court judgment, even in civil cases, establishes a norm of behaviour for a particular situation and

this remains so until the relationships change or until a superior court redefines the relationship through another judgment that overrides the earlier one. In fact during the High Court vacations, civil cases are not taken, only urgent applications are attended to. Thus it appears everybody is not in a hurry to conclude a civil case and if there is any urgent thing at all, interlocutory procedures are undertaken.

After pleading, the hearing of the civil case follows the same adversary pattern as in any other case be it criminal or civil. Evidence is adduced by the plaintiff/s and his/their witnesses in support of his/their claim. If need be, and where practicable, exhibits are tendered. The defendant also engages in similar exercise. Thus, both parties and their allies are subjected to the rigours of the purposely created and charged atmosphere of the courtroom for sorting out controversies.

Immediately before the hearing of a case begins, witnesses are ordered "out of court and out of hearing." The two parties - principal actors - are however present. The number of witnesses called depends on the circumstances of each case. This is not regulated by any law except that the mode of giving evidence is subject to the Evidence Act. Thus a uniform procedure is adopted throughout the

proceedings. At the close of the case, the counsel to both parties present their addresses and urge the court to give judgment in accordance with the line of argument of each if the justice of the case permits. Judgment may be given immediately or adjourned till a later date. The period these processes take is not regulated by any law, it is "case-created," "lawyer-influenced" and "court-induced." What we are saying is that this depends on the state of the work in the court, the lawyer's preparedness to carry on and the nature of the case in addition to availability of witnesses.

In the High Court, after entering appearance and the parties having pleaded to the claim, the court may proceed to enter judgment if the claim is admitted, but if not, the court will order pleadings.

Cases in which defendants do not enter appearance are common. In such circumstances, the plaintiff may take steps to obtain judgment by default if it can be proved conclusively that the defendant has been served. The assertion that a defendant has been served is valid only when the bailiff has submitted a certificate of service to the effect. The absence of a served defendant is generally taken as an admission of the alleged wrong and/or a disregard of judicial proceedings. Whatever the underlying reasons may be, this has the invaluable consequences of easing congestion of the already saturated court activities.

In contenteous matters, the procedure is much more complicated. When pleadings are ordered, the parties are required to submit to the court and to their opponents by way of "statement of claim" and "statement of defence" - .statements of the facts upon which they are going to rely in the action.[1]

These facts should be made as clear and concise as possible. The statement should include all the relief or remedies[2] which the plaintiff seeks while the statement of defence[3] should include all the answers to the facts alleged by the plaintiff in his statement of claim. The parties are generally given specific dates for compliance with the order and the period given depends on how intricate the issues are and it ranges from seven days to a hundred and twenty days.[4] The order is that the statement of defence should follow the statement of claim. But if after the expiration of the time for filing the statement of claim, the plaintiff has not complied, the defendant can ask that the case be struck out. More often than not, this motion is

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1. Order 13 rule 5.
2. Order 13 rules 7 and 8.
3. Order 13 rules 9 - 13.
4. Order 13 rule 18.

generally countered by another asking for extension of time within which to comply. The latter motion, invariably, succeeds and the defendant is paid costs. Several reasons may be responsible for non-compliance. There are cases where the defendant/s do not only deny the allegations but also counter-claims.[1] The counter-claim is also subject to the same process as the original case except that it is not newly begun.

Each pleading states what the contention of the party delivering it will be at the trial. The object of pleadings is to enable the parties to know, before the trial, the real point to be discussed and decided. It must however not contain any evidence by which any of the facts mentioned in it are to be proved. Facts not denied specifically or by necessary implication, or stated to be not admitted, are taken to be admitted, except against an infant or person of unsound mind. In all cases in which the party relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, the rules require that the particulars must be stated in the pleadings. For instance in action for libel or slander, if the plaintiff alleges that the words complained of were used in a defamatory sense other than their ordinary meaning, he shall give

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1. Order 13 rule 14. The counter-claim is a cross-action.

particulars of the facts and matters on which he relies in support of such sense. Thus the essence of pleading is to facilitate the work of the court and to enable the parties systematize and anticipate their opponents. It is from the pleadings that one can isolate the circumstances that gave rise to the action and the cause of action. On the completion of pleadings, a case is deemed ripe for hearing and the parties or their counsel thereafter bargain for time to be set aside for trial. How quickly time is allotted depends on the work-load of the court, and the estimated time required to complete the hearing of the case.

The procedure in matrimonial causes is different. In the petition, the grounds for the prayer sought is already included. The Respondent, filing an answer may include a cross-petition. After all the ceremonies about filing are over, the petitioner or his/her counsel will ask the Registrar of the court to issue the "Registrar's Certificate"[1] to the effect that the case is ready for hearing. On the receipt of this, a Hearing Notice is issued to the parties ordering them to appear in court to fix a date or dates for hearing. Henceforth it experiences the same fate as all other civil matters.

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1. See appendix G for registrar's certificate.

The trial of any case begins when the plaintiff opens his/her case. Most cases are accompanied by interlocutory proceedings that is "any proceeding in an action after the service of the writ." They are dealt with before final judgment in a cause. The interlocutory proceedings may be initiated by way of Motion/Motion Ex-Parte. These applications may result from many factors. Non-compliance with a court order as in the case of inability to file pleadings as directed by the court. A defendant may apply to set aside service of the writ on the ground of some irregularity in the manner of service. An application may seek leave of court to amend any part of the summons and pleadings provided these shall be done before final judgment. The application may be asking that the matter in dispute be referred to an arbitrator. If there is any reason to apprehend any repetition of the defendant's unlawful act and that there is a probability that the plaintiff is entitled to relief, he may ask for an interlocutory injunction. The proceedings in the series of motions form bona fide part of the proceedings in any case. The decisions on interlocutory applications and the main cause form the judgment of the case except that interlocutory decisions are invariably offset by final judgment. The judgment may be in terms of money or

specific actions to be performed. If there is no appeal[1] against the decision, the successful party can proceed to reap the fruit of the judgment.

There are several ways by which the fruits of litigation can be reaped. The successful litigant can proceed by way of a writ of precipae or fifa to recover the value of the judgement/debt. This is directed against the movable property of the judgment/debtor. The writ can be obtained immediately after the judgment of the court except where the judgment/debtor had asked for a stay of execution. It is informative to say that an appeal does not amount to a stay of execution for the judgment/debtor/appellant must apply for a stay. If in spite of the execution against movable property the judgment/debt is not recovered, the judgment/creditor can take a writ against the immovable property. This cannot be done in the magistrates' courts, thus an application is made to the High Court for this order and thereafter the immovable property can be auctioned. This too can be obstructed by the interpleaders' summons which stipulates that the judgment/debtor has no absolute right to the property.

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1. An appeal is no barrier to execution. The judgment/debtor must ask for a stay of execution or the court of its own motion orders a stay.

The judgment/debt may still not be recovered. The judgment/creditor may proceed against the judgment/debtor by way of a judgment/debtor summons. The judgment/debtor is summoned to the court to prove that he is unable to liquidate the judgment/debt. The onus is however on the judgment/creditor to prove that the judgment/debtor has the money to pay but has refused to pay. If this is proved, the judgment/debtor is committed to prison for a specified period and the judgment/creditor is made to pay for his upkeep in the prison. The cost of maintaining the debtor in the prison is added to the existing judgment/debt which the erring debtor will be expected to pay after his discharge.

In case the three strategies of recovering judgment/debt fail, the judgment/creditor still has other remedies. He can proceed against a third party who is owing the judgment/debtor by a Garnishe order nisi whereby the third party is brought to court to be compelled not to discharge his obligations to the judgment/debtor but to discharge same to the judgment/creditor. This is usually done by an application in which the Garnishe is made a party.

In case all these techniques fail, the judgment/creditor seems to be left with no other remedy. It seems from the above that only the willing and able debtor can actually pay. Whether the debt is

immediately discharged or not the judgment/creditor shall continue to reap the fruit of his judgment. The procedure of interpleaders is a reflection of the concept of property ownership in any society. This may be joint ownership and familial ownership. The offence of a single person cannot be visited on a whole group except where the group are implicated by the act either implicitly or explicitly.

Appeal processes

Whether criminal or civil, appeals follow the same procedure. They are protests against the decision of an inferior tribunal and the grounds of appeal are already set down in the Notice of Appeal. On compilation of the Records of Appeal which includes all material evidence given at the lower court plus the exhibits in support, they are transmitted to the Appellate Court. However appeals are lodged against decisions of lower court within the statutory period set down for such. Appeal can be lodged with permission after the expiration of the period set down for it by law. Thus in normal circumstance, an appeal must be lodged within thirty days of the delivery of the judtment.

Usually no evidence[1] is ataken at the hearing of an appeal. Counsel usually base their arguments and counter-arguments on the records of proceedings, supported by legal authorities for their contention. The court, in turn, bases its decision on the points complained of and the result may be a confirmation of the lower court's decision wholly or in part, a reversion of same, wholly or in part, or a dismissal of the appeal in its entirety. The judgment of the superior court thus becomes the valid judgment until it is set aside by a superior court.

Summary

We have described in this chapter the processes and procedures involved in the judicial arbitration of cases. The procedures thus far epitomize the established principles which is very ideal. It is a systematic procedure which if followed may lead to the effectiveness of the adjudicatory processes. Non-compliance may produce ineffectiveness of the process.

Both the criminal and civil processes are fraught with problems arising from the legal systems and their environment. A strict

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1. Evidence may be adduced by special permission of the court to clear ambiguity.

adherence to rules and procedure are not necessarily conducive to the effective performance of judicial system since it attempts to tolerate details as against haste. The process also assumes that the operators of the system shall always adhere to the set-down principles without giving allowance for deviation which may result from other factors. In effect we are postulating that judicial processes in practice do not conform to the processes which the formal rules and procedures will lead one to expect. In the next chapter we shall discuss the factors which shape the actual judicial processes.

CHAPTER EIGHT

SOCIO-LEGAL FACTORS AFFECTING JUDICIAL PROCESSES AND PROCEDURE

In the preceding chapter we set out the processes and procedures involved in the adjudication of cases. We concluded by anticipating some gap between the theoretical adjudicatory system and adjudicatory system in reality. In this chapter, we will examine this gap and evaluate its effect on the judicial process.

We are setting as our main thesis that organizational interdependence may inhibit or enhance organizational performance. As it is difficult to determine the performance of an organization by a single factor, a multi-dimensional explanation is more meaningful and fruitful. For this purpose, we are postulating that it is not only the accomplishment of organizational goal that should be used to assess the performance of an organization even if the goal is not as nebulous as that of the judiciary and that other factors should be considered. It is often not realised that the effective performance of an establishment may not result from its very set-up alone but from its environmental stresses and strains.

The judicial scene has been conceptualized as "an arena where the poor and the rich battle and bargain" before a supposedly impartial umpire. The issues which the court has to decide are hatched outside the organization and submitted for judicial intervention. The judiciary has no way of influencing the general flow of cases into it and its control over their completion is not total. Individuals and organizations create problems for the judiciary to solve. How well this task is performed is a function of several factors which are the by-products of the matters that come for settlement themselves.

From our discussions in the preceding chapter, it is shown that all types of controversy are subject to judicial arbitration.[1] Thus, the scope of judicial functions is expected to increase concommitantly with increase in issues and controversies within a society. It is also expected that the presence of judicial personnel and judicial establishments in an area is likely to increase the propensity to litigate among the people. This may be illustrated by the interrelatedness of the distribution of staff in the magistrates' courts and the volume of work in the magistrates' courts of Western Nigeria. This is intended to measure the relationship between the personnel and

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1. Exceptions may be found in situations where the law excludes the intervention of the court e.g. the national youth corps decree as amended.

the scope of problems individual magistrates have to grapple with. It can also be hypothesized that the older an organization is in an environment the more people tend to use it.

TABLE 23

Relationship between size of personnel in the magistrates' courts of Western Nigeria and propensity to litigate: 1969 - 1973*

YEAR	Criminal cases filed	Civil cases filed	Total No. of cases (criminal and civil)	No. of judicial officers per period	Total No++ of working days per year	Average No. of cases per judicial officer per year	Average No. of cases per officer per working day
1969	5,593	2,675	8,268	24	268	334.5	1.3
1970	4,955	2,515	7,470	25	268	298.8	1.1
1971	3,912	1,698	5,610	23	268	243.9	0.9
1972	6,164	1,945	8,109	27	269	300.3	1.1
1973	6,392	3,275	9,667	26	268	371.8	1.4

* Source: Compiled by the author from Quarterly Returns of cases, Chief Registrar's office.

++ The number of working days is computed on the presumption that there are 52 Sundays in a year and that each officer will be on leave for 45 days. No allowance has been given for public holidays and sick holidays.

Since there is no appreciable increase in the number of judicial officers as well as in the volume of work, it is difficult to establish that increase in the number of judicial officers will be accompanied by increase in the volume of work. The only deduction one can make from this is that there is work for every serving officer. It could be argued that completion of one case in a day is enough work for a magistrate, however this is not possible. For instance, all the cases are not simply disposed of by admitting fault or guilt. Majority involve protracted litigiosity since they are invariably hotly contested. To the extent that the issues at stake are off-shoots of controversies which find their ways to the court because they cannot be settled without vigorous contest, they consume the time of the court.

TABLE 24

Comparison of contested and non-contested cases disposed of

YEAR	Criminal				Civil			
	Con-tested	%	Non-con-tested	%	Con-tested	%	Non-con-tested	%
1969	2,209	43.03	2,924	56.96	796	54.03	1,543	65.96
1970	2,460	47.38	2,731	52.61	705	28.75	1,749	71.25
1971	2,129	43.63	2,750	56.36	582	39.19	903	60.80
1972	2,621	46.19	3,053	53.80	927	45.21	1,123	54.78
1973	2,640	43.08	3,487	56.91	955	32.37	1,995	67.62

Source: Compiled by the author from the Monthly Returns of cases.

We have already said that the period it takes to complete a case depends on the nature of matters involved and the predisposition of parties to speedy trial. In table 24 above, it is shown that 43.03%, 47.38%, 43.63%, 46.19% and 43.08% of the criminal cases for the years 1969, 1970, 1971, 1972 and 1973 respectively were contested. Similarly 34.03%, 28.75%, 39.19%, 45.21% and 32.57% of all the civil cases disposed of for the same period were also contested. The so-called non-contested cases too consume time. For instance, the influx of fresh criminal cases usually called "overnights"[1] may take half the magistrate's day's work. It will not be correct to conclude that most of the cases coming to court are non-contested. The number of cases disposed of by a court therefore depends on internal and external factors. It is not easy to estimate the period it will take to complete a case, since the court scene is used for bargaining for use of time. There can be unforeseen events inhibiting the smooth running of the court processes. The court may be ready to carry on a case, the parties may not and the counsel may have other engagements in other places that are likely to disrupt the work of the court. Thus, a case set down for definite hearing may suffer adjournments times

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1. Overnights are fresh cases coming to the court for the first time for registration. They are first dealt with in the morning of every working day.

without number. An estimation of the period it takes to complete a case therefore is not usually borne out as extraneous matters may affect it.

The situation is much more complex in the High Court. As I said earlier, only important cases are brought before it and elaborate arrangements are made to ensure that justice is done smoothly and efficiently. Ideally a judge at the High Court cannot complete more than two cases in a month if only to maintain the high standard expected of this category of courts. The general notion about justice is "not how much that is done but how well it is done." As a superior court of record, the High Court like other superior courts are a citadel of learning for the inferior courts who must follow their precedents. In effect, the quality of their decisions must be of such a high standard that befits a court that is endowed with the power to guide other courts and interpret intricate issues. One can conveniently describe the High Court and other superior courts as "Research Bureaux." The judge is not concerned with the hearing of the cases only, he also takes down evidence verbatim in long-hand. Instances when hearing of cases take two to three days are not infrequent. In other instances, a case may be part-heard for two or more months without the parties being able to procure their witnesses. Another factor which makes

the work of the High Court hectic is that most of the cases heard are civil; and civil cases have the notorious reputation of being slow to mature. For instance, it was reported that "Ogbomosho wins 65 year old suit"[1] Such cases are many but it seems those who complain of delay do not perceive delay in civil cases as unbecoming. It seems these are condoned for nobody is deprived of his liberty. Similar problems also affect criminal cases even though the courts are more predisposed to speedy trial. In a case of conspiracy, a man was reported to be "tired after 31 months in cell"[2] The report adds:

> When the case was mentioned the court was told that an important witness in the issue was involved in an accident and was receiving treatment in a hospital.

These are incidents where a case could have been heard but for the forces beyond the control of the court. The length of time it takes to complete a case is therefore a matter for conjecture. The only thing that is certain about a case is when it is begun. The saying 'justice delayed is justice denied" may be inapplicable in the High Court situation. It appears that the High Court (like all other courts) is in a hurry to dispose of criminal cases except that they are taken quarterly.

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1. Daily Times. Sept. 13, 1973.

2. Daily Sketch. June 28, 1974.

TABLE 25

Number of judges and cases filed in the High Courts of Western Nigeria: 1969-1973

YEAR	No. of Judges	Total No. of civil cases	Total No. of civil appeals	Total No. of criminal cases	Total No. of criminal appeals	Total No. of all cases	Average No. of cases per judge per year
1969	13	441	239	128	82	890	68.46
1970	15	517	390	216	101	1224	81.6
1971	16	631	227	119	80	1057	66.01
1972	16	805	159	116	75	1155	72.19
1973	16	844	190	126	77	1237	77.31

Generally, most cases that get to the High Court are contested. The protracted trial results from the nature of cases which are for most of the time matters that are very important to the litigants or the public in the case of criminal cases. The table below shows that almost all the cases before the High Court are disposed of only after evidence have been adduced.

TABLE 26

Number of cases contested compared with number of cases filed in the High Court of Western Nigeria. 1969-1973*

YEAR	No. of Judges	Civil cases filed	Civil cases contested	Civil appeal filed	Civil appeal contested	Criminal cases filed	Criminal cases contested	Criminal appeal filed	Criminal appeal contested	Total filed	Total contested	Average cases filed and disposed per judge per year	
												filed	contested
1969	13	441 100.0	375 84.58	239 100.0	177 74.06	128 100.0	161 125.78	82 100.0	86+ 104.88	890 100.0	797 88.55	68.46	61.30
1970	15	517 100.0	286 55.32	390 100.0	141 36.15	216 100.0	127 58.80	101 100.0	69 68.32	1224 100.0	623 50.90	81.6	41.53
1971	16	631 100.0	483 76.55	227 100.0	207 91.19	119 100.0	120 100.84	80 100.0	74 92.50	1057 100.0	884 83.63	66.01	55.25
1972	16	805 100.0	709 88.07	159 100.0	165 103.77	116 100.0	101 87.07	75 100.0	75 100.00	1155 100.0	1050 90.90	72.19	65.63
1973	16	844 100.0	631 74.76	190 100.0	161 84.74	126 100.0	142 112.70	77 100.0	69 89.61	1237 100.0	1003 81.08	77.31	62.69

* Source: Compiled by the author from Monthly Returns of Cases from the Chief Registrar's office, High Court, Ibadan

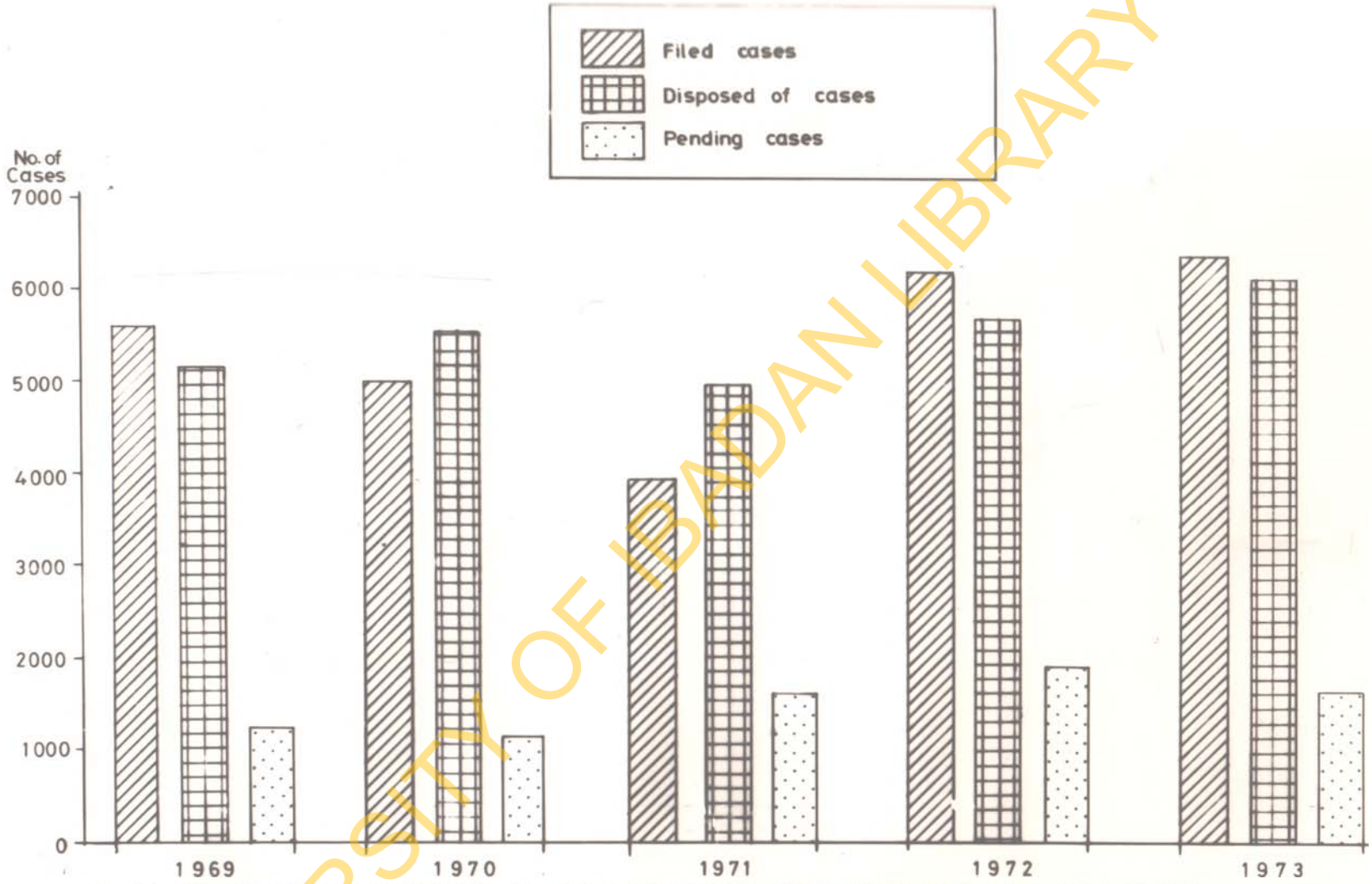

Fig.14. Graphical presentation of criminal cases filed, disposed of, and arrears by year in the magistrates courts of Western Nigeria

A comparison of table 25 with table 26 may indicate some differences in the frequency of cases filed. This is so because some cases were pending at the end of 1968. To get the number of cases pending at the end of 1968, we can add cases disposed of and pending, and subtract cases filed.

It will be erroneous to measure the performance of the judiciary by the number of cases in arrears. It is equally untenable to explain defects in performance by the non-committedness of the personnel to work. The frequency of cases filed may surpass those completed. This does not mean that efforts are not being made to reduce the arrears. This can be demonstrated if we look at the frequency of filed cases, frequency of completed ones and the arrears.

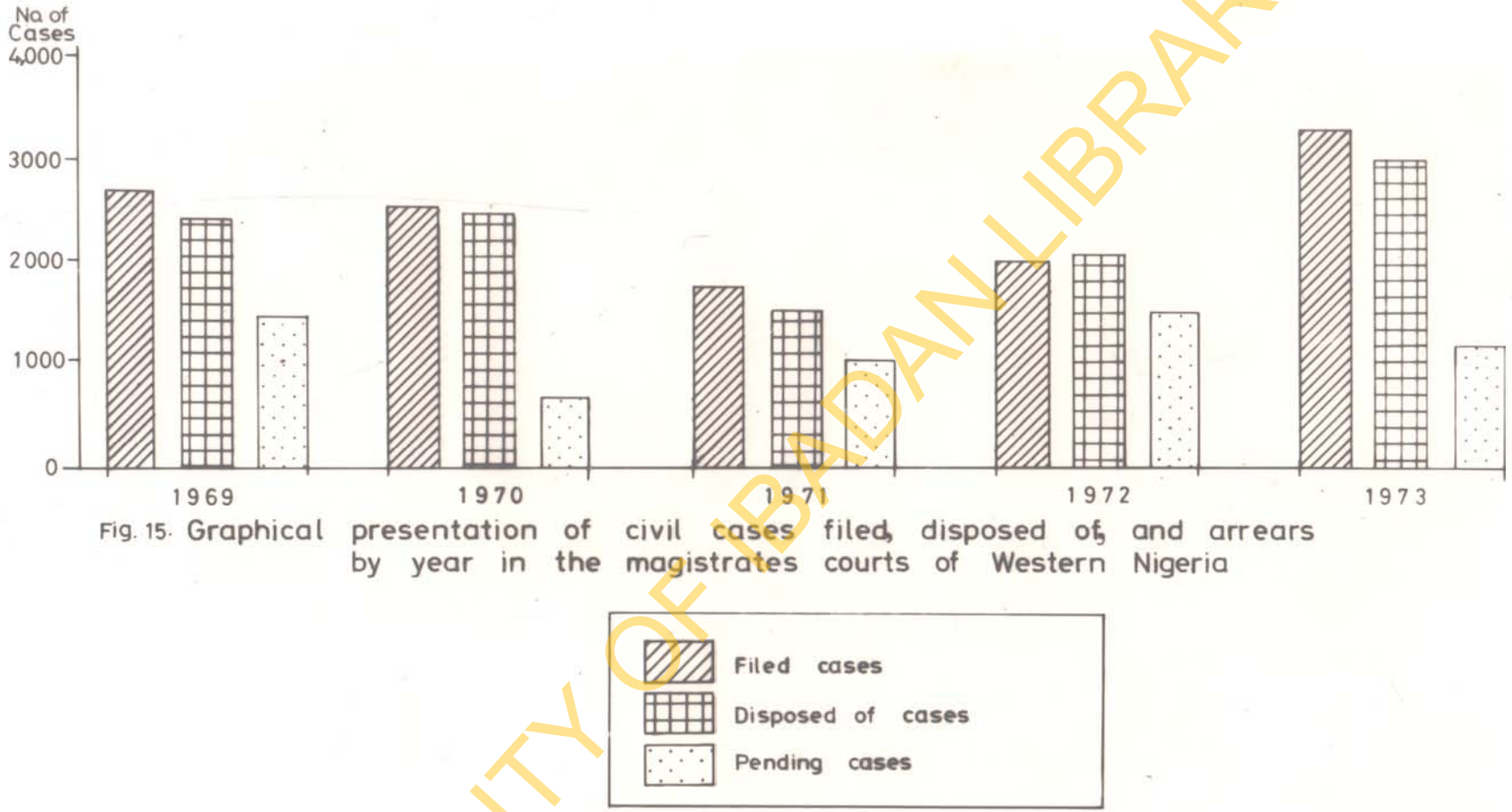

Fig. 15. Graphical presentation of civil cases filed, disposed of, and arrears by year in the magistrates courts of Western Nigeria

Figure 14 points to the fact that the frequency of cases coming before the courts is uncontrollable in the sense that social life outside the court determines it. It is not possible for the court to determine the frequency and the rate at which cases are filed. External factors are responsible for the phenomenal rise and the fall in the frequency of cases filed curve. One would have expected a steady rise in the number of cases filed since the society is increasingly becoming more turbulent. Both the arrears and the c ses filed are expected to rise together but while the arrears increases, cases filed oscilates. This seems unusual since the cases disposed of increase steadily. The same can be said of the civil cases.

Many factors are responsible for the increase shown in the frequency of cases filed. Influx of cases can result from several factors among these are structural and technological changes in the society. This study has focused on explaining the factors that favour the increase in the volume of work in our courts. Our respondents have adduced several reasons and these are tabulated below.

TABLE 27

Suggested factors favourable to increase in volume of work in court

Administrative Decadence*	Enlightenment and Civilization	Social Disorganization	Unemployment	Moral Laxity+	Don't Know
35 (19.13%)	79 (43.17%)	49 (26.78%)	9 (4.92%)	11 (6.01%)	12

* This refers to both intraorganizational as well as interorganizational structures and relations. Mentioned are cases of insufficient staff, arbitrary transfer when cases are in progress, shortage of stationery as well as uncomplementary relations among the court, the police and the bar. In effect, the increase here is due to slowness of process.

\+ Moral decadence relates to the existence of unwholesome society whereby mal-integration and maladaptation produce inordinate ambition resulting from selfish motives. This may also result from defective socialization processes.

The reasons are suggested by 170 (93.41%) of our respondents while 12 (6.59%) are silent on the matter. The categorization of the reasons is only for analytical purposes since the reasons are inter-related in several respects. It is therefore our view that enlightenment and sophistication will encourage litigation more than social disorganization. In fact social disorganization itself is an extension of enlightenment for it follows directly from the wave of rapid social change which is enlightenment in another cloak. Moral decadence is a by-product of social disorganization. This also results from the laxity that has accompanied rapid social change by way of industrialization, modernization, urbanization and acculturation. Administrative inadequacies may result from a number of factors which we have already enumerated. The organization of the police, the interrelatedness of the Police and the Director of Public Prosecutions' office, and the relationship of the two with the court, the lawyer/client relations and their relationship with the court and the very set-up of the court are sources of delay in court processes and thereby result in congested cause list. Unemployment is related to commission of crime especially crimes against property. The more crimes that are committed the more likely is increase in number of cases, and the heavier the volume of work in the court. The increase in the volume of work may be a measure of the intensity of police work in combating crimes.

In pursuit of this point a number of suggestions were made and the respondents were asked to react to them. The respondents are distributed on the items as follows:

TABLE 28

Social change and increase in litigation

Factors responsible for increase in litigation and increase in work of the court	Responses			
	False	%	True	%
People now have greater recourse to court than hitherto	1	(0.5)	181	(99.5)
Most of the cases are frivolous and trivial	115	(63.19)	63	(36.81)
The complexity of modern society encourages increased litigation	6	(3.3)	176	(96.7)
Most of the cases involve matters that cannot be settled outside court	8	(4.4)	174	(95.6)
The traditional way of adjudication has failed to cope with modern situation and this has resulted in mass litigation	17	(9.34)	168	(92.31)
The failure of traditional court is a product of the weak nature of kinship ties	44	(24.18)	138	(75.82)

From the reactions to the suggestions above it can be argued that increase in litigation is a reflection of the changes in social structure. In a society characterized by acquisitiveness and individualism, these reactions are not unexpected since the traditional integrationist tendencies are fast fading out. There are several reasons for this. There is greater competition for the use of family property which are stagnant in size while the family itself grows. The town population is increasing as a result of natural increase and migration. Natural increase results from the fact that the number of people who are born exceeds the number that die and this is a result of advanced medical care. Migration results from the replacement of traditional modus viviendi by an alien one. Thus those who would have accepted the maxim "be the keeper of your brother" are actually making efforts to tear apart their own lineage by unending court action against members over family property. Cases in which members of the same family have taken court action against their members are not uncommon.[1] Land, which used to be an inalienable commodity has become commercialised. Many more people are getting into business transactions with the hazards of loss and fraud. The result is that

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1. 1965 Nigerian Monthly Law Reports. p.136. "Sule Ogunade v. Sabina Ogunade" is typical.

several people can invest their money on a parcel of land - with the inevitable consequences of protracted litigation. The phrase "buy land and buy a law suit" will be an apt description of land deals that are coming to dominate both the urban and rural scene. Generally, more and more people are now getting involved in transactions that demand physical movements with the accompanying hazards to life and health. All these are by-products of developments which accompanied migration, education, economic aspiration and changes in style of life. The presence of modern government has also encouraged influx of people of diverse culture and outlook into urban centres where litigation is most pronounced. The urbanite has been aptly described as "a confused person torn apart by multifarious handicaps in his national environment."[1]

The contribution of Western education to this trend cannot be under-estimated. Cases of Harbeas Corpus, certiorari and Prohibition etc. are all modern phenomena which the new types of relationship have brought in its trail and it is also a manifestation of social and political awareness. They all result from the guarded fundamental human rights which everybody, especially the educated, have come to cherish. People are getting more and more involved

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1. Okin, T.A. The urbanized Nigerian(New York). Exposition Press (1968) p. 32.

in politics and governmental activities. The government too is increasingly getting involved in the life of the citizen. All these have consequences for the judiciary and judicial activities in terms of wider spheres of interaction.

The factors enumerated above also account for the variation in the distribution of cases. In a large city such as Ibadan, which is the State's major industrial centre, the seat of government, major communication centre, the type and nature of cases that come up for arbitration cannot be compared in terms of type and nature with those in Ado-Ekiti which is less urban and less industrialized, than Ibadan. The differences between urban and rural social structures are reflected in the type and nature of cases.

A selection of the cases that are filed in certain judicial divisions have been categorized according to the type of cases in order to show the differences in the type of cases filed and the social set-up in the judicial divisions. We have also shown the ages of the courts in these areas to establish that increase in cases is associated with the age of the courts. This is done on the assumption that the age of a court may influence the use of it, and that the types of cases will reflect the type of social and economic involvements in the particular area. It will also help us to establish the level of social awareness among a people.

TABLE 29 (a)

Distribution of civil cases by types and nature of matters involved, and the age of courts in selected judicial divisions 1969 - 1973

Ibadan Judicial division. 1969-1973. Population of the area: 1, 657, 990 (1963 census)

Year Court Established	Year to which data relate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Administrative+ matters	Land Acquisition
1955	1969	281 100.00	57 26.15	113 51.83	26 11.93	12 5.5	2 0.92	8 3.67
	1970	275 99.99	88 32.00	102 37.09	56 20.36	21 7.64	4 1.45	4 1.45
	1971	291 99.99	105 36.08	124 42.61	43 14.78	12 4.12	6 2.06	1 0.34
	1972	295 100.00	110 37.29	141 47.80	31 10.51	7 2.37	5 1.69	1 0.34
	1973	377 100.00	105 27.85	213 56.50	46 12.20	9 2.39	4 1.06	0 00
Total	1969-73	1456 100.00	465 31.94	693 47.60	202 13.87	61 4.19	21 1.44	14 0.96

Source: Compiled by the author from Monthly Returns of cases.

TABLE 29(b)

Abeokuta judicial division. 1970-1973. Population of the area: 974, 886

Year Court Established	Year to which data relate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Land Acquisition
1955	1970	59 99.99	33 55.93	19 32.20	6 10.17	0 00	1 1.69
	1971	89 100.00	52 58.43	23 25.84	8 8.99	2 2.25	4 4.49
	1972	78 100.01	47 60.26	22 28.21	5 6.41	0	4 5.13
	1973	88 100.00	50 56.82	29 32.95	5 5.68	3 3.41	1 1.14
Total	1970-73	314 99.99	182 57.96	93 29.62	24 7.64	5 1.59	10 3.18

Source: Compiled by the author from the Monthly Returns of cases.

TABLE 29 (c)

Akure judicial division. 1970-1973. Population of the area: 351,158.

Year Court Established	Year to which data relate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Land Acquisition
1960	1970	22 100.00	10 45.45	9 40.91	3 13.64	0 00	0 00
	1971	28 100.00	18 64.29	8 28.57	2 7.14	0 00	0 00
	1972	34 100.00	8 23.53	20 58.82	5 14.71	1 4.00	0 00
	1973	25 100.00	8 32.00	12 48.00	4 16.00	1 4.00	0 00
Total	1970-73	109 99.99	44 40.37	49 44.95	14 12.84	2 1.83	0 00

Source: Compiled by the author from Monthly Returns of cases.

TABLE 29(d)

Ijebu judicial division. 1969-1973. Population of the area: 50,128.

Year Court Established	Year to which data relate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Land-Acquisition
1963	1969	29 100.00	6 20.69	18 62.07	5 17.24	0 0.0	0 0.0
	1970	36 100.00	7 19.44	26 72.22	1 2.78	1 2.78	1 2.78
	1971	69 100.00	27 39.13	25 36.23	12 17.39	4 5.80	1 1.45
	1972	59 99.99	21 35.59	30 50.85	5 8.47	2 3.39	1 1.69
	1973	67 100.00	21 31.34	36 53.73	6 8.96	3 4.48	1 1.49
Total	1969-73	260 100.00	82 31.54	135 51.92	29 11.15	10 3.85	4 1.54

Source: Compiled by the author from Monthly Returns of cases.

TABLE 29 (e)

Ekiti judicial division. 1969-1973. Population of the area: 1,729,553

Year Court Established	Year to which data relate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Land Acquisition
1967	1969	24 100.00	7 29.17	10 41.67	7 29.17	0 0.0	0 0.0
	1970	24 100.00	10 41.67	8 33.33	6 25.00	0 0.0	0 0.0
	1971	26 100.00	13 50.00	8 30.77	4 15.38	0 0.0	1 1.85
	1972	37 99.99	9 24.32	24 64.86	1 2.70	0 0.0	3 8.11
	1973	31 100.01	14 45.16	13 41.94	3 9.68	0 0.0	1 3.23
Total	1969-73	142 100.00	53 37.32	63 44.37	21 14.79	0 0.0	5 3.52

Source: Compiled by the author from the Monthly Returns of cases.

TABLE 29(f)

Oyo judicial division. 1969-1973. Population of the area: 2,143,316

Year Court Established	Year to which data relate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Land Acquisition
1968	1969	37 100.00	13 35.14	11 29.73	5 13.51	8 21.62	0 0.0
	1970	34 999.99	18 52.94	11 32.35	3 8.82	2 5.88	0 0.0
	1971	33 100.00	17 51.52	12 36.36	2 6.06	2 6.06	0 0.0
	1972	43 100.00	23 53.49	11 25.58	6 13.95	1 2.33	2 4.65
	1973	40 100.00	10 25.00	18 45.00	4 10.00	2 5.00	6 15.00
Total	1969-73	187 100.01	81 43.32	63 33.69	20 10.70	15 8.02	8 4.28

Source: Compiled by the author from the Monthly Returns of cases.

TABLE 29(g)

Ilesha judicial division. 1971-1973. Population of the area: 481,720.

Year Court Established	Year to which data ralate	Total No. of cases filed	Land matters	Debt/ damages resulting from contracts and torts	Divorce and related matters	Prerogative* orders	Administrative+ matters	Land Acquisition
1971	1971	31 100.00	5 16.13	21 67.74	5 16.13	0 0.0	0 0.0	0 0.0
	1972	35 100.00	12 34.29	17 48.57	1 2.86	2 5.71	3 8.57	0 0.0
	1973	40 100.00	4 10.00	29 72.50	3 7.50	2 5.00	0 0.0	2 5.0
Total	1971-73	106 100.00	21 19.81	67 63.21	9 8.49	4 3.77	3 2.83	2 1.89

Source: Compiled by the author from the Monthly Returns of cases.

* These are cases involving the liberty of the citizen. They are initiated with a view to obtaining judicial relief cloaked under the prerogative writs of certiorari, prohibition, mandamus and quo warranto. All these writs are applied for in the High Court. These are also cases in which judicial relief is sought.

\+ These are cases on estate matter whether the deceased died intestate or not.

Tables 29 (a-g) show that increase in the number of cases may have nothing to do with the size of the population of an area. The rate of litigation in our selected Judicial Divisions does not support the argument that a large group is invariably more disorganized than a small one since the mechanism for social control will be weak as a result of the superficial, transitory and heterogeneous type of relationship. Truly, individualism usually dominates large groups, it does not seem to influence whether they will resort to litigation. They probably have other means of settling their disputes. What is borne out by Tables 29 (a-g) therefore is that the type of cases that are litigated in an area is related to the nature of socio-economic life of the people. For instance Okin[1] has described an urban social life as follows:

> The African city's social standards are nowadays becoming highly demanding. They tax the patience, the honour, the prestige, of the individual urbanized African severely. His employment at a better wage in the city is almost completely negated by social demands, with the result that he finds himself trapped in a continual, never-ending struggle to own his own shelter, improved household furniture, equipment et cetera.

From Tables 29 (a) - (g) and from this statement we can confidently assert that the most industrialized or commercialized area is

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1. Okin, T. op.cit. p.34.

likely to have the largest number of cases apart from the possibility that the size of the population may influence the increase. It is also obvious that in terms of type, the most commercialized and most politically activated area is likely to have large number of cases resulting from contracts and torts. A large number may involve claims of debt. For instance, the Ijebus and Ijeshas are reputed for their business activities and consequently most of the cases that are filed in these areas are claims for breach of contracts or damages. (See Tables 29 (d) and (g). The case of Abeokuta, an ancient town with enormous number of educated people is understandable. The rate of industrialization is extremely slow because the city is located midway between Lagos and Ibadan. Instead of developing the city to an enviable position of high industrialization, the people tend to drift to these two big cities - which are centres for politics, business and citadel for social activism. They visit their homeland on weekends when real life returns to the place. In a situation like this, the most commonly litigated matters is land, because the people hold tenaciously to the traditional values attached to land. The fact is that they are totally detached from home-involvements and consequently use land as a connective link with their fatherland. Since they have most of their fortune elsewhere their interest in the land at home is a form

of security as well as a legacy for posterity. Ownership of land does not involve any investment except where the owner is an alien on the land in which case he has to pay as rent a fee on the land depending on the land tenure system in the area. Because of their long absence from the town, it is possible for dishonest land brokers or any member of the family domiciled in town to sell their land without reference to the other members of the family. Commercialization of land may be a substitute for industrialization and a huge profit can be made on land without any visible investment. Increased monetization of economy made land alienable and therefore a ready-made commodity for acquisition of wealth. Consequently, the all-important concept of communal ownership of land becomes vague and hardly invoked except for personal gains and aggrandisement. The tendency therefore is inclination to individual ownership of property as the modern concept of family tends to include the man, the wife and his children. Oyo is another traditional town similar to Abeokuta in that its nearness to Ibadan is a factor responsible for the slowness in the pace of industrialization. Land disputes also dominate its litigiosity. And since commercialization and materialism as well as individualism are gradually characterising these areas, it is hoped that the predominance of land disputes will soon be challenged. For now, however, land is the most important object that stimulate litigation.

The distribution of matrimonial causes confirms our expectation that in advanced societies where emphasis is on individual survival, social cohesion will be at its lowest ebb. Thus, the sacredness with which traditional society used to hold marriage has disappeared. Dissolution of marriage no longer affects two families as in the past, it is now the problem of the spouses. The pleader who has lost in litigation is not disgraced, his/her honour is not put in question. From Table 29 (a-g) it is shown that the distribution falls gradually from Ibadan highest number to Ilesha lowest. Those involved in divorce suits are usually the sophisticated highly educated people who are married according to statute and are conscious of their rights. Most of such marriages might have been contracted without the traditional familial involvement and since marriage is based on mutual agreement, its dissolution often results from mutual agreement. A case of assertion of extreme freedom in matrimonial affairs was reported in the defunct Morning Post.[1] The report says:

> An 18-year old girl - Hadizatu Tazzalla - has instituted a legal action against her mother Mallama Marigo . . . In the suit, Tassalla is praying the court to restrain the mother from unduly interfering with her marriage to Zaria N.A. Police Corporal Mallam Abas . . . - She further asked the court to declare Mallam Abbas as her rightful husband.

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1. Morning Post. 4th October 1965.

Thus, it can be seen that modern trend is towards total freedom of action and liberalism in the choice of spouses. It stands to reason therefore that if non-interference is desired in contracting marriage unions, one would expect that no matter what bold attempts are made, will save the marriage from hitting the rock. Ibadan being the largest, the most socially activated, the most cosmopolitan and urbanized, has the largest share of the calamity of broken marriages.

As the type of cases is valuable in explaining the nature of social and economic life, it is also helpful in determining the length of time it takes to complete a case. The most problematic of all civil cases is the land matter and is most affected by external forces than the others. When pleadings are ordered in a land case it usually takes months to comply with the order because more often than not, a survey plan is needed and it is not done without difficulty. The difficulty arises because the matter of land is very touchy among a people for the quantity cannot be easily increased. The disputants may resort to violence to frustrate the efforts of the surveyor or the other side to the case. Natural forces such as rain or tornado may disrupt the survey work. Apart from the surveying, it is always difficult to get money to finance land litigation in that the monetary value of the land depends on the area of its location. In spite of this,

it is still strongly contested because of the traditional attachment to land and value which land has come to have in modern society. Witnesses to the case may be members of the same family and may find it difficult to procure witnesses among their members for the fear of losing face with whoever wins in the litigation. The influx of land cases in any judicial division therefore results in acute congestion.

As Table 29 (a-g) shows, the presence of a court in an area may encourage litigation. Thus, the longer this establishment is in an area, the more the people are aware of its purpose, and the more they are likely to make use of it. Ibadan and Abeokuta judicial divisions were inherited from the old Supreme Court structure, hence these judicial divisions have behind them over twenty-five years of existence. This long existence definitely has an influence on the use people make of the courts especially that they have the highest number of cases filed during the selected period. It may be argued that the High Court cases do not exhaust all cases and therefore cannot be used as a base for measuring level of litigiosity of a people. It could also be argued that civil cases too do not exhaust all cases and generalization cannot be based on them. On the first point, we say that the High Court, being a court of unlimited jurisdiction, can entertain all cases unlike customary and magistrates' courts whose jurisdictions

are limited. We are therefore contending that the civil cases in the High Court will give an almost correct representation of "litigiosity" rate in a community since they will be cases initiated by the individuals having considered the benefits of litigation and who feel strongly that a right has been violated and there is need for redress. On the second point, it can be argued that criminal cases only relate to people's rate of criminality; the accused persons have no way of influencing which court the cases should be heard since this is statutorily provided for. Thus frequency of criminal cases cannot measure the level of litigiosity unlike the civil cases which are expressions of the individual's willingness to assert his right.

Ilesha, the youngest of the selected judicial divisions, established only in 1971, has the least number of cases. This seems to buttress our argument that long establishment of court in certain areas encourages litigation. If the trend for Ibadan and Abeokuta judicial divisions is accepted as normal, it is hoped that the longer the court stays at Ilesha, the more people will take advantage of it. The case of Akure (established in 1960) seems to deviate from our expectation because it is third oldest in age and yet it has the second least number of cases. The reason for such inverse relationship is that Akure judicial division has suffered diminution in size because Ado-Ekiti

(established 1967) and Ondo (established 1968) judicial divisions were carved out of it.

In attempting to show this relationship, it is not intended to mean that presence of courts forments trouble. The point we are establishing is that nearness of courts encourages and facilitates assertion of right. Our claim is that short distance from the litigant, and easy access to the court increase the propensity to litigate. If transportation is easy, many who would have slept over their rights may resort to litigation. It is a common saying that "it is easier to begin litigation than to come out of it." Nearness to courts invariably leads to the invocation of this maxim because several would have started a court action before realising the futility of the exercise.

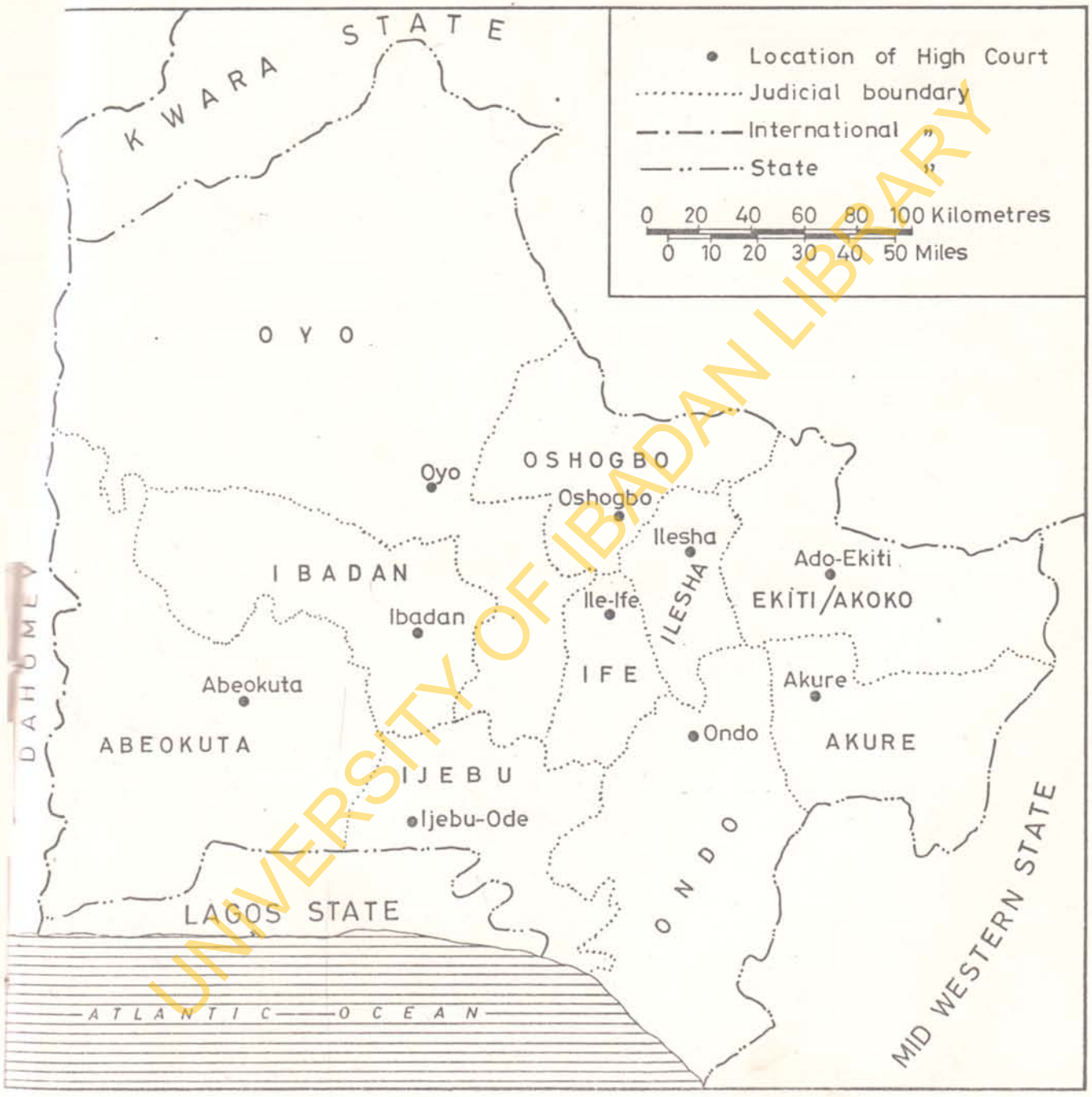

Fig. 16. Western Nigeria: Judicial Divisions, 1973

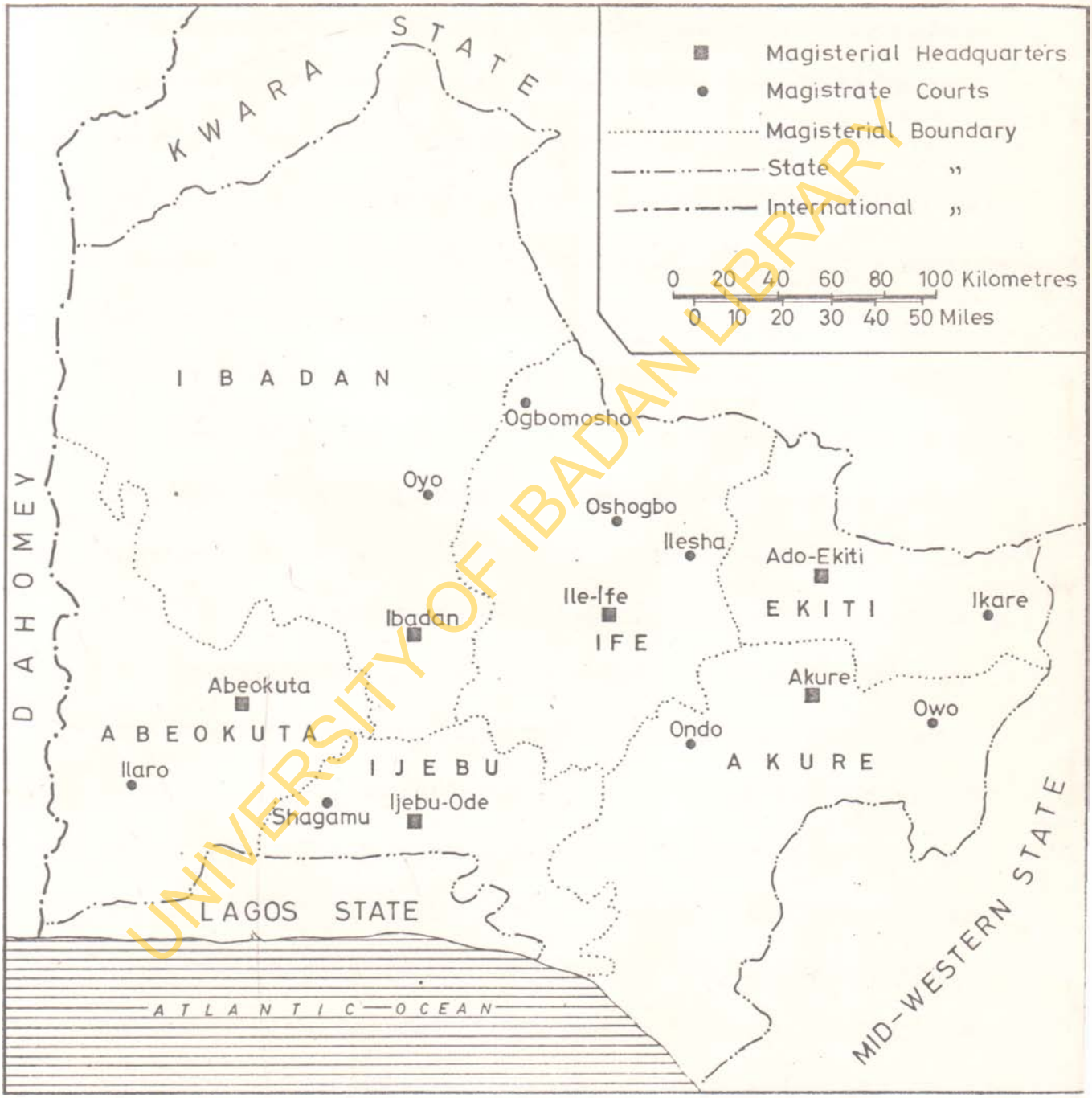

Fig. 17. Western Nigeria: Magisterial Groups, 1973

In fact, in establishing new courts, these factors of nearness and "convenient locations" are forces that determine the location of courts in addition to variables like the volume of work and the presence of other law enforcement agencies. Most of the courts are stationed in strategic places all over the state and invariably at the important administrative headquarters which most often are traditional capitals for the inhabitants of the judicial division and magisterial districts. And where no such establishment exists, and the people feel seriously the need for one, request for the establishment of courts are buttressed by the question of distance from the existing ones. Because of these human factors, communities have created the impression that courts are amenities that should be provided for everybody.

In spite of this system of distribution, the size of work in an area determines whether courts are to be established in it or not because the government is not interested in establishing courts for courts' sake. The question of distance to the court seems to have been underplayed in addition to other problems which inter-organizational relations may create. Furthermore, long distance may encourage justice by the sword or "jungle justice." The litigant from Shaki, a distance of about 139 kilometers to Oyo; Idiroko, about 125 kilometers to Abeokuta; Ajowa-Akoko, about 96 kilometers to Ado-Ekiti

or Kishi, about 174 kilometers to Oyo would find it highly inconvenient to travel to the various court centres only to be told that the cases cannot go on. However, one cannot say that courts should be established in every town or city, but it is important that human suffering should be reduced. Justice obtained through hardship negates the whole notion of justice itself. It is in recognition of this need that communities tend to regard courts as essential service that should be provided for them. This seems to be recognized by the government itself for on many occasions, government functionaries are said to have made statements in favour of making justice available to all. According to the Daily Sketch the President of the Court of Appeal was reported to have said:

> The Western State judiciary is to be given a big boost soon in the government's plan to bring justice within the reach of the people and lessen the burden of judges. . . Mr. Justice Madarikan explained that efforts were being made to provide every division of the State with adequately equipped courts and libraries to enrich the legal knowledge of both judges and lawyers. The President added that the government was struggling to bring about an atmosphere conducive to sound justice without putting unnecessary strain on either the Bench or the Bar. He said the need for modern and well equipped courts in the State was chiefly necessitated by the public's growing desire to use the court as the final arbiter in disputes.[1]

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1. Daily Sketch. December 18, 1973.

Similarly in the Budget Speech of the Government of Western State of Nigeria 1972/73, the Governor said, inter alia:

> Adequate facilities will continue to be provided for the Ministry of Justice and the Judiciary to enhance their services in their protection of private and public interests and the dispensation of justice to all and sundry without fear or favour . . . the two arms of the judiciary - Court of Appeal and the High Court of Justice - will between them spend £450, 000 (₦900, 000) on their recurrent services . . .[1]

In another Budget Speech, the Governor of Western State of Nigeria said:

> . . . two new customary courts in Oshun North-East and Ijesha North Divisions had to be established during the last financial year in an effort to bring justice nearer to the people . . .[2]

Emphasis seems to be on reducing human suffering, and in particular the sufferings of the judicial functionaries. Another deduction from the statements is that the government appears to have the welfare of the people in mind and gives the impression that this is the overriding reason for establishing a court. This may be correct as a matter of policy, the government still has its criteria of establishing courts if the qualities of courts are considered. It is true that almost all villages have a customary court, but the quality of justice obtainable therein is regarded as substandard.

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1. Brigadier Oluwole Rotimi. Budget speech 1972/73.
2. Brigadier Oluwole Rotimi. Budget speech 1974/75.

There is abundant agitation for establishment of courts by some communities all over the state. Some are politically motivated, others are not. For instance when the Iwo people were grouped in Ife magisterial district in 1955,[1] they petitioned against it on the ground of distance and the need to have a court stationed at Iwo. In the event of failure they opted for a merger with Ibadan Magisterial District which is nearer and more direct. The community also argued in support of their agitation that Iwo is larger in area and population to have a court and is prepared to make accommodation available for the court and staff. The request was turned down on the grounds that there were few cases and no police establishment. Similar agitations have been recorded for Ado-Ekiti, Ondo, Ikare and Ikire. Some have been successful, others are yet to.

The case for Ikire makes an interesting reading. In a letter dated 1st December, 1966, the Ikire community requested that a court should be established in Aiyedade District for the following reasons:

(a) That Aiyedade area is now a police state (sic). That is to say a Nigeria Police station having about 30 Nigeria Police constables (including officers to the rank of Deputy Superintendent of Police) has been sited (sic) in the area.

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1. File No. CRW/223. Magisterial district. Matters relating to.

(b) That the Nigeria Police's sphere of work and station extends to three main District Areas - Aiyedade District Council, Egbedore District Council and Orile-Owu District Council areas.

(c) That considering this extensive area of work on which this Nigeria Police Station (sic) is covering and judging from the police record of cases one is tempted to think of the strenuous journey to Ife or Oshogbo or any other place from Aiyedade District before a case can be brought to a Magistrate's court by the Nigeria Police.

(d) That Aiyedade District has been long overdue for such a court of law in view of the advances (sic) community now existing peculiar to court of law and which are not (of) customary nature in such a way as to be handled by customary courts which (is) the only court now existing in the area to grade 'B' level.*

A significant point in this letter is the emphasis on the presence of the police. It will be remembered that one of the reasons for turning the request of Iwo community down is the absence of a police post. Ikire community also made advancement in civilization a ground

* At the time of writing, the request has not been granted.

for protest, because it is perceived as being incompatible with social advancement to have just the customary court which is deemed traditional. The English-type court is deemed a worthy amenity that is worth struggling to have in a community. Thus a combination of distance, cultural advancement and the presence of other law enforcement agencies are important things which the officials as well as the community usually consider in addition to the volume of work before courts are established.

In fact, it appears people do not see any wrong in the demand for this institution. It is the argument that if a community seriously feels the need for one, they should ask the government. Respondents in this study were asked to react to the question: "Should a community agitate for the establishment of courts in its area?" The response is tabulated below.

TABLE 30

Community and need for courts

A community should agitate for establishment of court		A community should not agitate for establishment of court		Indifferent	
	%		%		%
130	71.43	50	27.47	2	1.1

N = 182.

The respondents gave a number of reasons for their answers. Some of these are multiple and distributed as below.

TABLE 31

Reasons* why communities should agitate for establishment of court

Exercise of civic right		Reduction of human suffering		Insurance to speedy trial		Insurance against a breakdown of law and order	
	%		%		%		%
38	23.17	77	46.95	16	9.76	33	20.12

N = 130.

* Some of the respondents gave multiple reasons.

Almost about 50% of the respondents who cared to say something feel that absence of court in a community which really needs it would lead to untold human suffering. This is followed by the more sentimental and emotionally charged answer of exercising civic rights. The maintenance of law and order is also important for the purpose of locating court. Implicit in this is that court can help restore normalcy in a situation of serious crisis or that its very presence may constitute a check to the criminal tendencies of a people. The factor of haste is also considered vital in this respect. The 52 respondents (28.5% of the total respondents) include those who are of the opinion that courts

bring no good to anybody. This group may have been influenced by the general notion that courts bring horror to people rather than pleasure.

In order to understand this social aspect of litigation, respondents were asked to spell out what they think should determine location of courts. The following points were mentioned.

TABLE 32

Factors* that should determine where courts are to be established

Volume of work and wave of crime	Population and size of area	Availability of basic amenities	Presence of other law enforcement agencies	Total No.of responses
126	80	24	8	238
52.94	33.61	10.08	3.36	99.99

N = 130

* Some respondents gave multiple answers.

The volume of work can result from a number of factors such as propensity to litigate which is a by-product of the economic and social activities of the people. The political climate of the time may also determine whether the court in an area is flooded with cases or not. Wave or crime on the other hand, can result from a situation of normlessness and political impasse. These two factors seem to

complement each other. The emphasis here seems to be that the presence of a court would help to restore normalcy to crimogenic area. It is also deducible from the facts shown by Table 32 that a large population is likely to favour increase in litigiosity and high incidence of crime. The respondents also feel the presence of basic amenities could be considered but it should not be the overriding forces in determining whether a place should have a court or not. The presence of other law enforcement agencies is also a factor in determining whether or not to establish a court in an area. This is a recognition of the interrelatedness of the various law enforcing organizations. The presence of a police post and presence of legal practitioners may stimulate and facilitate the establishment. More often than not, agitation for courts are begun by legal practitioners. Our deduction from this is that a court appears to be one of the institutions any large community cherishes and that its non-availability is likely to provoke agitation. The court is gradually being regarded as an essential amenity for it is a symbol of importance to the community which has it. Although it is not a political instrument, people tend to feel that attendance of court sessions in another area is a sign of subordination to such town.

Another constraining factor on litigation is the financial position of the litigants which is not always conducive to the smooth functioning

of the system. Not all the people that are wronged can seek redress in law courts because of the financial implications. It is only in criminal cases that financial position does not really influence whether one goes to court or not for the accused has no choice in the matter. It however determines whether a lawyer is engaged or not. In civil matters, financial conditions is a force inhibiting/enhancing compliance with court's orders most of the time. Not infrequently, lawyers beg leave of court to withdraw from cases because their "instructions are not perfected," that is professional fees are not paid.

The importance of the financial factor derives from the very structure of our court system. There is hardly anything one can process in the court without a fee.[1] For ordinary applications for bail in a criminal case, an accused person requires the services of a lawyer. The preparation of affidavit needs a lawyer and to argue one's case, the presence of a lawyer puts one at an advantage. Thus

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1. Even court lists are being sold in some courts. The Daily Times September 24, 1974 reported that "over 300 legal practitioners and litigants who stormed the Lagos High Court registry yesterday to collect lists of court cases for the week met disappointment as a result of non-availability of the lists . . . During an investigation, it was discovered that a court list is now to be sold for 10k a copy, unlike what obtained in the past where court list was given lawyers and litigants free of charge. The Chief Registrar of the court said that the scarcity of the court list was due to shortage of stationery.

it can be seen that the judicial processes lean so heavily on the activities of lawyers. And for every paper filed in the court, one is expected to pay some fees according to the prescription of the Rules of Court. Thus money seems to be the passport to all legal controversies in the court. If success is to attend litigation, one's ability to engage a good lawyer; comply promptly with orders and to carry one's witnesses to court when required to do so is invaluable. It would however be erroneous to conclude that all litigants are wealthy. In recognition of this, the rules of court provide for the system of in forma pauperis[1] (This method of financing litigation is hardly used since not many people are aware of its presence apart from the fact that the procedure for securing its use is problematic.

Litigants are aware of this financial involvement and have on several occasions, complained. On the sale of court list mentioned above, a litigant was reported as saying:

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1. Order 24 rules 1-9 of the High Court civil procedure rules. Rule 1 stipulates that the court or a judge may admit a person to sue or defend in forma pauperis except in bankruptcy proceedings if satisfied that his means do not permit him to employ legal aid in the prosecution of his case and that he has reasonable grounds for suing or defending as the case may be.

> This type of development is very embarrassing. It is strange that court list should now be sold to us. To obtain justice is becoming more expensive in this country. You have to secure the services of a legal practitioner; and now you have to pay for a court list to be able to ascertain where your case is coming up.[1]

As it is not possible to determine the income of most litigants because they are invariably not all employed on salaried jobs, there is generally no need to inquire about the income of litigants except in cases where income is the issue to be arbitrated upon. The most generally required information is about the job a litigant does. Because of the paucity of information on income, we are relying on the income of our respondents to determine whether this has any influence on litigating tendencies. It is assumed that the wealthy is likely to have an unfavourable attitude to our argument that poverty is a factor responsible for failure in litigation. This is expected to have this pattern if only to protect their group values. Conversely, the low-income respondents will react with prejudice and say only wealthy people succeed in litigation.

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1. Daily Times. September 24, 1974.

TABLE 33

Interrelationship of income of respondents and reaction to the statement that justice is within easy reach of everybody

Income of Respondent	Justice within easy reach of everybody			
	Disagree	Indifferent	Agree	Total
Under ₦300	28 62.22	1 2.22	16 35.55	45 99.99
₦301 - 1,300	22 42.31	3 5.77	27 51.92	52 100.00
₦1,301 - 2,300	6 33.33	2 11.11	10 55.55	18 99.99
₦2,301 - 3,300	6 37.5	2 12.5	8 50.00	16 100.00
₦3,301 - 4,300	5 31.25	1 6.25	10 62.5	16 100.00
₦4,301 - 5,300	2 28.57	1 14.29	4 57.14	7 100.00
₦5,301 and above	3 10.71	0 0.0	25 89.29	28 100.00
Total	72 39.56	10 5.49	100 54.95	182 100.00

Out of the 182 respondents interviewed, 39.56% disagreed with the statement that "justice is within easy reach of everybody," while 54.95% supports the statement. 5.49% cannot say whether or not justice is not the exclusive preserve of the rich. A further breakdown of the figure points to the fact that the least paid or low-income group tend to feel that justice is denied to some people whereas the highly paid respondents feel that justice is available to all and sundry, poor and rich alike. Out of 72 respondents who disagreed with this statement, 69.4% are within the income range of ₦1 to ₦1,300 per annum. This category of people includes prisoners, accused persons, litigants and some lowly paid clerks. At the level of agreement, it appears there is a fair idistribution within the groups except that the two extremes of the categories i.e. the low income and the highly paid groups, have the highest distribution. Of the 100 respondents who feel that justice is within easy reach of everybody, 43% are within the income range of ₦1 to ₦1,300 while 29% are within the income range of ₦4,300 and above. Those in the salary range of ₦5,300 and above are conspicuously dominant for out of 100 respondents who are favourably disposed to the system, 25% are in this income range.

In order to establish the notion that the poor will agree that justice is denied to some people, we try to associate poverty with success in litigation in the same way that we did for Table 33 The responses are distributed as follows:

TABLE 34

Perceived relationship of poverty to failure in litigation

Income of Respondent	Poverty as source of failure in litigation			
	Disagree	Indifferent	Agree	Total
Under ₦300	10 22.22	2 4.44	33 73.33	45 99.99
₦301 - 1,300	22 42.31	5 9.62	25 48.08	52 100.01
₦1,301 - 2,300	8 44.44	1 5.56	9 50.00	18 100.00
₦2,301 - 3,300	15 93.95	0 0.0	1 6.25	16 100.00
₦3,301 - 4,300	13 81.25	1 6.25	2 12.5	16 100.00
₦4,301 - 5,300	6 85.71	0 0.0	1 14.29	7 100.00
₦5,301 and above	28 100.00	0 0.0	0 0.0	28 100.00
Total	102 56.04	9 4.95	71 39.01	182 100.00

Table 34 strengthens the earlier view that the low income group always feel that only the wealthy are likely to succeed in litigation while the high income group are of the view that success in litigation is in no way associated with wealth of litigants. The deductions that can be made from the above is that people have the notion that there are some clandestine pressures that affect judicial activities. The view that the wealth of an individual will determine his or her success in litigation needs further investigation for it is like introducing an entirely non-legal factor into a purely legal situation. Respondents have been asked to indicate what in their opinions could influence the decision of a court. Their responses are tabulated below.

TABLE 35

Income of respondents and suggested non-legal factors affecting judicial decisions

Income	Non-legal factors affecting judicial decisions					
	Personal experience and discretion	Social pressure	Power drunken-ness and corruption	Cult member-ship	No answer	Total
Under ₦300	7 24.14	4 13.79	6 20.69	2 6.90	10 34.48	29 100.00
₦301 - 1,300	15 21.74	6 8.70	6 8.70	11 15.94	31 44.93	69 99.99
₦1,301 - 2,300	5 22.73	4 18.18	2 9.09	0 0.0	11 66.67	22 100.00
₦2,301 - 3,300	3 20.00	1 6.67	1 6.67	0 0.0	10 66.67	15 100.00
₦3,301 - 4,300	2 11.11	4 22.22	1 5.56	1 5.56	10 55.56	18 100.00
₦4,301 - 5,300	0 0.0	2 28.57	0 0.0	1 14.29	4 57.14	7 100.00
₦5,301 and above	3 10.71	4 14.29	6 21.49	0 0.0	15 53.57	28 100.00
Total	35	25	22	15	91	

One important impression that one gathers from this is that about 50% of the respondents feel that there is no pressure exerted on judicial activities i.e. 91 of the 182 respondents. Another notable point is that almost every income group is substantially represented on this view that no pressure is exerted on judicial activities that one is tempted to reject our notion that justice is not within easy reach of everybody. The table negates that view. Table 35 also casts doubt on the argument that only the wealthy succeed in court actions. It is also evident that the respondents did not mean that the court takes into consideration the wealthiness of litigants in arriving at decisions. If the argument that the wealth of litigants is neutral in judicial decisions is tenable, it means that a wealthy litigant will be in a position to engage a good lawyer, carry out court orders promptly and attend court regularly whilst a poor litigant will not have such facilities. It can also be an argument that the wealthy litigant can not easily be defeated in litigation, as more often than not, he has the money to prosecute his case till he reaches the highest court or he wins.

While not contending that court personnels are not corrupt, it is equally significant to agree, if in part, that certain pressures, though not necessarily ill-motivated, determine judicial behaviour. The judge is a product of numerous social forces and he has his own unique

experience which determines his activities in later life both at home and at work. His day-to-day interaction with the public presents him with an image of society that affects him in the exercise of his discretion. It follows that to the extent that judges vary in their life experience one can expect certain degree of variations in their exercise of discretion even on the same case.

Another important point deducible from Table 35 is that judicial officers are either power-conscious or corrupt and that their membership in secret association are factors that influence their judicial behaviour. It is unsafe to reject or accept these views since these dangerous allegations would require a more concrete proof than mere assertion. The allegation of corruption might have been due to a misapprehension of the system, or it could be an explanation of failure, and simply an attempt at a blackmail. There is no attempt to say that the judiciary is devoid of "bad eggs." Probably, there may be unscrupulous members of the bench whose malpractices are not yet discovered one cannot be too sure. Even though there is paucity of evidence on this, it will be unobjective to ignore such. The Daily Times once reported that:

> A Magistrate received ₦1, 000 as bribe to convict a former member of the Western House of Assembly, a Warri High Court has been told. The allegation is contained in a 12-point affidavit sworn to by Mr. Peuder Okitikpi and read in the court on Wednesday by a defence counsel, Mr. Viemudo Igho.[1]

It will be erroneous to base generalisation on this isolated allegation but more often than not court judges are enjoined to be upright especially those of the lower bench. The paucity of data on this however does not mean that there is no iota of truth in the allegation. It may be that the position of the officers puts them in vantaged positions that other law enforcement agencies could not effect arrest or make open their offences. It is also a possibility that other mechanism of disciplining erring officers are usually employed which does not admit of publicity.

It is expected that the members of the Bench would defend the integrity of their offices to the utmost, while members of the police and prisoners would see nothing good about the activities of courts. However, to eliminate, if only to reduce, the possibility of this allegation, protocol demands that the judicial officers live a secluded life in order to perform well without the threat or possibility of threat of blackmail. The degree of seclusion however varies from person

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1. Daily Times. August 23, 1974.

to person and it is also a manifestation of differences in individual ability to adjust to situation. The seclusion of the members of the higher bench appears to be almost total but the gentlemen of the lower bench mixed with the members of the public most of the time. An explanation for this difference in attitude can be found in the way so society perceives the position of these categories of officers - the judges and the magistrates. A magistrate is a civil servant and is held in lower esteem than the judge. The position of the judge is more secure than that of the magistrate. This is so because the judge is not supposed to fear anybody except God and his conscience and because of the revered position he occupies before the public, he rarely falls victim of such allegation. In addition, few cases are handled by the High Court and these invariably involve responsible citizens who are unlikely to subscribe to such ruinous and malicious comments. Conversely, the magistrates handle the bulk of the trivial and semi-important cases. These often involve low income and illiterate people. The perception of the role of the judiciary therefore varies with the position a person occupies in the society. In general, when such allegations of malpractices are made at all, they are usually an explanation of failures in litigation. It is the unsuccessful litigant that always attributes decisions to what has

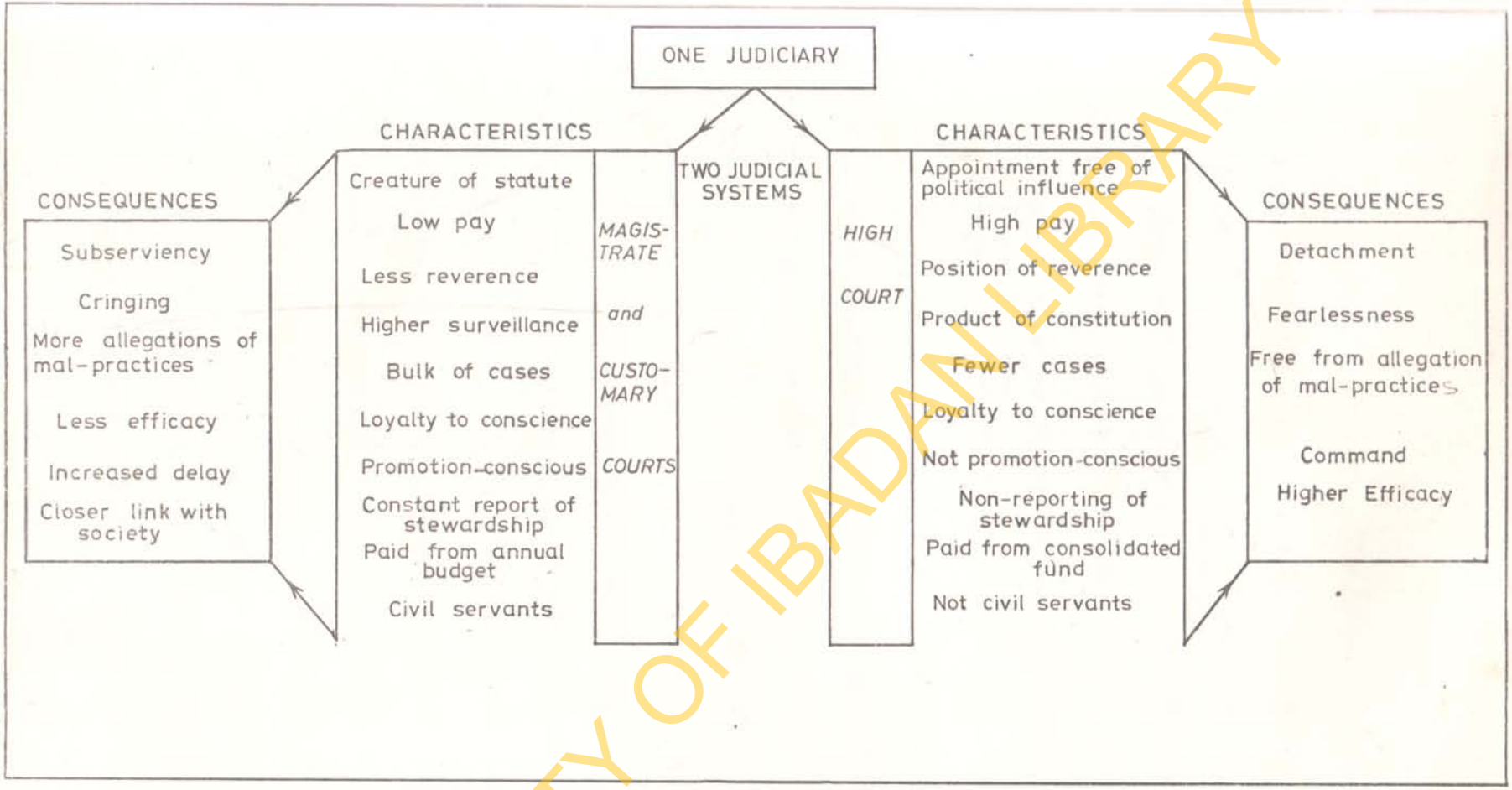

Fig. 18 . Fragmentation and Segmentation of the Judiciary and Social Pressures

transpired behind the screen. The two images of the judiciary which correspond with the distinction between the lower bench and the higher bench are set out below for easy comparison.

That "power corrupts and absolute power corrupts absolutely" is a controversial statement. Those who accused judicial officers of abuse of power do not give allowance for individual differences. If cognizance is given individual differences, it becomes difficult to accept or refute the accusation. The basis of the power which we often talk of is the very autonomy of judicial officers in judicial activities. Judges and magistrates have the power to dispense justice according to law, according to the facts and circumstances of the case and according to the dictates of their conscience. All these are subject to appeal but until an appeal has been lodged and that decision set aside, they possess uninhibited power. It is often argued that this unrestricted power (limited by law) may be used to the detriment of one party to a suit as against the other. Consequently, it is generally felt that a misuse of power may result. This argument loses its strength if we realise that the very nature of controversy admits one person losing and the other winning. If both parties to a case cannot win at the same time, it means that the discretion of the court must have been exercised in favour of a party. This is one of the significant

ways in which modern judicial system differs from the traditional system. Our argument is that responses alleging malpractices should be regarded as mere information whose validity requires more than mere utterance. The same goes for the allegation that membership in secret organizations has effect on judicial behaviour. Before one can say much about this one needs to know the ethos of the cults to realise the type of obligations imposed upon their members. This inveriably is not known to non-members and the members who know have the obligation not to divulge secret.

The exercise of discretion presupposes that cases are never the same. If there is variation of decisions in seemingly identical cases, it is the by-product of individual differences and the uniqueness of problems. To laymen, all cases of stealing are alike and should be treated alike. However, no two cases are alike in all respects. The cases with identical facts may differ markedly in terms of the determining situations and the mode of presentation. Since it is claimed that some pressures are exerted on judicial officers, an attempt was made to examine the effect this alleged pressure may have on court decision. Reasons for differences in decision of judges/magistrates in seemingly identical matters were isolated. It is thought that the type of contact an individual has will

determine his opinion in such matter. This therefore forms the basis for assessing reasons for divergent views on similar issues by judicial personnel. The respondents were asked to suggest reasons accounting for variation and differences in court's decisions in identical cases. The answers are tabulated below.

TABLE 36

Nature of contact and suggested reasons accounting for differences in courts' decisions

Nature of contact	Suggested reasons for differences in courts' decisions									
	Matters are never the same		Mode of presentation		Individual Training/ Bias		Corruption		Don't Know
		%		%		%		%	
Judicial officer	4	18.8	6	13.95	25	18.25	1	2.86	1
Police officer	0		3	6.98	11	8.03	3	8.57	
Prison official	3	13.64	1	2.33	11	8.03	4	11.43	5
Accused/ prisoners	6	27.27	19	44.19	27	19.71	19	54.29	7
Litigants	0		2	4.65	3	2.19	3	8.57	0
Legal Practitioners	7	31.82	4	9.30	35	25.55	2	5.71	0
Court official	2	9.09	8	18.60	25	18.25	3	8.57	8
Total	22	100.00	43	100.00	137	100.01	35	100.00	23

Out of the 182 respondents, 87.36% gave reasons for differences in court decisions and some of which are multiple. 12.64% of the respondents did not suggest any reason. But of the total reasons given 57.81% relates to individual training and bias. The influence of training and bias is however limited by the principle of stare decisis. Judges and magistrates have a way of making distinction among cases. The distinction thus made becomes the basis for variation in decision. Another way of ignoring existing decisions lies in the principle of persuasive judgments. The result of these judicial strategies is that loopholes are many in legal processes for variation in perception and consequently decisions. Variation may be a result of variation in the mode of presentation of the case itself. 18.30% of the respondents suggest that variation in the mode of presentation of the case varies from person to person, just as the training and bias of judicial officers vary. The customers of the court also have peculiar experience and problems and these affect the outcome of cases. The variation may be the fault of the prosecution or it may be a reflection of the varying ability of counsel. It may even result from the gravity of the matter itself.

Another deduction that can be made from Table 36 is that majority of the respondents claim that training and personal preferences

of the judges may be responsible for variation in decisions of courts. Respondents who favour this view are distributed as follows - legal practitioners - 25.55%; Accused/Prisoners - 19.71%; Judicial officers - 18.25%; court officials - 18.25%; police and prison officers are at par - 8.03% respectively. It appears from this that almost all respondents seem to share the view that individual preferences and training influence judicial activities. In fact all the lawyers interviewed hold this view. If respondents expect personal prejudice and training to influence judicial decisions it appears one can assert that variation in judicial decisions will be an expected phenomenon.

Variation in decision arising from several factors are expected to have several consequences which do not necessarily inhibit judicial processes. Some may be favourable, some may not. What consequences they have depend on the circumstances of each case. The anticipated consequences are enumerated below using the criterion of contact with the organization to determine the reliability of suggested consequences. This criterion is based on the assumption that the actor in a situation can assess his/her own activities in the same manner as his/her observers.

TABLE 37

Consequences of variation in judicial decisions and the position of respondents

Position of Respondent	Suggested consequences of variation					
	Growth of the legal system	Loophole/ uncer-tainty	Conflict of law	Lack of con-fidence	No con-sequence	No idea
Judicial officers	10 25.64	7 16.67	7 36.84	0 0.0	0 0.0	2 3.23
Police officers	0 0.0	3 7.14	2 10.53	4 22.22	0 0.0	5 8.06
Prison officials	0 0.0	0 0.0	0 0.0	4 22.22	1 33.33	12 19.35
Accused/ Prisoners	5 12.82	8 19.05	3 15.77	3 16.67	1 33.33	26 41.94
Litigants	2 5.13	0 0.0	0 0.0	1 5.56	1 33.33	3 4.84
Legal practitioners	10 25.64	18 42.86	2 10.53	4 22.22	0 0.0	1 1.61
Court officials	12 30.77	6 14.29	5 26.32	2 11.11	0 0.0	13 20.97
Total	39 100.00	42 100.01	19 99.99	18 99.99	3 99.99	62 100.00

The table shows that most of the respondents (64.84%) are of the view that variation in judicial decisions has consequences for the legal system. Of this, 32.23% do not think that the consequences are unfavourable. It seems they are saying that if the law must grow then this variation is necessary; that it is out of the contradiction brought about in the decisions that a dynamic legal system would emerge or that variation is a mark or a sign of a normal legal system. Similarly it is believed that variation is capable of creating some problems of uncertainty, impredictability as well as an escape mechanism for litigants and loopholes for lawyers to exploit. It is contended that this uncertainty in the system enables the lawyer to prove false the obviously credible evidence. Uncertainty in law creates opportunity for the growth of the judicial process. An obsolete decision can be rejected by a competent court and the new decision then becomes part of the law as the court will certainly spell out new principles.

As variation is positively functional to the legal system, it is equally detrimental; it brings about conflict. A litigant is confronted with additional problem of sorting out the right principle in determining the legality of his behaviour. This variation in decision increases the problem of appellate courts in resolving the conflicting decisions. Invariably, the latest decisions are accepted and adopted

in such situations. The unpredictability and uncertainty in judicial processes tend to undermine the confidence in the judicial system. The lack of confidence tends to kill interest in litigation for it is not exciting to embark upon a task whose ultimate result one cannot predict.

The consequence of all these is a combination of faith and doubt in its efficacy. It appears that an enlightened community or members of the legal profession will appreciate the value of variations and accept them without any misgiving. For instance, of the 32.23% who feel that the consequence will make for growth of the system, 25.64% are judges and magistrates; 25.64% are legal practitioners and 30.77% are court officials. This can be compared with those who mentioned lack of confidence as the possible consequence of variation. 22.22% are police officers, 22.22% are prison officials and 22.22% are also lawyers. This is reversed in the case of uncertainty and loopholes in which 42.84% are lawyers, 19.04% are prisoners and 16.66% are judicial officers. The dominance of the lawyers here is understandable for they are loophole and uncertainty manipulators. In effect, lawyers benefit from the loopholes which uncertainty of law creates.

Some respondents, particularly prisons and court officials, did not consider it necessary to remark about the uncertainty in judicial process. It appears from this that the enlightened is likely to be more favourably disposed to variation in decisions than the less sophisticated.

The doubt in the efficacy of the system in addition to other factors already enumerated often produced unanticipated consequences. One of such unanticipated consequences is the delay in the adjudicatory processes. Some people believe that delay is a necessary adjunct of the legal system. Others, while acknowledging the factor of delay, feel that the delay is inevitable. Judicial officers are of the view that what is important is not how much they do but how well they do it. Delay may result from a number of factors ranging from inadequacies in the number of personnel to the non-cooperativeness of the other persons involved in judicial activities. The reason for delay in judicial process is not generally considered within the proper context. More often than not, those explaining this factor usually make the court their focus and consequently underplayed the fact that the court is only at the receiving end of a chain of events hatched and executed from without.

There are two dimensions to problems of delay ; deplorable and intolerable delay associated with criminal cases, and the one that is tolerable because it merely constitutes a threat to the processes often associated with civil cases. The two result from the nature of cases at hand and the type of people involved. Each procedure has its own peculiar problems which are not found in the other, and if the problem is present at all, to a varying degree. Intolerable delays occur mostly in criminal cases. The Sunday Sketch reported that:

> The West Chief Justice, Mr. Justice Oyemade has ordered immediate commencement of proceedings in a charge of wilful damage against a man who had been in custody for eight years without trial. . . . The Justice strongly deplored the indefinite confinement of the suspect for an offence that should not have earned him as much as eight years jail term.[1]

The delay in this case, apart from being unnecessarily protracted, is aggravated by the fact that the accused was in custody and that the efficacy of punishment must have lost its force after eight years in jail. Certainly, delay of this nature is intolerable. Another example of this intolerable delay was also reported in the Daily Sketch that a man was kept in prison cell for 31 months for only preliminary investigation.[2] If it took more than 31 months to investigate, one wonders

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1. Sunday Sketch, June 2, 1974.
2. Daily Sketch, June 29, 1974.

how long it will take to conduct the trial. Such a delay is definitely intolerable because the liberty of the citizen was involved. A more deplorable report is captioned:

> 3-Year Murder ends: Man awaiting trial became crippled after 18 months in custody.[1]

These are all examples of intolerable and deplorable delays. Tolerable delays are found mostly in civil cases. For instance, the rules of court allow quite a long time for filing pleadings. Another procedural requirement is that an accused person suspected to be of unsound mind should not be tried until he is declared fit to stand trial. Such delay can be said to be tolerable in the sense that it ensures that a person who probably does not know the consequences of his action is not subjected to the ordeal of a trial. There are other procedural delays such as the preliminary investigation which are intolerable and boring for it amounts to duplication of process and as such doubles the length of time within which a case is heard.

The Public Service Review Commission identifies two main defects in the judiciary viz.

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1. Daily Times October 26, 1973.

(1) Its capacity is unequal to the load and (2) the constitutional provisions governing the judiciary in some respects are not designed to achieve the best results.[1]

Elaborating upon this, the Commission is of the view that the system is under considerable strain and is working inefficiently. According to the Commission, this results from the fact that the system consists of a number of largely autonomous, uncoordinated units, the appropriate judges and officers are responsible for the work of each court and there is no system of administration linking them into a coherent national whole. It is also its view that the structure of the court system and the way in which cases are disposed of leads to serious waste of judges' time to a considerable extent because of inadequate administrative and clerical support.

Granted that the Commission was preoccupied with a national judiciary, the problem of coordination (the lack of it) as set out does not really inhibit judicial processes. It is not expected that the autonomy of each judge in the performance of his judicial functions should be slaughtered at the altar of coordination. But if coordination means coordination of the activities of all the bodies - individuals/organizations - involved (and this is quite problematic) the Commission would

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1. Public Service Review Commission. September 1974. Main Report p. 68.

be justified. The normal procedure prescribed for judicial decisions, except otherwise directed by statutory requirements or amendment or in the case of appellate courts where three or more judges may sit as a court, the judges perform individually. However, the Commission almost hit the nail on the head when it said "judge's time are wasted because of inadequate administrative and clerical support." In addition to this, the Commission identified as source of delay absence of reliable statistics generally available for any level of court, a fact which makes it difficult to estimate future case loads and hence to determine the need for judges, magistrates, court staff and accommodation. The Commission further attributed the cause of delay to "its inflexibility and unsatisfactory organization and partly shortage of judges." These are factors that are conducive to delay and inefficient functioning of the organization with the consequential serious backlog of cases. The reasons adduced in support of this assertion is grossly inadequate because it is too narrow and inadequate to explain causes of delay in the judicial processes. For instance it can be argued that even if the administrative decadence is removed, the problem will still be there for it is the cumulative effect of several other external factors. It is not the internal administrative failures alone that cause delay in the judicial system; administrative short-comings of other organizations also have grave consequences for the judicial activities.

The Commission's second defect is vague since what is "best results" is undefined. The constitutional provisions only set up the courts while the different courts, through their Chief Justices, establish the procedure to be followed. Probably the Commission had the procedure in mind. If this is the case, it is submitted that the procedure isjjust a contributory factor and not a sufficient cause by itself. If the procedure guarantees equitable justice, it is submitted that justice should not be sacrificed at the scaffold of speed or haste for hasty dispensation of justice without justice being done will amount to injustice. Equitable justice and speed should go hand in hand and whenever they become incompatible, justice should be allowed to prevail even if delay accompanies it.

It is unarguable that there is delay in our courts. The causes of the delay in the court can be traced to the very nature of adjudicatory functions. The very initiation of a civil/criminal proceedings is plagued with extraneous factors which the law itself does not take cognizance of and which are not, and cannot be brought, under the control of the court. The parties to a case may have problems relating to the matter in court which are insurmountable except very slowly. It is the interaction of this external problems with the internal ones (the type Udoji and his Commission identified) that complicates issues and results in the delay.

TABLE 38

Position of respondents and problems of delay

Position of Respondent	Reaction to whether there is delay			
	Yes	No	Indifferent	Total
Judicial officers	20 76.92	6 23.08	0 0.0	26 100.00
Police officers	10 71.43	3 21.43	1 7.14	14 100.00
Prison officials	17 100.00	0 0.0	0 0.0	17 100.00
Accused/prisoners	20 74.07	5 18.52	2 7.41	27 100.00
Litigants	20 66.67	10 33.33	0 0.0	30 100.00
Legal practitioners	31 88.57	3 8.57	1 2.86	35 100.00
Court officials	18 54.55	15 45.45	0 0.0	33 100.00
Total	136 74.73	42 23.08	4 2.20	182 100.01

Exploring this problem further, our respondents were asked to react to whether or not there is delay in the court. It is assumed that the nature of contact an individual had with the court would affect his perception of the system. This assumption does not however negate the validity of the responses, if only the biases of the individual are recognized bearing in mind the individual's position. Attempt was made to assess the extent to which the participants see any delay in court processes and to see whether there is any association between one's position and the type of reaction. It is also assumed that judicial officers and staff, legal practitioners and police officers would deny the existence of delay whilst the other categories would see things differently.

The result here does not justify the assumption that the nature of contact an individual had with the court would affect his perception of the system and that judicial officers and staff, legal practitioners and police officers are likely to deny the existence of delay whilst the other categories would see things differently. Delay is an obvious phenomenon and everybody seems to agree that it is a problem. This does not however mean that one's position cannot influence one's perception of the situation. The result of this reaction therefore is that there is a consensus and actual cases bear this out; that court

processes are protracted. Out of the total respondents, 74.73% as against 23.08% are of the opinion that there is delay. Of interest is the responses of the judicial officers, police officers, prison officials and legal practitioners where 76.92%, 71.43%, 100% and 88.51% respectively agree that there is delay in court processes.

Respondents were further asked to identify the sources of delay and the following answers were received.

TABLE 39

Nature of contact and causes of delay in the judicial processes

Nature of contact	Suggested causes of delay				
	Administrative Inadequacies	Protracted police Investigation	Cumbersome procedure	Non cooperation of lawyers & litigants	Not applicable
Judicial officers	5 9.26	8 16.33	9 23.68	11 44.00	6 15.04
Police officers	4 7.41	2 4.08	4 10.53	0 0.0	4 8.70
Prison officials	4 7.41	4 8.16	4 10.53	0 0.0	0 0.0
Accused/prisoners	9 16.67	12 24.49	4 10.53	2 8.00	7 15.22
Litigants	6 11.11	7 14.29	6 15.79	2 16.00	10 21.74
Legal practitioners	26 48.12	7 14.29	3 7.89	4 16.00	4 8.70
Court officials	0 0.0	9 18.37	8 21.05	4 16.00	15 32.61
Total	54 99.98	49 100.01	38 100.00	25 100.00	46 100.01

This shows that several factors are responsible for delay in court processes from the point of view of the respondents. The respondents attribute causes of delay to the shortage of personnel and stationery and the processes of investigation by the police. The procedure itself causes delay. Lawyers and their clients are said to be a major cause of delay for instance 44% of those who mentioned lawyers/clients are judicial officers who can claim to be in possession of first hand information about lawyers and clients for they deal with these everyday. But out of 54 respondents who attribute delay to administrative inadequacies, 48.12% are legal practitioners. An issue that could be raised from this is whether it is a matter of "class antagonism" that is responsible for the charges and counter-charges. Lawyers are officers of the court, they earn their living on how well the court performs and to that extent they can be regarded as part of the court as well as external to it. Causes of delay can be seen in the following order - administrative shortcomings - 32.52%; protracted police investigation - 29.52%; cumbersome procedure - 22.89%; and the non-cooperation of lawyers and their clients - 15.06%. In conclusion, we can deduce that there are several factors accounting for delay and a further look at concrete cases may help us to confirm or reject this claim.

Two cases of deplorable delay in court procedures were noted by the Abeokuta Chief Magistrate in his Quarterly Returns of June 1970. The report has it that two suspected lunatics were awaiting trial - Busari Egberongbe - first arraigned before the court on 16/10/67 and his Remand Warrant was last endorsed on 4/7/69 with the following remarks:

> Remand sine die for treatment in view of Doctor's report dated 25/10/68 endorsed to Police on 21/5/69.

Even though the prison authorities complained it was not lawful for them to have prisoners on remand for indefinite period, the suspect was left in custody with no positive action taken to alleviate his suffering. The second case is that of Michael Olufunmilayo - charged with murder. The remand warran was last endorsed on 23/5/66 with the comments: "This is an Ado-Ekiti case, why is it here please?" It seems nobody bothered to answer this question. The prison authorities also held the view that there is no legal authority for this prisoner's retention in prison. This offence was committed on 8/8/64. Both accused were suspected to be of unsound mind and could not stand trial.

Following upon this report, a chain of correspondence ensued among institutions - within the court, the court and the prison, the court and the Mental Hospital, the court and the Governor. The first

reaction by the court was to clear the mess from its own premises. The first case was said to be a certified lunatic but the prison authorities felt that the prison is not an assylum for keeping lunatics and suggested that Egberongbe be transferred to Lantoro Mental Hospital. The second case had not been certified and should be transferred to a mental hospital for this purpose and to keep.

Three months after the first report, the condition of Egberongbe was reported to be deplorable by the Chief Magistrate. In his words,

> The prisoner was extremely violent and was chained down in his cell, absolutely naked. At the time I went to visit the cell, it was fairly clean but the prison authorities reported that this prisoner daily painted himself head and body with his own faeces and would not eat his food unless he mixed it with his own faeces.[1]

The prison authorities reported that the Mental Hospital refused to have him for treatment because of the prisoner's violence. The Chief Magistrate admitted that there was lack of proper facilities or treatment for the prisoner and recommended "that his case be brought to the notice of the appropriate competent authority with a view to reli relieving this ugly spectacle." The case of Olufunmilayo was also mentioned with the Superintendent of Prison's comments" that he was equally puzzled why he was ever brought to the prison."

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1. MCA/03/286.

And on 14/1/71 the Chief Registrar wrote the Ado-Ekiti court for explanation with all the reports on Olufunmilayo. Another letter originated from the Chief Registrar's office on Egberongbe on 4/2/71 as suggested to the Chief Magistrate, Ado-Ekiti that the proper thing to do when a person is a certified lunatic is to send him to a mental hospital. The Ado-Ekiti court alleged that the case of Egberongbe was an Akure Chief Magistrate's matter and that he should be so directed. By December - 16/12/71, nothing had been done about Olufunmilayo in spite of the series of letter. The Chief Registrar then wrote:

> By a warrant signed by you on the 7th January ( ) the above-named - Michael Olufunmilayo - person was remanded in Abeokuta prison for medical observation on a charge of murder. The accused has been in prison since then and nothing appears to have been done to hear the case.
>
> I am directed by the Honourable the Acting Chief Justice to request you to reproduce the accused from Abeokuta prison with immediate effect and to arrange the hearing of the case to begin without further delay.[1]

It is then, and then only, that the Chief Magistrate wrote on 21/12/71 and said that the accused person had been certified as "unfit to plead" vide a certificate dated 9th October 1967. In compliance with the order of the Chief Justice, the Chief Magistrate ordered that the

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1. CRW/994/vol. 4/156 of 16/12/71.

accused be reproduced.[1] When accused was reproduced, the prosecution asked for adjournment till 3/2/72 "so as to give him time to prepare for prosecution of the case." The accused was remanded in prison custody again. Meanwhile the Abeokuta High Court judge ordered the Abeokuta prisons to consider "either releasing him or sending him back to the Ado-Ekiti Chief Magistrate or taking any other appropriate steps." The judge warned "I shall no more countenance any returns made in regard to the accused."

On the issue of lunacy certificate, the Abeokuta prison denied ever receiving one about Egberongbe whereas a letter dated 25/10/68 issued by the Medical Superintendent certified that the accused

> has a gross defect in his personality which qualified him to be called as Aggressive Psychopath, a form of defect which is not neurosis or a psychosis, but requires or is susceptible to medical treatment.

The letter added:

> It will be unwise and dangerous to commit this man to Lantoro Institution where the security of other patients and staff will be endangered because of his extremely aggressive and homicidal behaviour.[2]

On 29th January 1972 the Chief Registrar[3] asked the Chief Magistrate Abeokuta to intimate him with the steps he proposed to take to ease

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1. MCA/03/302 of 21/12/71.
2. Letter D.9.23/854 of 25/8/68.
3. Letter CRW/994/3/190 of 29/1/72.

the present plight of Egberongbe Anikura. The letter adds, "As you know this matter comes within your entire jurisdiction and discretion and this office should not interfere with the exercise of your jurisdiction or discretion in this matter." The Chief Magistrate then addressed a letter to the judge of the Judicial Division and informed the Chief Registrar that section 225(2) of the Criminal Procedure Act takes the matter outside his jurisdiction.[1] The Abeokuta Judicial Division then wrote the Military Governor asking that section 225 (2) C.P.A. be invoked[2] and in the Quarterly Returns of 31st March 1972 the Chief Magistrate, Abeokuta wrote:

> I wish to report that the Military Governor, Western State had signed a warrant ordering Busari Egberongbe to be removed to Lantoro Institution. But the medical superintendent Aro Hospital refused his admission on the ground of public safety. The medical superintendent in his letter to the Prisons Authorities promised to take the matter up with the Ministry of Health.

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1. Sec. 225(2) C.P.A. stipulates "If the offence charged is not bailable by the High Court or if a judge refused bail under paragraph (a) of sub-section (1) or after application made under paragraph (b) thereof or if sufficient security is not given, or if no application is made for bail, the judge shall report the case to the Governor (1) who after consideration of the report may, in his discretion, order the accused to be confined in an assylum or other suitable place of safe custody and the judge shall give effect to such order.

2. HCA/0282/vol.I/90 of 13/12/71.

The Chief Registrar's last comment[1] on this issue is that

> there is nothing we can do about the refusal of the medical superintendent to admit him. We can only ask the Chief Magistrate to let us know further development about the matter.

The case of Olufunmilayo was eventually dismissed in February 1974 for want of prosecutions because most of the witnesses could not be traced.

The case of Egberongbe is a typical example of the problem that inter-organizational and intra-organizational relations are likely to encourage. All efforts made to get the proper order to confine Egberongbe in the appropriate institution within reasonable time failed as a result of bureaucratic bottle-neck. The law that prevents appropriate action from being taken even if by delegated power, ensures procedural ineptitude and administrative debauchery. What if Egberongbe were not a criminal, where could he have been confined?

The protracted exchange of correspondence did not produce any good result since actions taken, if at all, were always long overdue before they are taken. If the saddening reports would not make prompt action possible what hope do we have for cases with milder critical situation?

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1. Comments from file CRW/994/vol. 3/158.

As a further evidence of causes of delay, the Returns of Cases Pending for three months and over are given below with reasons given by the court. These are reasons given for such cases for the year 1973. We have added the number of times these were mentioned since it is not possible to produce the returns as they are given. Furthermore this will be arranged according to magisterial area for further discussion. From this table, it is abundantly clear that there are many more reasons than my respondents could identify. These are reasons attached to individual cases and therefore could be regarded as more reliable. It shows that many extra-legal factors affect adjudicatory processes that the performance of the judiciary cannot be made a matter for judicial overhauling alone. In fact it is a matter of multi-organizational reorganization and that some of the problems are insoluble.

TABLE 40

Reasons for delay in disposing of cases in the magistrates' courts of Western Nigeria 1973 by magisterial areas*

Magisterial area	Causes of delay									
	Non availability of witness	Prosecution not ready	DPP's advice awaited	Accused at large Bench warrant issued	Adj. at the instance of defence	Adjd. at the instance of court	Accused mentally sick	Accused serving jail sentence	No reason given	Total
Ife	18 14.52	18 14.52	6 4.84	13 10.48	7 5.65	26 20.97	15 12.10	6 4.84	15 12.10	124 100.00
Ado-Ekiti	14 8.05	40 22.99	23 13.22	11 6.32	9 5.17	19 10.92	17 9.77	10 5.75	31 17.82	174 100.01
Abeokuta	16 8.65	68 36.76	20 10.81	11 5.95	13 7.03	30 16.22	4 2.16	2 1.08	21 11.35	185 100.00
Ibadan	98 16.25	193 32.01	15 2.49	52 8.62	43 7.13	104 17.25	4 0.66	14 2.32	80 13.27	603 100.00
Akure	3 1.86	121 76.16	6 3.73	4 2.48	8 4.97	11 6.83	4 2.48	3 1.86	1 0.62	99 99.99
Ijebu	6 2.17	50 18.12	126 45.65	16 5.80	35 12.68	22 7.97	2 0.72	0 0.0	19 6.88	276 99.99

* Source: Compiled by the author from Quarterly Returns of cases pending for 3 months and over. Chief Registrar's office, Ibadan

The problems differ in order of magnitude from area to area. This reflects the organizational factors of the various bodies performing and the level of commitment of these other bodies to other courses apart from the judicial processes itself. These other organizations have other functions to perform apart from their court duties. For instance at Ibadan where the office of the Director of Public Prosecutions is very near, the court, the complaint about delay resulting from non-advice is infrequent whereas the reverse is the case with Ijebu, Ado-Ekiti or Abeokuta. At Akure, where a branch of the Director of Public Prosecutions' office is established, there are very few complaints about that office. Thus it appears nearness and devolution of authority would make the relationship smoother. The courts in certain cases have adjourned cases because of congestion and shortage of personnel. To bring this out more succintly, I shall now arrange the reasons in order of magnitude from area to area with the most important causes in each area comint first and the rest in order of magnitude. Some of the causes are not easily removable. No court can proceed against a mentally sick offender nor can an accused be judged in his absence. And when witnesses are not available what else can the court or police do? Their interest, in cases, more often than not, terminates with a report to the police and they become disinterested after two or three adjournments. The problem

TABLE 41

Causes of delay identified by courts in order of magnitude by magisterial district

Ife	Ado-Ekiti	Abeokuta	Ibadan	Akure	Ijebu
Prosecution not ready	Prosecution not ready	Prosecution not ready	Prosecution not ready	Prosecution not ready	Awaiting DPP's advice
Adjourned at the instance of court	Awaiting DPP's advice	Adjourned at the instance of court	Adjourned at the instance of court	Adjourned at the instance of court	Prosecution not ready
Witnesses not avail-able	Adjourned at the instance of court	Awaiting DPP's advice	Witnesses not avail-able	Adjourned at the instance of defence	Adjourned at the instance of defence
Accused mentally sick	Accused mentally sick	Witnesses not avail-able	Accused at large Bench warrant issued	Awaiting DPP's advice	Adjourned at the instance of court
Accused at large Bench warrant issued	Witnesses not avail-able	Adjourned at the instance of defence	Adjourned at the instance of defence	Accused at large Bench warrant issued	Accused at large Bench warrant issued
Adjourned at the instance of defence	Accused at large Bench warrant issued	Accused at large Bench warrant issued	Awaiting DPP's advice	Accused mentally sick	Witnesses not avail-able
Awaiting DPP's advice	Accused serving jail term Not pro-duced	Accused mentally sick	Accused serving jail term Not pro-duced	Witnesses not avail-able	Accused mentally sick
Accused serving jail term Not pro-duced	Adjourned at the instance of defence	Accused serving jail term Not pro-duced	Accused mentally sick	Accused serving jail term Not pro-duced	Accused serving jail term Not pro-duced

of the prosecution is closely related to non-availability of witnesses. If it is not witnesses that cannot be procured, it may be that exhibits are being expected from the Forensic Science Laboratory or that clearance have not been obtained from a superior police officer or the Director of Public Prosecutions. Most of the time, the complaint is that investigations have not been completed. In circumstances like these, the court can do nothing except where it takes the insalutary course of striking out the case which also has adverse consequences of re-arrest and relisting. Most frequently, the court disagrees with the prosecution about undue delay in cases. Both bodies operate with each other in mutual suspicion. The court may feel that it is a deliberate attempt by the police to frustrate the course of justice "because the police either have had their palms greased or money is yet to change hands." The police, on the other hand, feel that the court is uncooperative or that it is the fault of the court that their witnesses suffer as a result of unnecessary adjournments. Both the court and the police interact in mutual distrust.[1] These two sources of delay may be easily removed for those involved are public functionaries and ordinary reorganization may reduce the tension.

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1. Oyakhilome, F. E. "Police impression of the magistrate" In Elias, T. O. (ed.) The Nigerian magistrate and the offender. (Benin City) Ethiope publishing corporation (1972), pp. 81-91.

The other causes are not easily removable. An accused person who is mentally sick cannot be compelled to undergo a trial. If this is done, the trial will be a nullity. Mental illness does not cure easily if it is curable at all. The court only acts on suspicion[1] of mental illness, it is the Psychiatrist[2] that can certify that an accused person is mentally unfit to take his plea in a case. This process takes time to mature. Invariably cases in which offenders are certified lunatics stay indefinitely in court. Equally unassailable is the problem of absconding offender. The mere escape has doubled his punishment or guaranteed punishment for him and conscious of this, the accused dodges Bench Warrant and may even move out of the area totally. Declaring him a "wanted" person by the police takes time to produce any result. Rarely do we have escapees being rearrested except if he commits a fresh offence.

The last but not the least, of the causes of delay is that emanating from the defence. This is done mostly in cases where lawyers function. Of all the occupational roles in the court, the only private individual who is officially recognized as having a special status and concomittant obligations is the lawyer. His legal status is that of

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1. See. 223 (1) of C.P.A.

2. Sec. 223 (4) of C.P.A. and sec. 224.

"an officer of the court" and he is held to a standard of ethical performance of his duty to his client as well as to the court. This special position often leads to the lawyers' involvement in several other activities that he cannot fulfil all his obligations satisfactorily. At times the justice of the case may demand that the lawyer be given the opportunity to prepare the defence of his client. The defence's problems may appear in the same cloak as that of the prosecutions in terms of procuring witnesses. No lawyer seeks adjournment of cases without just cause.

Having considered the various reasons for delay, it can be concluded that the activities of the court are inhibited by several factors - internal and external. Because of these problems, its activities are unpredictable even if scheduled. Work progresses in the court if, and only if all the components of the organization as a network of interrelated organizations are committed to it. And since quite a number of the actors come from outside, they tend to determine the smoothness of activities within it. The parties come and go, but the structures remain to continue the activities of the organization. The individual tensions and conflicts notwithstanding, a given accused person's case may present to all the participants problems to solve. The probability of continued future relations and interaction among

the components must be preserved. There is a high frequency of interaction among all levels of personnel in the court setting, and this has the effect of disturbing the performance of the judiciary. The client is the secondary figure in the court system as in certain bureaucratic settings. He becomes a means to other ends of the organization's incumbents. He may present doubts, contingencies, pressures which challenge existing informal arrangements or disrupts them; but these tend to be resolved in favour of the continuance of the organization and its relations as before. Nevertheless, there is a greater community of interest among all the principal organizational structures and their incumbents than exists elsewhere in other settings. The court is an on-going system handling delicate tensions, managing the trauma produced by law enforcement and administrative activities and requiring almost a pathological distrust of "outsiders" bordering on group paranoia. More often than not, the caseload is intolerably heavy and these must be disposed of within an organizational context of limited resources and personnel. This invariably results in harsh scrutiny from appellate courts and condemnation by the public. It is indeed a delicate balance.

Our focus in this chapter is that the judiciary is an organization enmeshed in a network of interorganizational and intraorganizational relations. We have also examined the extent to which this organizational involvement have been problematic for the judiciary. We have also been able to identify the sources of tension within and without the organization and we have therefore concluded that the performance of the judiciary is a matter for multi-organizational explanations as the natural model and the dynamic conception of organizations promise.

CHAPTER NINE

ADJUDICATION AS A SOCIAL PROCESS

Our analysis of the judiciary thus far conceives it as an organization whose performance is determined by factors internal and external to it. We have highlighted the sources of stresses and strains within the organization. The functions of the judiciary is best understood if we adopt a situational analysis approach. The promise of this technique is that we can perceive the actors in the organization as being involved in a network of social relations which can be defined as "action-set."[1] Thus we are able to analyse the judiciary as a social process.

A social process has been defined as "the way in which individuals actually handle their structural relationships and exploit the element of choice between alternative norms according to the requirements of any particular situation."[2]

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1. An "action-set" is the number of individuals recruited by ego for socially defined purposes to assist him in taking collective action. (See P. H. Gulliver. Neighbours and networks. (Berkeley) University of California press (1971) p.18.

2. J. Van Velsen: "The extended-case method and situational analysis" in Epstein, A. L. (ed.) The craft of social anthropology (London) Associated Book Publishers (1967) p.148.

This definition presupposes that social structures are models a
and that a gap exists between the structural model and the processes emanating from the structure of the organization. Commenting on this gap, Velsen said:

> . . . even if social structures are merely models, then as the set of primary forms of the society, they need supplementing by studies of processes.[1]

This implies that the theoretical structures and actual social processes should be regarded as complementary because the actual assessment of a situation is more meaningful if they are combined. Social organization involved ordering of actions and of relations with reference to given social ends. It also involved adjustments when members of the organization choose between alternative courses of action. Situational analysis bridges the gap between the theoretical model and reality. The gap itself cannot be regarded as "exception" because it is part of the field of study and may even have some regularity and pattern of behaviour of its own. It can be argued that the structuralist's assumption of consistency cannot be borne out in a system like the judiciary whose characteristic feature is unstable and non-homogeneous. As a method of integrating variations, exceptions and accidents, into descriptions of regularities, situational analysis

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1. ibid. p.141.

with its emphasis on process, might therefore be particularly suitable for the study of unstable and non-homogeneous social entities.

Van Velsen had argued that the stress on the study of norms and actual behaviour in a variety of differentisocial situations for handling of certain analytical problems also calls for different techniques of fieldwork and presentation of data. This according to him, "requires a greater emphasis in fieldwork on the recording of the actions of individuals, as individuals, as personalities, and not just as occupants of particular statuses."[2] One of the assumptions on which situational analysis rests is that the norms of society do not constitute a consistent and coherent whole. On the contrary, they are often vaguely formulated and discrepant. It is this fact which allows for their manipulation by members of a society in furthering their aims, without necessarily impairing its apparently enduring structure of social relationships. It appears therefore that situational analysis lays stress on the study of norms in conflict and the most fruitful source of data on conflicts of norms is, not unexpectedly, disputes whether aired or outside courts.

The advantage of this method is that it helps to show how the unique, the haphazard and the arbitrary are subordinated to the

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1. ibid. p.143.

customary within a simple, if changing spatio-temporal system of social relations. We hope also that it will help to show how the general and the particular, the cyclical and the exceptional, the regular and the irregular, the normal and the deviant, are inter-related in a single social process, in this case the judicial processes.

This study, in addition to the descriptive analysis presented earlier, relies on some actual cases as illustration of the social processes involved in the adjudicatory processes. These are cases watched partly or wholly by the author during the period of the field-work. It is our hope that these cases will enable us to see judicial functions in their true perspective.

The cases are selected for convenience. They represent the criminal-civil cases dichotomy. There is no attempt whatsoever to regard these cases as typical. The cases are selected to illustrate some of the points earlier made in this study. It was however difficult to anticipate the deductions that are likely from them hence any deductions that result should be regarded as deliberate. The cases analysed demonstrates the social network involved in adjudicatory processes. Some of the cases typify some of the problems inherent in interdependence of organizations. Some of the cases illustrate individual biases in judicial decisions and individual perception of

judicial process. From the case analysis it will be shown how various factors interplay to shape the judicial process.

CASE ONE

The case of the killer tanker driver

A tanker lorry collided with a private car along the Ring Road, Ibadan - and killed all the four passengers in the car. The accident occurred after a rain and on a steep. It was also at night as both vehicles carried their head-lamps.

After the accident, the tanker driver pretended to be going to the police station to report but absconded. The report was eventually made to a police patrol team by a nightguard at the petrol station in front of which the accident took place. He was the only witness who saw the accident happen. The police patrol team in turn reported to the Motor Traffic Division of the Nigeria Police, whose duty it is to investigate such cases.

A policeman later visited the scene that night and took measurement of the scene of accident in the absence of the tanker driver who is also the only survivor of the accident. When the accused was apprehended the following day, he was taken to the scene of the accident and measurement was taken again in his presence. The Fire Brigade was later called to help pull the tanker off the car.

In this case the accused was charged on information by special application under section 340 (2) (b) of the Criminal Procedure Act for the offence of manslaughter by dangerous driving and the offence of dangerous driving. Accused pleaded not guilty to the charge when read to him, it then became imperative for the prosecution to prove its case. The hearing lasted four months and six witnesses were called.

The issues at stake in this case are:

(a) Whether the accused drove dangerously with utter disregard to the other users of the road;

(b) Whether the accused was speeding excessively as a result, he was unable to avert the accident;

(c) Whether the rain could not have contributed to the occurrence of the accident if accused had taken proper care.

The prosecution contended that the accused was speeding excessively as shown by the evidence of the 5th Prosecution Witness - the only eye-witness - hence he could not avert the accident. The accused, on the other hand, contended that the accident was not due to his negligence but due to the fact that it was raining and the road was wet and slippery. He also argued that the victims of the accident contributed to the occurrence of the accident for they - the victims - did not dip the light of their car and that they were driving on his own side of the road.

At the close of the case, accused's counsel contended that the evidence showed no recklessness, it only showed the occurrence of an accident. It was his view that mere speeding does not amount to recklessness in law. He referred to decided cases in support of his contention that the amount of negligence alleged was not sufficient to constitute an offence of manslaughter. This view was accepted by the court and the charge of manslaughter failed while the accused was found guilty of dangerous driving.

Pleading for leniency, counsel for defence said the accused was "a first offender and had aged dependants and many children." He impressed upon the court that his imprisonment was likely to bring untold suffering to the dependants and urged the court to exercise its discretion by imposing a fine. The judge retorted sharply: "Do you think the circumstances of the case justify imposition of fine?" Counsel held to the view that fine was within the absolute discretion of the court even if not provided for statutorily.

The accused was fined ₦200 or 6 months imprisonment with hard labour. The fine could not be paid immediately and counsel pleaded for time within which to pay the fine. Two weeks was granted.

The occurrence of this accident brought many people from different walks of life into a common scene. Those assembled for

this purpose were not necessarily connected with the incident but became involved by virtue of their professions and connections elsewhere. The contending parties have recruited supporters who thus became members of their action-sets. The offence of manslaughter is not a private wrong and cannot be privately redeemed hence it is a contest between the state and the accused and the following action-set emerged.

Action-set of the prosecution/state

State counsel (representing the DPP)
Medical officer
Vehicle inspection officer
Two Indian friends of victims
The night-guard - eye witness
The police investigator
The community at large.

Intermediary

The court and the law.

Action-set of the defence

Accused
Counsel
Relations of accused.

The very action of the accused estranged him in the community. Only his relations and the hired agent joined his action-set. The action-set of the prosecution includes whole community and hence the machinery of state was set in motion against the accused. The offence was regarded as inhumanity to humanity and thereby earned accused public

condemnation. Accused himself seemed to have shared the belief hence he at first attempted an escape. It is this same belief that had prompted the eye-witness to report the incident to the police. Probably this same belief has influenced the office of the Director of Public Prosecutions to take up the case by special permission without a preliminary investigation. Asking for permission to file the information the Director of Public Prosecutions said:

> the circumstances in which the offences were committed, investigations into them had taken a fairly long time and in order to save time and further expense, I have deemed it necessary to prefer an information against the accused instead of holding a Preliminary Investigation. Further, I consider it desirable that an expeditious determination of this matter would meet the justice of the case.

The question may be asked: What are the circumstances that favour the special procedure? The office of the Director of Public Prosecutions is manned by members of the community. It is natural for the Director of Public Prosecutions to feel the way he did especially that four people died in the accident. The Director of Public Prosecutions wrote on 12th February 1974 and the accident occurred on 27th October 1973. Is this too long a period for investigation compared with what obtain in other cases? The investigation of this case had taken about three months! The consent of the court was granted on 19th February 1974 whilst the hearing of the case commenced on 11th March 1974, the very first appearance in court.

Even though accused was estranged, he was able to secure a paid ally - a legal practitioner who shared in his problems. Thus in this case, and by its nature, the parties have successfully polarized the Bar into the Private and Official Bars. Though they are learned brothers, the brothers were in opposing camps - one championing the cause of an individual against the community of which he is a member whilst the other was putting the interest of the community in the forefront. These are people who had no personal stakes in the matter except that one feels that a public wrong had been perpetrated and should be so requitted whilst the other feels that society has alienated and estranged the accused and he must protect him. Both parties then engaged in recruitment of sympathisers expecting the judge to manipulate the law, to take side with either the defence or the prosecution. Both presented with vigour the side of the case that was favourable to it and left the rest for the court to decide.

The attempt of the prosecution to get the accused convicted prompted evidence of the seriousness of the damage done to the private car. It also proved that some people died in the accident and that it was the accused who caused the death by driving his tanker lorry recklessly and keeping to the wrong side of the road and at the same time speeding excessively. As a further evidence of speed, the skid of the vehicle measured 83 feet.

The defence felt that rain could have increased the probability that the accident will occur. But rain was a phenomenon not caused by the driver. This was an attempt to locate the cause as beyond the control of the driver. An unsuccessful attempt was made to prove that the only eye-witness could not have seen the accident happened as it was more probable that his attention was drawn after the accident had occurred. The defence contended that the speed of the vehicle at the time of accident was only 20 m. p. h. which does not amount to recklessness by the Nigerian standard. It is also the argument of the defence that the point of impact to the resultant position which measured 83 feet was no evidence of recklessness as it is only twice the length of the tanker lorry and speed could not be evidence of recklessness as the road was good and there were only two vehicles - the two involved in the accident - at the material time. It was argued that the extent of damage was not due to speed but the weight of the tanker lorry. This too is another attempt to show that the accident was not caused through speed by the driver which he could control, but was caused by the weight of the vehicle which was not the making of the driver. The defence therefore felt that there was contradiction in the evidence and this must be resolved in its favour.

The offences charged carried a maximum punishment of life imprisonment. The second charge of dangerous driving is added because the court cannot convict of dangerous driving if only manslaughter is charged.[1]

The two action-sets have presented each side's version of the story waiting on the mediator-judge and the law to take a position. It was first proved that the accident was not due to mechanical defect and the accused's admission that the accident took place on his wrong side of the road, was explained by the fact that the victims' car was allegedly on its own wrong side of the road. In effect, defence contended that the victims caused the accident. The court compared the evidence of the nightguard - the 5th prosecution witness - and that of the accused and found that of the witness more reliable. However it identified contradictions with respect to excessive speed issue but deduced that this allegation seemed to have been buttressed by the sketch of the scene showing 83 feet to the resultant position from the point of impact. However the court shared the view of the defence that excessive speed alone is not sufficient evidence of negligence for according to the court:

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1. Brett, Sir L. et al. op.cit p.701. Section 158 of the C.P.A. applies.

> To sustain a charge of manslaughter by dangerous driving, a very high degree of negligence showing utter disregard for other users of the road is required. The standard of negligence required to constitute the offence of dangerous driving is not the same with manslaughter arising out of negligent driving of a motor vehicle. A person may drive a motor vehicle at a speed or in a manner dangerous to public within the meaning of that section and caused death thereby and yet not to be guilty of manslaughter.

The court also considered the amount of damage allegedly done to the vehicle and the submission of the vehicle inspection officer to the effect that:

> The vehicle was a total wreck. The body was mangled together with the chassis. The battery, the radiator, the windscreen, the steering and linkages and the body were torn to shreds.

In the view of the court, the damage was serious enough especially that the oil-tanker was empty. The space covered from the point of impact to the resultant position was described by the court as "the actual distance traversed by the front of the tanker; the length of the tanker is immaterial." On this score, the court rejects evidence of the accused and accepts that the accused was speeding excessively as described by the 5th prosecution witness and on his evidence the judge said:

> I am impressed by the evidence of the 5th prosecution witness He gave his evidence with the comportment of an independent witness which he really is.

On the issue of excessive speed therefore, the judge concluded:

> In my view, speeding excessively at night, on a wet road and during a rain when the wipers of the vehicle were on, is strong evidence of negligence.

The court could not find the accused guilty of manslaughter because the evidence disclosed that

> There were no other vehicles on the road at the material time and there is no evidence that the accident occurred in a built-up area, in the midst of a heavy traffic or a road inundated with pedestrians. On the facts and circumstances of this case it has not been proved beyond all reasonable doubts that accused drove with utter disregard for the safety of the public and lives of other users of the highway.

These are the grounds upon which the success of the manslaughter charge foundered. The charge of dangerous driving was sustained on the ground that accused drove in excessive speed especially during a rain.

Throughout the judgment, the personal opinion of the judge dominated. He was presented with several alternatives but his own perception of the situation guided by precedents enabled him to arrive at a decision. His decision appears to have favoured both for neither can boast of total success or failure. In the imposition of punishment, the judge, exercising his discretion, used fine instead of imprisonment thus affording the accused the opportunity to choose whether or not to go to prison. In the process of the trial, the parties introduced

extraneous matters to the case - the effect of the rain, the drink, the family size of the accused and other circumstances of the case. A final recourse to the society which was enraged against the accused was made by the defence all in an attempt to secure the leniency of the law.

A final comment about this case is the length of time it took to complete. The hearing took about four months - March to June 1974. Taking of evidence and address took four days. There were three other adjournments as a result of the ill-health of the judge. In effect the hearing that was completed in March was followed by the judgment in mid-June thus negating the advantages that would have accrued by avoiding the preliminary investigation.

From the analysis so far, it is clear, and the parties themselves recognized it, that the society had been divided into two distinct segment - the offended and the offender. This single act of the offender which could not be settled on individual basis produced the division that social conflict can generate and the alignment that will be produced thereafter. Overtly pervading the whole development was the conflict that has erupted between the rest of the community and the accused, each seeking to present its own side of the case in the most persuasive manner. Each side, as a result of the other's opposition,

has been able to achieve, if partially, some measure of success, and to some extent, at the expense of the other.

CASE TWO

The case of the nervous taxi driver

A taxi cab knocked down a motor-cyclist and his wife on Ibadan-Oyo road on 6th November, 1972. The victims of the accident were removed to the University Teaching Hospital, Ibadan where the husband died whilst the wife survived with a broken limb.

The accused reported the accident and a police investigation ensued. This investigation took nine months to complete - 6/11/72 - 3/8/73 i.e. the day a charge was preferred against the accused. This case commenced with a preliminary investigation on a three count charge of

(1) Manslaughter under the criminal code

(2) Two counts of dangerous driving under Decree No. 4 of 1971.

There are two stages in the hearing of this case - the preliminary investigation stage and the trial stage. This involved the participants in different roles at different stages and also changes in the participants' roles and their nomenclature.

The action-sets at the preliminary investigation state comprise:

Prosecution's action-set

Police prosecutor	)	
Police investigator	)	
Vehicle inspection officer	)	Deponents
Medical officer	)	
Wife of the deceased	)	
Community at large	)	

Intermediary

The magistrate and the law

Action-set of the defence

Accused
Counsel

The preliminary investigation is an exercise aimed at determining whether there is a case that could be tried by a competent court. In effect this is not a trial. This exercise also affords the accused the opportunity to know the type of evidence that was likely to be given against him in the event of a trial. It also affords the prosecution the opportunity to straighten its case or drop the charge.

One notable observation about this case is that there are three offences at the commencement of the investigation but through the objection of the defence counsel, the third count which disclosed the same offence as count two was struck out. Another important observation is that the offences were brought under the criminal code and a Decree.[1] This shows that the law itself may conflict even in its

1. Decree No. 4 of 1971 sec. 4 provides 7 years imprisonment for dangerous driving.

very setting and would have tasked the legal prowess of the police in determining which aspect of the law that is applicable in any particular matter. This is more complicated because the Road Traffic Laws[1] have not been abrogated. The withdrawal of one of the charges as a result of the lawyer's objection may be an evidence of the insufficiency of the police legal knowledge.

At the beginning of the investigation, no plea was taken and the accused was granted bail but he never utilized the privilege. Even his only ally - paid ally - deserted him at the second appearance in court of the case because he (accused) could not honour his side of the contract. There were five appearances at the magistrate's court but the actual hearing took two days and there were only four deponents. After the second appearance, another magistrate took over from the one who commenced the investigation. The investigation ended with a committal of the accused who was again granted bail pending the trial but he did not respond to the overture. The investigation lasted three months.

The trial of the case began three months after the committal order. At the Assizes the action-set was as follows:

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1. Cap. 113. Laws of Western Nigeria 1959.

Action-set of the prosecution/state

State counsel (representing the DPP)
Four witnesses
The community at large

Intermediary

The judge and the law

Action-set of the defence

Accused.

The trial took another four months to complete. The accused pleaded not guilty to the charge which now contained two counts of manslaughter and dangerous driving under the Road Traffic Laws. Because the accused was in custody, the court was eager to finish the case. The hearing started on the very first appearance of the case at the High Court until it reached a stage when prosecution could not continue because one of the witnesses was absent. There were two more adjournments before the witness could be brought to court. At the third hearing, the prosecution concluded its case and the accused gave evidence in his own defence whilst the court adjourned for judgment. Between this hearing and judgment, there were five adjournments owing to ill-health of the judge.

Both the prosecution and the defence agreed that the victim died as a result of the accident but disagreed on who was responsible for the accident. It was the prosecution's claim that the accused drove

dangerously and on the deceased's side of the road. But the accused claimed that the deceased caused the accident by not keeping to his own side of the road and that it was out of share anxiety that the deceased jumped on to the bonnet ot the taxi cab while he (accused) struggled to save his life. Accused also denied the contents of his statement to the police especially the portion where he was alleged to have said:

> The accident took place on the left side of the road facing Ibadan.

In pursuit of this course, the accused said

> The statement could have been a creation of the police imagination. No driver can afford to defy the police.

The accused also denied having sped at the material time.

The prosecution in a bid to establish that the accident was due to the accused's recklessness called the vehicle inspection officer who said the accident was not as a result of mechanical fault. He said:

> The steering of the car was in good order. The brakes were effective. Tyres and spare tyres were in good order. The general mechanical condition of the vehicle was perfect. In my opinion, the accident was not due to either mechanical or brake failure.

As the inspection was not done on the day of accident, the accused suggested to the witness that some repairs could have taken place on the car before the inspection. On the issues contested in this case

viz. "where exactly on the road did the accident take place?" the court observed that the sketch which was not disputed shows

(a) that the point of impact was on the deceased's side of the road, and

(b) that the accused's vehicle had skid marks of about 11 ft. long.

The above confirmed the content of the disputed statement. The court however agreed that the accused took care to avert the accident for the police investigator said in answer to a question from the accused:

> Yes, the skid marks were made when you applied your brakes . . . Yes, I saw the brake marks. The point from where you started to apply your brakes is on your nearside of the road.

On the face of this, the court deduced that the accused could not have been travelling on his wrong side of the road if the skid marks started as described. It is also the court's view that a deflection must have taken place when the accused applied his brakes when something happened suddenly. Because of this the court was unable to ascertain the cause of accident and thereby unable to hold accused liable for the type of recklessness that the offence of manslaughter requires. Nevertheless, the court felt that if the accused had been careful, the application of brakes would not have compelled the vehicle to swerve. It would have been possible for the accused to stop on his own side of the road. The accused was found guilty of dangerous driving on this ground while the charge of manslaughter failed.

Accused pleaded with the court for leniency especially that he had stayed almost two years in prison custody.

In passing sentence the judge said:

> I would have sent the accused to prison for six months I. H. L. but in view of the fact that he has been in custody for nearly 2 years, he will serve a term of one day imprisonment.

One striking thing about this case is the emptiness of the accused's action-set. It appears the accused had no relations or that his relations were not prepared to rally round him in this crisis situation. Throughout the 18 months which the case lasted, the accused had nobody to take him out on bail. The case was conducted without the aid of a lawyer for the accused. The importance of the lawyer's job is apparent if we remember the initial problems encountered by the police when they presented the charge at the magistrate's court. The information preferred at the trial at least for the offence of dangerous driving, was at variance with the one preferred by the police at the preliminary investigation.

The procedure of preliminary investigation necessarily increased the period the case remained. The case had been unduly protracted owing to faults not only of the court but also from other sources outside the court. It was affected by factors such as congestion in the court and some administrative changes within the court itself. The

problem resultant from inter-dependence of organizations is manifestly pronounced in this case. For instance the police was unable to ascertain what laws were contravened - the Motor Traffic Law or the Decree. At the trial, the court could not proceed with the case, at least on three occasions because the prosecution could not procure a witness. The enthusiasm with which the trial started was forestalled by illness - a natural force, - and this certainly had the latent consequences of wastage of human resources to the extent that the prosecutor continued to appear in court, and the accused was always reproduced to be told that the judgment could not be delivered because "His Lordship is indisposed." In essence, the problems observable in this case cannot be attributed to the fault of a single individual or institution, it must be understood within the intra- and inter-organizational interconnectedness.

The procedure adopted in this case is at variance with the case of the tanker driver even though the two cases are identical in nature except that their circumstances are not the same. Police investigation took only three months in the former case while it took nine months in the present case. As it is usual for all serious crimes being handled by the police to be referred to the office of the Director of Public Prosecutions for advice, one wonders why the difference in

the advice offered in both cases. Could it be the seriousness of the one vis a vis the other that had affected the action advised? The most probable explanation is the human factor. The cases might have been handled by different people in that office because . it is unlikely that two different people will view the same thing not to say two things occurring at different periods under different circumstances in the same way. Another important factor in explaining the differential attitude in this case is the law itself which provides for two procedures as alternative ways of doing a single thing. It is an individual factor to choose which of the alternatives is desirable and will meet the justice of the case.

In arriving at a decision in this case, the personal feeling and perception of the judge play tremendous role. His summing up and the basis of his decision are anchored on what aspect of the evidence he believed and those he did not believe. The doubt he could not resolve resulted in a discharge for the accused on the offence of manslaughter. It is also his personal ability and reasoning that enabled him to make the deduction, on the fact of the evidence before him, that the accused nevertheless sped and hence the "swerve" when he applied his brake. The type of punishment imposed in both cases is totally dictated by his discretion and perception of the situation.

The ordered, or rather the institutional conflict between the police and the public is also made manifest here. Drivers regard the police as enemies and "masters." Their relationship can be likened to that between the cat and the rat. The hostility between the public and the police is invariably resolved not by open confrontation but through the intervention of other organizations such as the court. Nevertheless the relationship is definitely that of hostility and a ground for malicious lies and capricious allegations. In this case, the fact that the accused had stayed 18 months in prison awaiting trial might have influenced his attitude to court proceedings.

The public attitude to this case requires some explanation. Could it be said that the type of people involved in case one and the present case determined public reaction? The victims of the first case are foreign nationals and held important positions in society - Managers of Company - whilst the victim of the latter is a Nigerian who only owns a motorcycle. Could the lack of concern result from the length of time both cases took, i.e. the memory is fresh in the former while it is blurred in the case of the latter. The positions of the two accused in both cases also affected the size of their action-sets. The accused in the former case is an elderly person with 18 years driving experience while the accused in the latter case is a young man

with only two years driving experience. The lack of concern for the accused in the latter probably shows his relative insignificance in his household, or that it epitomizes a breakdown in the network of relationship. The general aversion for prison which characterizes the traditional society is not articulated in his own case especially that no legal assistance was procured for him. This desertion is unexpected in a society where the strong notion of kinship has not totally disappeared. It can be said that this amounts to a breakdown, if temporarily, of kinship cooperation especially that one's membership of a kin group should be articulated during a crisis as well as the time of joy.

CASE THREE

The case of the murdered Hausa nightguard

On the night of 11/5/70, two motor vehicles stopped in front of the Trans Atlantic Ltd., Molete Ibadan as a result of an alleged side-brushing of one by the other. One was a trailer and the other a "pick-up" Peugeot. As the two vehicles forced each other to a halt in front of the company's premises one of the nightguards there - Hausa - challenged them to leave the premises for the company regulations prohibit it. One of the drivers speaks Yoruba while the other speaks Hausa - the same language spoken by the nightguard. An

argument ensued between the Yoruba driver and the nightguard which eventually resulted in a scuffle during which the deceased nightguard fell down unconscious and later died.

Before the scuffle, the trailer driver - an Hausa - had sent one of his apprentices to the police to report the alleged side-brushing. The policeman who came met an entirely different situation as the scuffle and death had taken place. The deceased - the Hausa night-guard - the accused and other persons present on the scene were carried in a police van to the police station and then to the hospital for certification of death and treatment of the accused.

On 21/5/70, the accused appeared in court for preliminary investigations on a charge of murder. This is the beginning of the drama that was to last three years. Thenceforth the case had a che-quered journey till the end of the trial. The ordeal and agony of the processes, as we shall show later, seems to be enough punishment for the accused for causing the incident.

At the very opening of the case, the prosecution asked for a fairly long adjournment

> because the case is still under investigation after which it shall be sent to the Director of Public Prosecutions for advice.

The court granted two months adjournment with the injunction that investigation should be hastened. At the next hearing, the prosecution

informed the court that the case was almost ready for transmission to the Director of Public Prosecutions and again asked for a long adjournment. This gave the defence some anxiety and prayed the court to order speedy action. The court ordered:

> Police is hereby advised to forward the file in time since the accused has no advantage of going on bail.

A further two months adjournment was granted. At the third hearing it reported that the file was effectively with the Director of Public Prosecutions. The court then granted another 43 days adjournment.

At the fourth hearing a new chapter in the history of the case was opened. On the advice of the Director of Public Prosecutions, the police prosecutor applied to withdraw the charge of murder and substituted a charge of manslaughter. This application was granted and the murder charge struck off while the accused received bail in the sum of ₦1000 (£500) and two sureties in the sum of ₦500 (£250) each and the case was adjourned again.

At the fifth hearing, the counsel for the accused wrote to the court begging for adjournment for about two months on the ground that he had a fractured arm. (Incidentally the accused was then on bail). The magistrate retorted:

> I cannot adjourn a case for so long since the witnesses have been served and the prosecution is ready to go on. I advise the accused to go back to his counsel and arrange for his defence by the next adjournment.

In spite of this warning, the defence counsel did not show up at the seventh hearing but sent in another letter asking for adjournment. The reaction of the court to this is expressed in the following language:

> In view of the fact that prosecution witnesses are being paid by the state for coming to court and it is more convenient (to) this court to start this case now, I can no more adjourn the matter and shall proceed.

Another observable peculiarity presented by this case is the fact that most of the witnesses do not speak the local language and cannot speak the language of the court - English. This situation necessitated the use of an Hausa interpreter who is not an official of the court.

From then till the end of the preliminary investigation there were 23 adjournments. Seven deponents gave evidence. After the deposition of the 3rd deponent, the prosecution applied for adjournment as two witnesses were sick. At the resumed hearing two deponents again gave evidence and the prosecution reported it could not get the other witnesses. On two other occasions, the accused was reported sick and admitted at the Adeoyo Hospital. On another occasion, the Doctor/deponent was busy with Oremeji disaster* victims and could not attend court. On another hearing the prosecutor was busy at the armed Robbery Tribunal.

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* A house collapsed at Oremeji area of Ibadan and the victims were rushed to hospital for treatment.

The issue at stake in this case is "who killed the nightguard?" The prosecution alleged that it was the accused who hit the deceased with a rod he drew from the butt of his vehicle and took to his heels when he noticed that the deceased fell down unconscious. But the accused claimed that all the nightguards present beat him up to unconscious stage and that it was in the process of the free-for-all fight that the deceased must have been hit. This piece of evidence seemed to have been confirmed when the police investigator said:

> On arrival there, I met two men lying down unconscious right on the premises of the Trans Atlantic.

It is the view of the defence that it was difficult to determine whose act led to the death of the deceased. The counsel cited the case of Frank Onyenankeya v. The State in NMLR p. 34 where it was held that

> To sustain a charge of murder or manslaughter, the evidence must be such as to show that the death was caused by the act of the accused.

It was contended by the defence counsel in favour of the accused therefore that the evidence adduced were inconclusive on this matter and the court was urged to rule that the accused had no case to answer to warrant committal for trial.

The judge ruled against this submission and committed the accused for trial in the following language:

> I have carefully considered the evidence before me in this case and examined all the legal authorities cited by the defence counsel and come to the conclusion that the prosecution has established a prima facie case on the fact that it was as a result of an unlawful attack of the deceased by the accused that killed him - the deceased. And I therefore find that the accused has a case to answer and he is therefore committed to next Assizes at Ibadan to answer his charge.

The accused was granted bail in the sum of ₦600 (£300) and one surety in the same amount.

It took twenty-eight months to complete the preliminary investigation. In order to understand and appreciate what follows, the reader is reminded that the accused was committed for an offence of manslaughter. The compilation of the records of proceedings for transmission to the High Court took another eight months - October 1972 to May 1973 and the case came up at the 1973 September Assizes of the Ibadan Judicial Division.

The case brought against the accused at the Assizes in respect of the offence for which he had been standing trial and for which he had been committed to the Assizes by the Magistrate's court, is murder which carries a death penalty (Murder was the first charge that was withdrawn at the preliminary investigation on the advice of the Director of Public Prosecutions. The new charge of murder was filed by the Director of Public Prosecutions. This altered the procedure to be adopted in the latter. The accused cannot be granted bail.

When information was read to the accused, he pleaded not guilty. The social setting of the court was as follows:

Action-set of the prosecution/state

State counsel (representing the DPP)
Two police investigators
Medical officer
Two Hausa witnesses
The senior registrar of the court
Public at large.

Intermediary

The judge and the law

Action-set of the defence

The accused
Counsel
Accused's relations

At the very opening of the case, after the accused had pleaded, the state counsel said:

> Accused is now charged with murder. I apply that bail be cancelled.

This application was granted because the court has no discretion in the matter. As expected, the court became necessarily eager to dispose of the case and was bent on hearing it that day. The problem of language which plagued the preliminary investigation came into light again.

Within two days of the hearing, five witnesses gave evidence. Before the close of the second day, the prosecution informed the court

that two of the witnesses could not be served at Sokoto as the witness summonses had been returned unserved and therefore applied under section 34 of the Evidence Act[1] to tender their deposition through the High Court Registrar. The defence did not oppose the application but the court ruled:

> The application is refused as no sufficient evidence is led to bring the prosecution within the provision of section 34 of the Evidence Act.

The witnesses that could not be got were the 3rd Deponent at the preliminary investigation - to give evidence of identification of the deceased; and the 5th Deponent - the trailer driver whose activities culminated into the events that precipitated the trial.

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1. Sec. 34 (1) stipulates: "Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or when his presence cannot be obtained without an amount of delay or expense which in the circumstances of the case, the court considers unreasonable. Provided -
(a) That the proceeding was between the same parties or their representatives in interest.
(b) That the adverse party in the first proceeding had the right and opportunity to cross-examine.
(c) That the questions in issue were substantially the same in the first as in the second proceeding.
(ii) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

At the next hearing, the prosecution produced a medical certificate to the effect that one of the two witnesses - 3rd Deponent - had died but offered no evidence of identity to the effect that he was the required witness. In view of this stalemate, the defence applied for bail under section 118 (1) of the Criminal Procedure Act.[1] This application was granted with the remark: "Liberty of the accused is at stake." As this is not usually done in murder cases, the writer had some chat with the judge afterwards who said:

> It is rarely done but the direction of the available evidence has created doubt in my mind as to whether the offence is actually murder or manslaughter. And if one feels very strong about this, there is nothing wrong in exercising the discretion in the favour of the accused person.

From then on a lot of complication seemed to be in action in this case. There were two other adjournments to prove that one of the witnesses was dead and that permission be granted to tender the deposition of the one that could not be served. Even though a letter was produced from the employer of one of the men confirming his death in addition to the death certificate, it was still impossible for the prosecution to have its way. In fact the defence commenced on the medical certificate thus:

> The medical certificate is a duplicate. The Doctor would need to be called to testify and identify the dead with the certificate.

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1. Section 118 (1) stipulates: "A person charged with any offence punishable with death shall not be admitted to bail, except by a judge of the High Court.

This generated some legal battle when both counsel referred to the sections of the Evidence Act that was favourable to their side of the case. The court ruled:

> The certificate appears to be a duplicate typewritten copy of original. It is presumed accurate until contrarily proved. The objection is overruled and certificate is admitted and marked Exhibit 'E'.

In spite of this ruling the judged commented:

> (sic) Still no sufficient evidence is adduced to satisfy section 34 of the Evidence Act. No serious attempts appear to have been made. But evidence of Dan Jimoh can be admitted.

(Dan Jimoh only gave evidence of identification). After the admission of the deposition, the prosecutor applied for adjournment to enable her lay proper ground for admission of the other deposition which application the court refused and consequently the prosecution closed its case.

The defence made a no case submission under section 286 C.P.A. It contended that no evidence of killing of deceased was adduced and that the prosecution has not proved that death was due to the act of the accused. It further contended that the deceased has not been identified to the doctor. Because of these, it contended that the court cannot convict on the evidence adduced and that the accused was entitled to be discharged.

In reply the prosecution urged the court to hold that there is a prima facie case against the accused. She admitted the case for the prosecution was not strong and urged the court to hold that a case of manslaughter has been made out. The prosecution also agreed that the witnesses had not been truthful but left the facts to court.

In its judgment the court held that the witnesses were untruthful. Inter alia, the court said:

> It is unbelievable that the accused fell unconscious and was so met by the investigating police officer who collected him without any witness knowing how he became unconscious and denying any connection therewith. The injuries on the body of the accused no doubt showed he was assaulted. If the witnesses could not be truthful in such obvious points as this, I do not see how I can rely on their evidence in other points of the incident.

The judge also observed contradictions and inconsistencies in the case of the prosecution. According to the court:

> The prosecution has failed to lead evidence sufficient to determine how the dead met his death and in such circumstances, I do not consider it necessary to call on the accused for defence. I uphold the submission and discharge

> accused on the charge of murder under the provision of section 286 of the Criminal Procedure Act.[1]

From the beginning of the trial to acquittal it took 41 months. Most of the adjournments were reluctantly granted. For instance at the High Court trial, the court wanted to adjourn the case to the next day but the defence counsel complained that it was not convenient for him. The judge retorted:

> You have no such right. This is a murder charge. Whether you are here or not the case will go on. The liberty of the accused is involved.

This is typical of the way the bargaining for use and non-use of time is carried out in the court scene. Other instances of adjournment at the instance of the prosecution have been mentioned. The attitude of the judge has been that of impartial mediator. Instances where the court opposed the prosecution as well as the defence are many. Even

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1. If at the close of the evidence in support of the charge it appears to the court that a case is not made against the defendant sufficient to make a defence the court shall, as to that particular charge, discharge him. Paragraph 466 of Brett, Sir L. et. al. says section 286 is to be construed with section 301. Where, after most of the evidence for the prosecution had been led and an adjournment to obtain a further witness been refused, the prosecution closed its case and the accused was discharged because there was no case to answer it was held that that amounted to a dismissal of the complaint on merits and that the discharge was equivalent to an acquittal for the purpose of section 185.

in the processes of taking evidence the court was preoccupied with maintaining a balance according to law. When lawyers raised objection on matters such as asking "leading questions"* the court either over-ruled or disallowed the question. Of its own volition, the court may raise objection on how evidence is being given "for the sake of justice."

Another point that deserves some comments is the peculiar experience of this case. It moved from murder to manslaughter and back to murder. As it is usual for the police to prefer a holding charge, the first charge of murder may be excused as one instance of inadequacy of legal knowledge of the police. The change that resulted might have emanated from the Director of Public Prosecutions exercising its quasi-judicial functions and as the prosecutor for the state has the final say in prosecution of criminal cases. Presumably it was on its advice that the charge of murder was withdrawn after carefully studying the available evidence. When the charge returned to murder, it is the exclusive decision of that office backed by its determination to prosecute. In favour of the latter decision, it may be argued that the preliminary investigation might have revealed new things to make the change necessary. Nevertheless this is a clear evidence of inconsistencies in the processes of enforcing law. At

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* Questions that are suggestive.

least a person committed for trial on a charge of manslaughter would, if only temporarily, be embarrassed on the receipt of information indicting him for murder. It is important to note that all those who handled the case until the trial except the police are all professionals and one expects some measure of consistency in their perception of the case. If they do not perceive an issue within the same legal context, one may be tempted to conclude that individual perception determines what aspect of legal rules are used.

It is also significant that from investigation to the end of the trial, the accused never said a word except the statement he made to the police and his plea. It was a battle of wit between the prosecution and the defence represented in the magistrate's court by the police and counsel respectively, and at the High Court by a state counsel and defence counsel respectively. Truly the parties polarized the community into two opposing camps with two different aims - one asking for punishment, the other pleading innocence, while the court attempted an objective appraisal of the available evidence.

The decision of the court was based on the judge's perception of the situation after considering the laws and legal authorities cited by the two lawyers. It cannot be ruled out that his personal temperament might have influenced most of his utterances and decisions but

certainly it is presumed they are within the permitted area of law. The law itself can be regarded as an instrument for manipulating one's perception of a particular situation. Which aspect of the law that is used on a particular occasion depends on the individual's perception of a particular trend. The general practice of lawyers however is to cite only laws supporting their side of the case. Thus the court is presented with a complex array of evidence and conflicting legal authorities which the court is supposed to sort out. This sorting out necessarily involves the use of discretion based on personal assessment of a situation.

Another thing that plagued this case is the non-availability of its key witnesses. It could be asked whether the decision could have been different if all the witnesses who gave evidence at the preliminary investigation had been present at the High Court? It is possible that the evidence that was not given was material to gain a conviction in this case, or that such evidence, even if it was available would not have been strong enough to gain a conviction. This is a matter for conjecture.

The rationale for preliminary investigation is to enable the accused to know in advance the evidence that would be given at the trial but can it not be said that the emphasis on this had worked

adversely on the enforcement of law in this case! But the question remains to be answered that if the first investigation had been the actual trial, would the court have convicted on the face of that evidence? The point may be raised whether the committal points to the direction that that court's decision would have gone! It does not since committal is not a conviction. It only means that there is something to explain in answer to the charge by the accused. Even after the defence, a court that ruled that an accused had a case to answer may still acquit him.

Another point worth considering is that had death not occurred, who would have been the offender - deceased or accused? Is it a conclusive evidence of aggression that the survivor is guilty of the death of another in a combat? Is the court saying that the killer of the deceased had not been proved? It is clear from the evidence that both the deceased and the accused were unconscious in a scuffle involving them and others; how then did the police arrive at the conclusion that only the accused should be charged? Could this decision have been based on the fact that the other participants in the scuffle could naturally not have been expected to engage in a destructive action against their colleagues. Is the fact of death a guarantee of innocence? This case demonstrates the significance of "death" as

a social phenomenon influencing the course of justice. It also shows the intricacies of the inter-relatedness of organizations. This case represents a manifestation of the exchange and bargaining nature of judicial activities. It is a process full of negotiations for use and non-use of time and application of law. How effectively the functions of the judiciary are performed is a function of intra- and inter-organization cooperation.

CASE FOUR

The case of the dismissed trade unionist

The plaintiff in this case is a veteran trade unionist employed by the Defendant/Workers' Union on specific terms. But as a result of certain disagreement within the rank and file of the Workers' Union, the Plaintiff, having allegedly shown sympathy for the losing side in the strife, had his appointment terminated.

Aggrieved, the plaintiff brought an action at law against the defendant/union to "declare unlawful the termination and to recover his monthly salary of ₦156.66k (£76.6.8d) till the day of judgment and until the plaintiff's appointment is terminated by a properly constituted delegate's conference of the union. The plaintiff also prayed the court to appoint a receiver to look after the affairs of the union until there is a properly constituted Delegates' conference of the union."

Unlike the preceding cases, a sort of relation existed before the commencement of this action. It is a disruption of the existing relation that has generated a conflict situation that the court is called upon to normalise, or to legalise the actions of the parties. Up to the time of the incident, the harmonious relationship was not subject to external ordering. It was basically a contractual relationship that could only be liquidated under the terms of the agreement that created it.

The line-up for the social situation that resulted is as follows:

Action-set of the plaintiff

Plaintiff/Unionist secretary
Some members of the union
Counsel for the plaintiff
Union Constitution

Intermediary

The court and the union constitution

Action-set of defendants

The workers' union
Some members of the union
The defence counsel
The Union Constitution

Factions emerged in the Workers' Union. The members of the union, by virtue of their appointments, remain bona fide members of the union but were divided on this case. The Bar, on the other hand, has not changed from its monolithic set-up except that by the very nature

of the profession, its members can take any side in any dispute. The opposing counsel nevertheless regard each other as "learned brothers" at war for this particular case as well as all other cases in which, perchance, they may be opposed to each other. In effect, the consequences of a single crisis in an organization has created polarized relations in other organizations unconnected with the initial conflict and has forced the machinery of the state for ordered conflict into operation to regulate the strained ties and maintain the delicate balance such a situation has produced. The relationships that emerged were very temporary and the garb of combatants worn by the actors sooner or later fizzled out. But how well the battle was fought depended on a number of factors which were peripheral to the present social situation.

The issues to be sorted out were:

(1) Whether the defendants have committed a breach of contract by unlawfully terminating plaintiff in violation of the constitutional processes stipulated by the terms of appointment;

(2) Whether the plaintiff had taken side in a rift within the union in violation of his terms of appointment which stipulates detachment.

The issues joined were as follows:

(a) That a contract existed between the parties

(b) That there was a rift in the Union

(c) That the rift produced factions

(d) That it was the victorious faction in the rift that terminated plaintiff.

This case first appeared in court on 16/1/73 and was determined finally on 16/4/74, i.e. 1 year and 3 months. After pleadings had been ordered the court adjourned the case sine die. The plaintiff complied with the court's order whilst the defendants did not. This precipitated another chain of interlocutory matters as the plaintiff filed a motion praying for "judgment in default and injunction on the defendants not to fill position of Secretary." The defendants, on the other hand, filed an application praying for "an extension of time within which to comply with the order." This was about eight months after the case had been filed in court.

The two applications came up for hearing on the same day. The application for extension of time was granted with costs against defendants/applicants in favour of the plaintiff/respondent whose application for judgment in default was struck out but granted the interim injunction on the ground that "any action on the line of appointing new secretary would stultify the order of the court."

The actual hearing of the case began when it was exactly one year old in court. The witnesses contended that the rift within the union precipitated the actions that resulted in the present case. It was also contended that the Federal Ministry of Labour intervened in the matter unsuccessfully. The two factions to the crisis could not

be reconciled. That during the period of uncertainty the faction that felt strong held an alleged Delegates' conference and took decisions that the court was being asked to declare void. According to the plaintiff, this action was taken before the referendum which declared that the faction (defendant) were the legal and bona fide representatives of the Defendant/Workers' Union. It was also established that the Workers' Union was a jural person and therefore subject to certain obligations contained in the Trade Union Act. The union also has a constitution which stipulates the behaviour of officers and members. The bone of contention in this case is that the defendants infringed certain clauses of its own constitution. The defence however contended that the plaintiff cannot claim what is not stipulated in his terms of appointment. Both parties then called on the court to accept its own version and perception of the situation.

In its judgment, the court conceives of this case as that involving declaration of right which it puts in the following language -

> The real issue before the court is a case of wrongful dismissal framed as a declaration of right carrying with it consequential remedies.

According to the court the issues that were to be resolved are

> to examine whether or not the meeting of 4th March, 1972 described as Delegates' conference by the 1st, 5th and 6th Defendants was what it was described to be, and if so, whether the decisions taken therein were valid.

The court held that the alleged Delegates' conference was not a Delegates' conference on the ground that it was not called by the General Secretary - the Plaintiff - who constitutionally was to prepare the agenda. Besides the Trade Union Adviser who legally intervened in the matter recommended as follows:

> That the purported elections of 4/3/72 be declared null and void. . . . That a delegates' conference be convened in accordance with the provisions of the constitution to elect officers.

These were not denied by the defendants and therefore valid. It is the reasoning of the court that if the meeting held on 4/3/72 is not valid, the decision taken therein will be void pro tanto.

On the other hand, the court held that the plaintiff was partisan in the rift within the Union. Nevertheless the court felt that the misdemeanour of the plaintiff ought not to have been ignored. The union ought not to have taken a decision that contradicted the constition of the union:

> By taking the decision not to have a paid General Secretary for one year, the Afolabi faction had automatically suspended the office of the General Secretary for one year in that under Article 14 of the constitution of the union the General Secretary shall be a full-time paid official.

The court therefore held that no lawful termination of plaintiff's appointment actually took place and therefore approved the claim of his monthly salary till the date of judgment. The court was at pains to point out the limitation of this decision when it said:

> This declaration therefore is not to be construed to have the effect of planting the plaintiff as a paid General Secretary of a union controlled by a faction which has shown so much hostility to his continuance in office as a paid General Secretary. Secretary.

The order restraining defendant/union from appointing a secretary was rescinded. The claim for the appointment of a receiver was dismissed. The court also declared that the union should be liable for judgment. Two hundred naira costs was awarded in plaintiff's favour.

A notable observation one can make about this case is that it is entirely governed by the law created by the parties for the purpose of regulating their relations. It is unlike a state law with the states paraphernalia to enforce it.

Each side to the contest gave its own interpretation to the constitution for both claimed to have acted within the letters of the constitution. Another point to note is that the "court found that both parties erred but that the action taken by the Union against the plaintiff was improper, as other means were provided for his discipline.

Thus it is seen that the union's constitution was the domineering weapon that every member of the court's social situation had recourse to even though the defence emphasized the letter of appointment. In effect, the social network in this case seemed to be involved in gradation of law, and each party having recourse to that which was favourable to his case. The court considered the issues at stake within the

framework of the union's constitution. The parties sought justifications for their actions within the boundary of the constitution. This recourse to the constitution by the parties as well as the court with divergent interpretations of the rules manifestly shows the uncertainty of law itself and the human pressure exerted on it for individual's interest. Ideally, laws are specific but enforcement admits of several interpretations. The interpretation of any law will depend partly on the individual's involvement in a particular case. In this case therefore, the judiciary has been called upon to interpret the laws created to regulate private relations because these laws are not adhered to or there were conflicting perception of them. In fact, this may lead us to ask the questions "what is law?"

By pointing out the limitation of the judgment in this case, the court is presumably avoiding an attempt at reconciliation. It has been given specific duty to perform and this has not included entrenchment of plaintiff as General Secretary for eternity. If there is to be an accord between the plaintiff and the defendants, it is not for the court to decide. This will depend on an entirely new agreement outside the powers of the court. This amounts to a recognition of the limitations of judicial decisions. Courts can hand down judgments but it has no weapons of its own to enforce it.

This case involved the nature of Trade Union organizations in our society. The court even took judicial notice of the perennial strifes and disputes which is a characteristic pattern of most trade unions. The strife in this case led to the emergence of two factions. The referendum held appears to have failed to resolve the crisis, for at the trial of the case, the factions were very active. The outcome of this case did not resolve the conflict within the Union since it was not part of the issues submitted for judicial pronouncement. The genesis of the case was located in the internal strife within the union for the General Secretary was being penalized for allegedly taking side with one faction. The General Secretary is not a member of the union, he was a servant and was expected to take legitimate orders from the union. In a situation of crisis involving factions and duplication of authority, it was not clear whose order the secretary was to obey. In this case, the constitution did not anticipate a situation of the nature and hence silent over it. The secretary was therefore left in a dilemma as to "whose order was legitimate in the circumstance." It can therefore be argued that it was the vagueness of the constitution on specific issues of conflict that probably ensured that the secretary would err and the consequential litigation that followed an attempt to punish him. It is therefore arguable that the law itself may provide

forum for proliferation of litigation especially where its terms are ambiguous.

The all-pervading power of the court to intervene in crisis is seen in operation in this case. It can arbitrate on any matter submitted to its jurisdiction except that it may not go outside the boundary of the issues defined for it. The court is always conscious of this limitation and invariably makes specific its decisions. The court is presumably a toothless dog since its decisions can only be effective if other bodies are willing to give effect to it.

CASE FIVE

The case of the ungrateful teacher

The defendant in this case was a student at Adeyemi College of Education when she approached the plaintiff - a School Proprietor for sponsorship. The latter acceded to this on the understanding that the defendant would make her services available to the plaintiff on the completion of her course. Anticipating the fulfilment of this agreement, the plaintiff proceeded to arrange to introduce certain courses - courses in which the defendant was specializing - and sought the approval of the Ministry of Education to offer them in the West African School Certificate examination. The defendant did not honour the agreement to serve the plaintiff on completion of her course, and plaintiff did not secure the approval sought for his school. The result of this is the present case.

The action-sets, each recruited by the principals are as follows:

Action-set of the plaintiff

Plaintiff
Counsel
School students

Intermediary

Court and law

Action-set of the defence

Defendant
Ministry of Education

Issues contested

(a) Breach of contract induced
(b) Quantum of damages

Issues joined

The existence of a contract.

The evidence in this case is that an agreement was voluntarily entered into by the parties stipulating the obligations of both. The plaintiff honoured his part of the agreement with valid documents but the defendant did not. As a result of the defendant's action the plaintiff suffered loss in three ways:

(1) The defendant's service was lost;

(2) The school could not be recognized to offer certain courses for which the defendant was trained; and

(3) The school lost students with concomittant loss of money for the plaintiff.

As a result of these losses, the plaintiff claimed a refund of the actual amount expended on the defendant and damages for breaching the agreement and for his personal sufferings. The defendent on the other hand contended that she did not intentionally breach the agreement because the Ministry of Education trained her and bonded her to serve in public schools for a specified number of years.

In this case therefore, two agreements are in operation. One seemed to have superseded the other. One was voluntarily entered into while the other was involuntary. Why did the government bond supersede the private agreement? Another question is "why did the defendant negotiate the sponsorship at all?"

Since the validity of the agreement was not in dispute, the court's preoccupation was to determine the quantum of damages after rejecting the defence of induced breach. Among other things the court said:

> the defendant cannot be excused from her contractual liability . . . No doubt, the defendant had known before the agreement that any teacher trained at Adeyemi College of Education will be expected to teach at public schools. Even if she was not aware, she has fettered herself by the terms of agreement.

On the issue of damages, the court took a cursory look at the terms of agreement which stipulates:

> Defendant shall pay such sums as shall have been expended on her and whatever may be deemed fit for a breach of contract.

In assessing damages the court waded through some decided cases to locate its decision within accepted principle as it is in no way stipulated by law the exact amount of damages that should be awarded. Each case would determine what damages to be awarded. The judge's perception of a situation will also influence what he considers equitable

in any particular case. An inferior court nevertheless must under the principle of stare decisis follow existing decisions by a superior court on seemingly identical matters. Because of this, the court adopted the principle laid down in Henry Ezlani & ors. v. Abraham Njidike[1] that

> The measure of damages in action in tort is not the same as in action in contract but the rule against double compensation remains the same in both.

This was further strengthened by the case of Livingstone v. Rawyard Coal[2] where Lord Blackburn (as he then was) defined the measure of damages as

> the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

Carefully guided by the above principle the court said:

> As a result of the defendant's breach the hope of the plaintiff in securing recognition for teaching physics did not materialise. I therefore hold that the plaintiff is entitled to general damages for breach of contract. I assess this to be ₦80 (£40) as general damages.

This is in addition to the special damage of ₦120 (£60) and costs of ₦35.

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1. 1965 Nigerian monthly law report p. 95.

2. 5 appeal cases p. 25 at p. 39.

In this case, there were eleven adjournments, six of which were at the instance of the court. The reasons for this are that three magistrates handled the case. On two of the six occasions the court did not sit while on one occasion the presiding magistrate had no jurisdiction to handle the case. There were four adjournments at the instance of the plaintiff. On two of the four occasions, plaintiff was sick while on the remaining two occasions, the lawyer had other engagements. There was an adjournment emanating from the defendant's side and this was necessitated by the fact that she was sick and a medical certificate produced to the effect.

This case typifies the problems characterise interdependence of organizations - the intra-organizational problems interacting with inter-organizational problems. Movements of judicial officials no doubt had adverse effect on the processes and the time lag of this case. Natural factors such as illness also had a part to play in the determination of the time it takes a case to finish in court. The very set-up of the legal procession with dominant solo practitioners posed some problems for use of time in the court. Listing of cases is therefore fraught with problems that can be solved by solving the problems of the individual actors.

CASE SIX

The case of the incompatible couple

The partners in this case were university graduates married according to the ordinance. The marriage was contracted when the petitioner was an undergraduate and this seemed to have interrupted cohabitation. For lack of proper understanding and other extraneous factors, relations and friends could not salvage the marriage when threatened by dissolution. There were two issues of the union.

The matters at stake were

(1) Neglect
(2) Adultery
(3) Custody of children

The issues joined is

Dissolution (but on different grounds).

The principals in this case recruited the following action sets:

Petitioner's action-set

Petitioner/cross-respondent
Co-respondent
Counsel

Intermediary

Court and law

Respondent's action-set

Respondent/cross-petitioner
Respondent's friends
Respondent's houseboy and driver
Counsel.

The union to be dissolved was contracted in 1968. For the greater part of the time that the marriage subsisted, partners lived separately. In fact the petitioner had cause to travel abroad for an academic session. And whenever she was around, it was problematic getting along with the Respondent. During her studentship, she allegedly had some filthy association with one of her lecturers (joined as co-respondent in this case) whose activities were alleged to have frustrated efforts at reconciliation. The partners seemed to have yearned for dissolution on ground of incompatibility but neither was prepared to accept responsibility for the events that prompted the dissolution. The petitioner alleged neglect while Respondent alleged adultery. These allegations were bitterly contested by the parties.

The second Respondent was never in court since he was not properly served to defend the suit even though the Registrar of the court directed that the suit was ripe for hearing. On the receipt of the cross-petition, the co-Respondent wrote to the court asking for directives on the issues, but he never received one.

It was the Respondent who cited the second Respondent in his answer and cross-petition. Because of administrative short-comings, the court ruled that he has not been properly made a party to the cause. The principle Audi Alteram Partem applied and the case against him

was dismissed. On the substantive issue, the court sorted out the grounds upon which the petitioner was seeking dissolution as follows:

(a) intemperate and drunken habits;

(b) indifference to the welfare of the petitioner as a wife

(c) lack of connubial affection

(d) denial of marital privileges

(e) calculated policy of estrangement.

The court regarded the petitioner's complaints as "minor differences which in normal circumstances cannot and should not wreck any marriage." It is the view of the court "that the petitioner's accusations were petty and unsubstantiated."

The court also accepted the evidence of adultery against the petitioner as the whole truth even though the counsel for petitioner urged on the court that this has not been strictly proved. The court held that:

> the burden of proof of adultery is as in other civil cases but that by the nature of the gravity of the matrimonial offence and its social stigma the standard of proof ought to be strict. In any case, I consider myself in 1974 bound by the rules which are applicable to this court, than rigid attachment to dicta which might be suitable for England in 1948 but wholly inadequate to meet the problems of modern Nigeria.

The court therefore held that there was sufficient familiarity that could facilitate adultery. The court contended that adultery cannot

be proved by direct evidence. Although the court found the petitioner guilty of adultery, it declared that the law does not consider adultery in itself as sufficient ground for dissolution of a marriage.[1] The court therefore deduced that the first Respondent as a result of the adultery "finds it intolerable to live with the petitioner."

The petition was dismissed while the cross-petition succeeded and a Decree Nisi in favour of first Respondent for the dissolution of the marriage issued. Unusually, costs was awarded against the petitioner. At a later sitting in camera, the court granted custody of children to the Respondent.

The case was filed on 9/1/73 and completed on 29th April 1974 (1 year 3 months). There were fourteen adjournments at the instance of the court and the procedural requirements. Two adjournments were at the instance of the Respondent and four at the instance of the petitioner/counsel. Two other adjournments resulted from the agreement of both counsel. These adjournments generated heated arguments between the parties and their legal representatives. Thus a lot of bargaining for use of time resulted from the relationship that this case has created.

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1. Section 15 (2) (b) matrimonial causes decree No. 18, 1970.

Another factor that intrigues us is the fact that the parties had several alternatives and chose that which each considered favourable to his/her case. The judge had the problem of sorting out the truth in the conflicting pieces of evidence ably adduced by the parties. His personal perception of the situation backed by decided cases and legal principles helped it to arrive at a decision considered most appropriate by it.

The composition of the action-sets in this case is worth examining. The cause of action is even more puzzling. Truly, relations between the partners had remained poor. There had been some minor disputes since the beginning of the union yet it continued. It was logically in the interests of both partners that at least a minimum of co-operation and affinal relationship should continue in spite of the strains in the union. Moreover it was in the interest of the issues of the marriage that they should maintain the union hence the efforts of the friends and families of the partners at preserving the union. Some of these people had been frequent members of other's action-sets for years including the period of harmony that existed between the partners and it was their wish that the union should continue.

In spite of the moves by the families and friends, the tension, the potential conflict persisted. Only a little earlier the families of the respondent and the petitioner attempted a settlement. The residue of resentment following the failure to settle had prompted some of the friends to join in the action-set of the husband after they had failed as mediators. It is therefore not surprising that some friends of the family became allies of the Respondent at the trial and the decision of the court was certainly affected by that.

The present dispute, then, arose out of the history of relations between the partners, and their current marital positions in the society. One might say that the dispute was inevitable. Since the parties were bent on separation, the court had no option but to separate them, even though the separation could not be total having regards to the presence of children. The circumstances of the case was probably such that it was impossible, at least not desirable, that they should have been separated. However, a real settlement of these, and the re-establishment of connubial relations was out of question because of the personal antagonism between the partners and their structural pulls in opposite directions.

This case depicts the weakness in kinship ties as well as the influence of kins in marital relations. Probably this is a by-product

of the modern trend and the moral laxity that has come to characterize urban relations. This general trend seems to have been aggravated by the effect of rapid industrialization and urbanization with the concomittant superficiality of relations. The marriage was initiated and executed by the two parties with the relations playing passive roles of endorsing the fait accompli. Since there was mutual marriage it is to be expected that there will be mutual divorce. The exclusion of the parental overall sanction in the matter coupled with the standard of education of the parties increase the chances that the marriage would hit the rock. The exposure of the petitioner to other social environments where liberal ideas about marital relations as well as the interrupted cohabitation which the couple had, were guarantees that the association would collapse except sober reasoning prevailed. Lastly, the attitude of the parties to the case and the type of evidence adduced in proof of allegations were of the type which the traditional courts could not have tolerated but which the modern court requires to enable it take a decision. Probably, if the parties had not both sought dissolution, the court would have decided to the contrary. The effect of this is that the court's hands were fettered by the joint demand that it could not promote a reconciliation. This public demand for dissolution of the marriage by both parties seems to be in conformity

with modern trend since neither thought he/she had lost face. There is however no attempt to say that broken marriages characterize the urban social situation, it is only predominantly an urban phenomenon since familial ties are no longer strong enough to salvage marriages on the threshold of collapse.

Summary

Every case brings about a social network that is intricately maintained and varied from case to case. These social networks more often than not bring together people of diverse orientations to a scene with specific norms. The relationships established are off-shoots of ties elsewhere. The size of the social network created is "case-created," "case-determined" and "case-concocted." The actors in the scene are faced with alternatives within which to choose the appropriate behaviour. The appropriateness of behaviour is as determined and evaluated by the individual and the reaction of other actors. Several factors influence this choice and a member of the action-sets would behave according to the dictates of his colleagues in the set and the reactions of others in other sets provided such act is within the ambit of the law. How smoothly this relationship is maintained depends on the entire members of the whole social network, and on the social situation.

The interdependence of the various actors in the court-scene is seen to have been problematic for the organization in terms of smoothness of action. More often than not, it has resulted in protracted litigiosity and consequently hardship and suffering for the participants. Most of the inactions of the members have not always resulted from individual short-comings but also from natural factors like illness. Legal procedure has also created some bottle-necks for the very system it is intended to enhance and smoothen. The relationships established for the members of the social situation is structured and ordered. The fragmented type of association brought about by the adversary system is epitomized in the division within the rank and file of the members of the Bar and the society at large. The counsel-client relationship is deemed instrumental since non-fulfilment of certain contractual obligations may lead to a breakdown of that relationship and therefore a desertion as in the case of the lawyer who withdrew from the case when the accused in our second case did not fulfil his own side of the contract. In fact where the tie subsists, it invariably terminates with the completion of the case. This is typical of all relations in the adversary system. The court depends for most of the time on how these others perform their duties and they are expected to present their sides of the case in the most partisan manner to enable

the impartial tribunal sieve out the truth from falsehood. It is to be realised that the court's reasoning replicates individual biases supported by individual perception and understanding of the legal involvement. In effect whatever decision a court makes is deemed to be within the ambit of the law since there are normally two sides to a matter and until reversed by a superior court, the decisions are valid. In such a situation the law is regarded as an instrument which the various actors manipulate for individual ends. The law is a double agent that serves two masters with equal loyalty but turns against one now and then the other. How it functions depends on the matter at hand, the manipulators and the circumstances prompting its call to duty. Nevertheless, the law has provided the framework, a system one might almost say, by which to standardize expectations and to provide guide-lines of a kind every one could (but not always did) follow. Even though it is a flexible phenomenon, it is the flexibility that made it possible for it to be used constantly, conveniently, and above all, successfully.

Another observation one can made from this case analysis is that the social relations cannot be seen as in any way forming a stable pattern. "At any one time" something like the network may be lifted out of the continuum of social life by analytical procedure and for

analytical convenience. This analytical procedure itself cannot be regarded as stable, for in the first place, even "at any one time" the network of relations is much less definite than such procedures might suggest. Participating actors at the time would not probably be less certain. The network of relations is also one of expectations; and expectations may or may not be fulfilled. In the second place, the network "at any one time" must be viewed, and really can only be properly understood as the temporary culmination of a great deal that has gone before; and what happens at that time will in some ways affect or alter the network.

In concluding this chapter, we will liken the network to a reel of movie film. The individual frame or picture is "at any one time" part of the whole. It may have an internal consistency, a message, an individuality of its own; but its full significance emerges only as a part of the whole reel. It is within this framework that I have regarded adjudication as a social process - dynamic process over a period that is conceptualized as something like a continuous reel of film frames. Adjudication as a social network "at any one time" is the product of decisions made and interaction played out by people previously.

In the following chapter, we shall examine the role of law in society.

CHAPTER TEN

LAW AND SOCIETY: THEORY AND PRACTICE

This study has conceptualized the judiciary as an organization enmeshed in a network of social relations which shape and reshape its form and performance. These interrelationships have been shown to be problematic for the enforcement of law in addition to the internal strifes within the judiciary itself. We have examined the effect of social and economic factors on the adjudicatory processes and we have attempted to show that these factors are likely to have far-reaching effects on the judiciary. We have also shown that the law itself may pose some problems for adjudicatory functions, as is shown in procedural uncertainty and conflicting decisions of coordinate or superior courts, even though, we admit that individual perceptions may contribute to this divergence. We have also attempted to show that such variations in courts' decisions do not amount to adjudicatory mal-functioning, rather they are evidence of growth of the law and the legal system. The judiciary thus conceptualized has been shown to be different from the classical bureaucratic theory of organization even though the judiciary is a formal organization. Thus we have used the judiciary, in this study, to understand the nature of law.

As we have earlier argued, a society can properly be understood through its laws, it is pertinent to make a cursory examination of the source of law more so that the judiciary is designed to give effect to law. In this exercise, we shall examine the relationship between the people and the law-making processes. This will be concluded by examining the societal perception of justice.

Law, which is a key phenomenon in law enforcement, has been defined by some, in terms of its ultimate objective, by others in terms of its source, and still others have conceived it as a dynamic process of ordering human relations. Generally, law seems to be viewed as an "instrument for social engineering."[1] It can therefore be argued that these perceptions of law reflect what the law does rather than what it is.

Two needs have determined philosophical thinking about law. According to Roscoe Pound,[2] these are the paramount social interest in the general security, which is an interest in peace and order, and the pressure of less immediate social interests; and the need of reconciling them with the exigencies of the general security. These

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1. Roscoe Pound conceives of law as an instrument of social control.

2. Pound, Roscoe: An introduction to the philosophy of law. (New Haven) Yale University Press (1954) pp. 2-3.

also involve making continual compromises because continual changes in society have called for readjustment, at least, of the details of social order in the society. These needs have led men to seek some fixed basis of a certain ordering of human action which should restrain group as well as individual willfulness and assure a firm and stable social order.

These two reasons formed the basis of all societies and they have been problematic to explain as well as maintain. Implicit in the two reasons is the problem of order in society and how it is maintained It also raises the issue of societal changes and persistence. The inter 'integrationists' conceive of law as an instrument to maintain the status quo. To this school of thought, "law is man's badge of infamy, his confession of ineradicable perfidy "[1] But to the utilitarian, law creates the sense of right rather than the sense of right creating the law. Law is said to know only one purpose and according to Aguda[2] "the role of law in society is a guarantee of peace, order, and good government."

This calls to question the nature of man as an admixture of evil and good. Man is an amalgam of good and bad impulses which are

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1. Fuller, Lon L. Anatomy of law. Penguin books. Middlesex (1968) p. 9.

2. Aguda, Justice T.A.: "Principles of morality and sin must form the basis of criminal law." in Sunday Sketch Sept. 6, 1970.

constantly in conflict and the general tendency is that the bad impulse tends repeatedly to be prevailing over the good.[1] It is further conceived that these dark and dangerous forces implanted in man's very nature needs be sternly curbed and if not curbed "may lead to total destruction of that social order in whose absence man's state would be no higher than that of the animals." This view stresses the indispensability of restraints upon the forces of evil, and anarchy in society.

These perceptions of the law stem from two viewpoints. One is that man's nature was intrinsically evil and the other was that man was originally created good by nature but that due to sin, corruption or some other internal weakness such as avarice, man's original and true nature had become distorted. These, to the protagonists of law, are justifications for the existence of law in society.[2] The notion that human society, on whatever level, could ever conceivably exist on the basis that each man should simply do whatever he thinks right in the particular circumstance is too fanciful to deserve serious consideration.

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1. Lloyd, Dennis: The idea of law. Middlesex. Penguin books ltd. (1973) p.13.

2. Bodin and Hobbes perceived the original nature of man as one of disorder, force, and violence. For Hume, without law, government and coercion, human society could not exist. In this sense, law was a natural necessity for man. (See Lloyd, Dennis op cit. p.15).

In fact, such a society would not be merely a society without order, but the very negation of society itself.

Diametrically opposed to this view is the conception of law as an "instrument of oppression." From this viewpoint, law does nothing other than to inflict pain on a society already oversupplied with suffering. This view stems from the perception of law by Marx and Engel that "there is nothing like natural law or impartial justice." They contended that the law is and should be the weapon of the class in power and administered in its interest.[1] Gani Fawehinmi seems to have subscribed to this view when he said:

> Equality before the law in this country, as in every capitalist oriented legal system, is largely formal and devoid of substance. There is equality, doubtless, where there is equal wealth. . . .[2]

Thus it can be seen that there is no agreement on the sources of law among scholars and legal luminaries. Many schools of thought have emerged and competed for recognition. In fact, three predominant schools of thought have emerged. The "natural law" school of thought perceives of the law as an embodiment of the "oughts" in the

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1. Robert, Jackson H.: "The supreme court as a unit of government." In Alan F. Westin (ed.) The supreme court: views from inside. (N.Y.) M.W. Morton & Coy. Inc. (1961).

2. Fawehinmi, Gani.: "The role of lawyers in Nigerian society" In Nigerian Tribune. August 20, 1970.

universe (Aquinas). The school of legal positivism, on the other hand, perceives the law as the command of the sovereign authority of a politically organized society (Austin). Further still, the school of legal realism conceptualizes law as a system of precepts discovered through human experience (Holmes). (Reference has been made to the school of sociological jurisprudence (Dean Pound) which conceives of law as an instrument of social control. These are all attempts to rationalize the law of their times and places. The significance of these lies in its analytic purpose and the fact that it may enable us to understand a particular society. These conceptions are not mutually exclusive. Implicit in these conceptions is a system of ordering human conduct and adjusting human relations.

The basis of this distinction is the presence of the element of force in law. Some have argued that force is incidental to law but not essential to its existence. It has also been suggested that some people obey law not because of coercion but because of the pleasure accruable from gregarious living. Since everybody cannot rule in any society, human law has come to depend for its ultimate efficacy on the degree to which it is backed by organized coercion (Austin). Societies need this to continue as an on-going social entity. For everybody in the society:

> The law is like the weather. It is there, you adjust to it, but there is nothing you can do about it except to get under cover when its special kind of lightning strikes.[1]

In the common parlance, the law is no respecter of person. It is like a stormy rain that does nobody good.

The question of finding the law is within the province of the discipline of jurisprudence. Is it the one contained in the law books as laid down by the legislature or the pronouncement of the courts? Usually there is a gap between the Word and the Deed. The reality of law is to be found in the decisions of courts, that is, in actions they take concerning the controversies that are submitted to them for resolution. Justice Charles Evans once remarked:

> We are under a constitution, but the constitution is what the judge says it is.

The emphasis is on the courtroom activities where life and the law intersect. It is in the court that the Word becomes the Deed and in the process acquires a meaning that is identical with its projection into human affairs. Where does the judge obtain the rules by which he decides cases?

"The ideal law is doubtless that which is known clearly to all persons who can then regulate their actions as to keep within its limits."[2]

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1. Fuller, Lon L. op cit. p.12.
2. George W. Keeton & Dennis Lloyd. The United Kingdon: the development of its law and constitutions (London). Stevens & sons ltd. (1955) p.18.

This is too idealistic and simplistic. Law involves more than that. In some cases, the law is nothing more than an intelligent prophecy of what the court is likely to rule. Whether the definition is court-centred or not, the law exists in some crude form in statutes, customs, judicial precedents, opinions of experts, morality and equity. These can be dichotomised into two broad groups - "made-law" and "implicit law." These are otherwise known as "statute" and "customary" laws. The two are analytically distinct but mutually related in reality.

The statute is "legislature-created" and comes into operation at a determinate time. It has a determinate human source. Customary law on the other hand, is not declared or enacted. It grows or develops through time. The date of its coming into operation can usually be assigned within broad limits. Though it may be possible to describe the general class of persons among whom the custom has come to prevail as a standard of behaviour, nevertheless it has no definite author, there is no person or defined human agency we can praise or blame for its being good or bad. There is no authoritative verbal declaration of the terms of the custom, it expresses itself not in a succession of words, but in a course of conduct. The purpose of the custom is never made explicit but entrenched in moral.

Levy-Bruhl has shown that this distinction is unnecessary as both have same characteristics. According to him:

> . . . law derives from the social group; legal rules express the way in which the group considers that social relations ought to be ordered. . . . Statutory law is not essentially different from custom . . . both are the expressions of the will of the group . . . while custom is spontaneous and unconscious; statutory law proceeds from specialized organ and originates by means of procedure called enactment.[1]

The law contains a scale of values - those in which it operates. Chloros[2] perceives of law as being very much in the centre of society. The scale of values has affected the law in two ways:

(a) the current ideas about right and wrong must necessarily determine the principles of law;

(b) a scale of values is decisive in shaping the kind of state in which we live and ultimately the liberty and happiness of all citizens.

As for Chloros,[3] there is no safer way of understanding the character, history and customs of a people than through the study of its legal system.

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1. Levy-Bruhl, Henry: Sociologie du droit. Presses Universitaires, Paris (1961). pp. 39-40.

2. Chloros, A. G.: "Law and society" In Graveson R. H. (ed.) Law (London) Routledge and Kegan Paul (1967) p. 12.

3. ibid. p. 20.

The first has implicit in it the notion of custom and morality. The second presupposes a political community. The truth of this analysis is that modern states have rules regulating the life of the people and even entering largely into the decisions of justice, which do not belong to positive law.[1] It is on this basis that one can talk of the interaction between the customary and statute laws. The result of the interaction is more often than not, a blending of the systems or rather an emergence of one unified legal system since the customary law itself may become codified. The extent of the codification accounts for the differences in the laws of societies in the world. There are differences, not only in contents but also in their types and immediate purpose as distinct from their universal and ultimate purpose of social order and survival, in the modes or techniques for their formulation and enforcement. Explaining the variation or differences, Ajayi said:

> . . . they may be due to variations in the stage of development reached by the respective societies, to mere accidents of history or some other purely fortuitous circumstances.[2]

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1. Markby, Sir William: Elements of law. (London) Henry Frowde O.U.P. (1896) p. 8.

2. Ajayi, F.A.: Judicial approach to customary law in Southern Nigeria. (Unpublished) Ph. D. thesis. University of London. (1958) p. 26.

How much of these laws are known to the people? If law is to regulate behaviour and if it is a technique for predicting what decisions courts of law are likely to make in particular circumstances, what contribution do the people make towards its enactment? It has been argued that an understanding of the functioning of law in society requires more than concentrating attention on the activities of the legislators, courts or other tribunals. The law is a great social fabric constituted by human behaviour in all the mass of transactions which have legal significance, and to this, the activities of numerous officials, members of the legal and of other processions, as well as law-creating groups such as the commercial community, are making continuous and important contributions. Laws are either made sequel to an abnormal situation or to determine what future behaviour should be in certain circumstances. In some circumstances, the need for law becomes so obvious that the legislature is only forced to react and in others, the government may of its own volition find it expedient to enact the law. The details of the law may be as perceived by the legislature having regards to the circumstances of the enactment whilst in others, the details are delegated to other agencies to spell out.

The flaw in this is that the people whose behaviours are to be regulated know very little about the enactment. How fitting the

sanctions attached to the act that is declared unlawful and how enforceable they are, are invariably not considered. The problem is simple in a case where social pressures[1] require the promulgation of the law but it is complex when the people cannot see any need for the particular law.

In our law-making processes, the public is always relegated to the background. There is very little publicity allowed until the actual enactment. Adegbite[2] in a lecture delivered to the members of the Nigerian Bar Association, Ibadan branch on 24th April, 1975 said:

> . . . legislative measures in this country have not always been exposed to public comments. It is the practice of Government to keep secret their detailed legislative proposals until they are laid before the Executive Council . . .

If this comes from the very officer then charged with law-making in the State, it can be deemed to represent the true position of things. Our contention therefore is that if the intended law is not known, how much influence can the members of the public exert in a situation of ignorance? Ironically, the law recognizes no ignorance as an excuse

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1. The armed robbery decrees are typical. After the Nigerian civil war, incidence of armed robbery was high and the people actually felt the need for a drastic measure. The robbery decree provides death by public execution for the offence.

2. Adegbite, Dr. Lateef was the then attorney-general and commissioner for justice in the Western State of Nigeria.

for breaching it as the maxim ignorantia juris neminem excusat (ignorance of the law excuses nobody) shows. This exists as a presumption of law that everybody knows the law. But as it was argued earlier our law making processes lack sufficient publicity and this obviously negates the presumption.

One may be tempted to attribute the absence of publicity to the peculiarity of military governments which are supposedly undemocratic. The truth, of course, is the contrary. Even during the period of parliamentary system, the customary three readings of the bill which is designed to give opportunity to the public to know in advance what may be a new aspect of social control, the publication (in the official Gazette) was limited to the few politically conscious citizens leaving the majority in the dark until the actual enactment.

The system contains contradictions which are manifested in the form of discrepancy between legal rules and public sentiment. At times, law may lack the support of the public. At other times, dominant public sentiment may change while the written laws remain unchanged and a cultural lag would result. In effect, the law may represent a cultural lag or lead, but whichever appearance it takes, if it deviates markedly from public sentiment, it will be difficult to

enforce. An example of obsolete laws in Nigeria is the law of bigamy.[1] The furtherest that any complainant has gone about the second marriage is to file a caveat to prevent it from taking place. And where the marriage is contracted in spite of the protest or without a protest, the partners have learnt to tolerate it or seek a divorce. The law cannot be enforced if no report of the breach is made to the law enforcement agency.[2] The questions may be asked: Why are the victims of this crime unwilling to report to the law enforcement agencies? If the law cannot be enforced, why retain them on our statute books? The fact is that most invariably, Nigerians have chosen the most honourable path by seeking a dissolution of the existing marriage rather than report the crime. In fact, section 3 (1) (a) of the Marriage Act makes a marriage void if either of the parties is, at the time it takes place, already lawfully married to some other person. According to Adesanya[3] "a voidable marriage suffices for the purpose

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1. Section 311 criminal code of Western Nigeria stipulates that "Any person who having a husband or wife, living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife is guilty of a felony and is liable to imprisonment for seven years.

2. The then chief justice of Nigeria once remarked that if the law of bigamy is enforced, about 95% of Nigerians would be guilty.

3. Adesanya, S.A.: Law of matrimonial causes. Ibadan University press (1973) p.144.

of rendering a subsequent marriage void for bigamy." Our culture tolerates multiplicity of wives and hence the law of bigamy in our statute book can be regarded as an anarchronism, a relic of colonial heritage. In fact, Adesanya claims that both the criminal law of bigamy as well as sections 47 and 48 of the Marriage Act are dead letters in Nigeria despite their theoretical strictness. This is because most of the people saw nothing wrong in engaging in such acts, and obligatory monogamy itself is regarded as a foreign concept and a little more than a status symbol.[1]

Another problematic area in law-making is a situation when given laws are not publicly perceived as leads or lags, although actual or latent changes are perhaps involved. In this instance the issues are so complex and ill-understood that the relation of laws to life situations is obscured and people are frustrated because they cannot understand what the government is doing and why. Such laws are invariably subject to severe attack by the people or they are defied. The enforcement is usually fraught with problems for the basic enlightenment required to make the people accept such law is basically absent.

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1. Adesanya, S.A. op.cit. p.145.

The absence of publicity that affects intended law also affects the enacted law itself. In the case of a law of general nature the question of for whom the law is made does not, on the whole, seem to be sufficiently considered. Furthermore, some laws remain unreformed and unenforced. There is an admission that our laws are invariably not reformed. The then learned Attorney-General[1] put it bluntly that:

> . . . there is no doubt that the method by which law is reformed in the Western State is not adequate.

Whether or not the laws are reformed, enforced or unenforced, if they are not abrogated, they remain laws simpliciter. An infringement of any aspect of it may earn the culprit the wrath of the law. As we earlier on put it, laws are laws if they are regarded as laws by the courts. The courts have also been credited with the power to make laws or reform existing ones. Thus the role of the courts in the development of any legal system cannot be over-emphasized. Actual controversies are submitted to courts for adjudication and the laws which are the laws from the point of view of the legal realists are applied.

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1. Adegbite, op cit.

The courts have been described as the "Temple of Justice."[1] Expatiating on this, the then learned Chief Justice of Mid-West State, Mr. Justice Mason Begho said:

> . . . We have inherited from Great Britain all that is noble in the common law and the determination always to do right to all manners of persons without fear or favour, affection or ill-will in consonance with the judicial oath taken by all magistrates and judges.

The idea of law is often associated with the notion of justice, and the judge is regarded as its priest. On the other hand, judges, as the exponents of unwritten law, as the representatives of the "royal" font of justice, were regarded in a peculiar sense, as the "depositaries or living oracles of the law."[2]

Thus it can be asserted that the end of law is justice. Fitzgerald[3] claims that theorists as far removed from one another as Aquinas and Salmond have claimed justice as the goal of law; indeed for them it is a logical part of the very notion of law. Even the positivists would not deny the relevance of justice to a critical

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1. Justice Mason Begho. "Courts are temples of justice" In Sunday Observer. November 22, 1970.
2. Dennis Lloyd. op cit. pp. 259-260.
3. Fitzgerald, P.J. Salmond on jurisprudence (London). Sweet and Maxwell (1966) 12th edition. p. 60.

evaluation of the law. The notion of justice entails that like cases be treated alike not only as regards the hearing but also in respect of the finding. In addition to this, the notion of law represents a basic conflict between two different needs: the need for uniformity and the need for flexibility. Uniformity is needed partly to provide certainty and predictability to enable the citizen to plan his activities with a measure of certainty and predict the legal consequences of his behaviour. Flexibility, on the other hand, is needed to accommodate exceptional cases, and in fact legal realism has shown that no rule can provide for every possible case. This is why some measure of discretion is accorded the court. Furthermore, flexibility is necessary to enable the law to adapt itself to social change. The import of flexibility is that a serviceable legal system must be able in its development to take account of new social, political, and economic requirements.

Justice, in philosophical connotation, is different from justice in reality. It is dictated by the prevailing views in any society. Judges themselves are members of the society, they are influenced by the prevailing views in handing down justice. In effect, the purpose of judicial process is not justice in philosophical connotation, but justice as perceived by the judge and sanctioned by the society within

a social and political climate. If the decision of the court is not in conformity with the prevalent social values, then the decision of the court may be unenforceable or made redundant by act of parliament. Presumably, it is the political climate of the time that prompted the judge in the celebrated treasonable trial to say, in reply to Chief Awolowo's allocutus, inter alia:

> If you were the only one before me, I would have felt that it was enough for you to have undergone the strain of the trial. I would have asked you to go. But, I am sorry, I cannot do so now because my hands are tied.[1]

On the other hand, the reaction of the Ghanaian Government to the decision in the case of one Sallah against the Busia government for wrongful dismissal typified justice as perceived by the ruler. The Supreme Court of Ghana found in favour of the plaintiff and the Prime Minister, in a broadcast to the nation declared the judgment valueless. In defence of his stand, the Prime Minister said "the constitution is not a fetish." He added he was not protesting against the Supreme Court's decision because it had gone against his government but because he "wanted to ensure that Ghanaians were given fair trial any time they went to Court."[2] This action was ably defended

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1. Jakande, L.K. op.cit. p.330.

2. "The clash with the judges: Busia defies his own constitution" In Africa and the World. vol. 6 No. 60 June 1970.

by his Attorney-General - Mr. N. Y. B. Adade in the National Assembly and was reported:

> Mr. Adade referred to the Supreme Court judgment in the Sallah case and asked members not to rely on it in their contributions to the debate because it was "hopelessly valueless by any standard. The court was not legally constituted and its "judgment was tainted with judicial immorality and impropriety."[1]

In justification of his attack the Attorney-General said that the Constituent Assembly committed a fundamental mistake by thinking that human beings are fallible but the courts cannot err. This represents the law-maker's notion of justice, i.e. it must be in support of the government. The acting Chief Justice commented on the case and the crises it sparked up thus:

> The Sallah's case had "taught us the difficulties that beset a people striving to establish a democracy in their society."

According to the report, the Chief Justice in an undisguised reference to the Busia government said:

> No litigant likes an adverse decision to be given against him and his reaction to the decision, which in some cases may be violent, may be unpleasant to the judge.[2]

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1. Ghanaian Times, June 17, 1970.

2. "Judge speaks of the authority of courts." In Africa and the World. op. cit.

Another recorded incident of conflict between the court and the government was in the case of the Deportation order served on a lawyer, Mr. John Lynes in Ghana. When Mr. Lynes was served with the Deportation Order, a motion was entered in the High Court appealing against the order. Meanwhile, on the application of the government, a magistrate ordered that Mr. Lynes should be detained for 27 days pending the hearing of the High Court motion. This detention necessitated another application at the High Court and Mr. Justice Cousey ordered that Mr. Lynes be released. The order was ignored, the government alleged that it was "a nullity and unenforceable" and "irregular, invalid and grossly erroneous in law."[1] Thus we see that the law-maker's notion of justice is opposed to the judge's notion of justice. As earlier said, the notion of justice depends on the political and social climate of the time. In fact, the whole notion of the independence of the judiciary is usually called to question only, and only, when the judiciary is in confrontation with the government. In this country, there has not been open threat to the independence of the judiciary but it cannot be said that there has never been a subtle threat to it. The most pronounced occasion was in the case of Prince

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1. Africa and the world. vol. 6 No. 62. August 1970.

Adeleke Ademiluyi v. Government of Western Nigeria and another [1] The High Court of Lagos ruled against the Government of the Western State when the former challenged its right to confiscate its property lying and situate in the Lagos State. By Decree 45 of 1968, [2] the jurisdiction of the court was taken away in any decree of the Federal Government and it was made retroactive such that the judgment of the High Court was nullified. Another attempt to muzzle the independence of the judiciary was the occasion of the affidavit episode* whereby the Federal Government warned the judiciary not to allow itself to be used as a vehicle to embarrass the government. The reaction of the Advisory Judicial Committee was to ban swearing to affidavit. The ban sparked up public reaction and a quasi press-war between the Bench and the Bar as well as the press commenced. [3]

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1. All Nigeria law report. vol. 2, 1968. pp. 272-281.

2. Sec. 2 (1) of decree 45 of 28/8/68.

3. See Daily Times, November 4, 1974. "Our use of affidavit has no precedence" (Elias) (b) Daily Times, September 17, 1974. "Lawyers meet CJ over affidavits" (c) Daily Times November 8, 1974 "The affidavit controversy - no legal right to prevent one from swearing" (Olu Onagoruwa). (d) Daily Times, November 21, 1974 "Our stand on oaths" (The Nigerian bar association) etc.

* When in 1974, the Gowon administration became corrupt to the letter and at the same time tyrannical, Nigerians resorted to the use of affidavit to expose corrupt officials.

However there have been cases in which the judiciary has been demonstrably fearless. The Amakiri v. Iwowari,+ the Olunloyo v. Government of Western Nigeria,* the magistrate Awosanya contempt case, are typical of this. Most often the judicial dignitaries in their public utterances reassure the public that the judiciary is free. The then Chief Justice of Nigeria was reported to have said he did not know of any instance at which federal or any state government trampled on the independence of the judiciary. The Chief Justice asserted:

> The judiciary has not fought shy of sustaining its independence, indeed it has not shirked its responsibility to caution the authorities when necessary.[1]

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* Dr. Omololu Olunloyo sued the then Government of Western Nigeria for wrongful dismissal and breach of contract. The court found in his favour.

1. Daily Sketch, October 30, 1974.

\+ This is a case of general and special damages for battery and unlawful detention against the Aide camp to the former military governor of the Rivers State. The court found for the plaintiff.

++ A case of smuggling was pending before Mr. Awosanya - a magistrate. The Customs and Excise officers then filed a writ of prohibition at the Federal Revenue Court asking Mr. Awosanya to suspend proceedings in the case. But Mr. Awosanya proceeded to strike out the case in flagrant disrespect to the order of the superior court. Mr. Awosanya was convicted for contempt of court and he appealed to the Supreme Court which ruled to the contrary and discharged Mr. Awosanya.

This non-interference seems to have attracted comments even from the military. The one time Adjutant-General of the Nigerian Army - Major-General Emmanuál Abisoye - was reported to have said that the court should be allowed free hand to hear any complaint brought by a citizen against anybody no matter his status in the society.[1] This statement seems to have contradicted the non-interference picture painted earlier but since there are no proven evidence of interference in purely judicial matters, the non-interference notion may therefore be held tentatively as a representation of reality.

Whether this conclusion is valid or not, it raises the whole issue of judicial independence. What does it mean? Truly, and by tradition, the judiciary is the third arm of government, its independence is only stressed in purely judicial matters. The question of an upright judiciary is almost invariably raised only when the citizen is engaged in legal confrontation with the government or its agents. And when a court is bold to pronounce the government guilty, it is generally felt that the judiciary is upright and free. But when performing the most general functions of arbiter among the citizen, the issue of independence is invariably not considered.

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1. Daily Times, September 11, 1974.

The fourth notion of justice is that perceived by the victim of the court's decisions. It is unlikely that an accused condemned to death would make favourable remarks about the court. Most invariably, accused persons in such conditions protest their innocence even after a pronouncement of "guilt." It is either that the case has not been viewed from the right perspective or that some enemies have planned to incriminate the offender. Usually, the notion is expressed in persistent denial. The Sunday Sketch reported the case where a robber persistently asserted his innocence even at the point of execution. The robber blamed his execution on the antics of those he called his "enemies" who incriminated him.[1] The notion of justice as seen by the victim is mostly represented by the usual omnibus ground of appeal which more often than not is worded thus:

> The verdict is altogether unreasonable, unwarranted and cannot be supported having regards to the weight of evidence.

Thus it can be seen that the notion of justice can be perceived from four perspectives - the judge's, the law-maker's, the victim's and the public. It is within these broad perspectives that one is to understand the notion of independence of the judiciary and the justice. it dispenses. Thus it can be concluded that the so-called independence of the judiciary is an ideal state or rather it is more of a theory than practice.

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1. Sunday Sketch. May 5, 1974.

Whether the judiciary is independent in its judicial performance or not, whether the notion of justice from the four dimensions enumerated conflict or not, it is a basic truth that the judiciary manipulates the law which it recognizes as the law, and which the people either recognize as the law or they are made to admit as the law; and which the law-makers are prepared to enforce as the law. Thus as we have earlier shown, judicial processes are an amalgam of activities emanating from outside the court, and having consequences beyond the court. These activities are governed by their own norms which may be at variance with the norms of the judiciary. However in the court situation, these divergent norms are patterned into specific normative standards of court processes. Thus it can be argued, as our case analysis has shown, that actors in the court are faced with the problems of selecting from meaningful alternatives to act.

It can therefore be argued that the court is like a processing machine turning the inputs - law and controversies - into the outputs of order, peace and stability. The effectiveness of this depends on whether particular issues reach it. Another chance element in litigation is accentuated by the respective means of the parties to the litigation. The one-time Honourable Attorney-General said:

> Parties to a litigation are often deterred from fighting their cases to the Supreme Court for lack of funds. Sometimes, litigants settle their cases out of court since it may not be possible to forecast the outcome of their cases with certainty . . .[1]

This has been shown to have serious implications for enforcement processes. If access to justice is not equal, the notion of fairness can be regarded as farce, vague and of no substance. It is questionable as it is untenable to expect unequal people to have equality in a place dominated by inequality. Truly, cases are decided without fear or favour, but financial constraints blocks the opportunity to the masses.* If one cannot present one's case because of lack of money, how can one compete with the man with money for justice? The availability of the judicial infrastructures does not guarantee justice to all. It requires also ensuring the use of the opportunity if the need arises. In effect, the phrase "taking justice nearer to the people" is a camouflage for it is taking infrastructure to the people without ensuring that the aggrieved persons have equal opportunity of using it. Because of this lag, the law which we say is no respecter of person is different in practice from that theoretical notion.

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1. ibid.

* The recent provision for legal aid in 1976/77 budget of the Federal Military Government is a recognition of the fact of inequality and an attempt to correct it.

Laws are enforced only when there is an infringement and the infringement is brought to the notice of the court. If this does not happen, it becomes 'blue law'. There are also some laws that are unenforceable not because courts cannot rule on them but because there are natural inhibitions. For example, while a court can repossess a plaintiff of a tract of land, it cannot repossess him of his reputation. The court can make a defendant restore a unique chattel but it cannot make him to restore the alienated affection of a wife. Even if the court rules to the contrary, it has no power of its own to enforce it.[1] It is at the mercy of other law enforcement agencies for the execution of its decrees. This takes us logically to the human problems in law enforcement processes.

The problem of the courts then is, as has been shown in this study, ascertaining the law in the legal system that is to be applied to a cause, and if none is applicable, reaching a rule for the cause (which may or may not stand as a rule for subsequent cases) on the basis of given materials in some way which the legal system points out. Even when the rule is chosen, the court still has the problem of

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1. The case, Mojeed Agbaje - harbeas corpus. In this case the Ibadan high court ordered his release and this decision was confirmed by the Western State court of appeal. In another application, the Lagos high court also ordered his release. The powers that helm him never burged until they were pleased to grant him freedom. (Morning post, Sept. 1969).

interpreting and determining its meaning as it was framed and with respect to its intended scope. Lastly the law so found and chosen will be applied to the cause in hand.

The notion that the main function of the court is to interpret the law is misconceived. It is also misconceived to think that law is nothing but a mechanical fitting of the case with the straight jacket of rule or remedy. The truth is that laws are laws only when the court has searched for the one that is applicable in the particular circumstance. It is therefore contended that law-making, adminstration and adjudication cannot be treated in isolation of one another and be regarded as separate entities.

This point has been ably put by the then Attorney-General of the Western State, Dr. Lateef Adegbite[1] when he said:

> you must all, in your diverse legal practices, have witnessed occasions when courts become enmeshed in attempts to find working compromises as they interpret difficult legislation, or where they have to resolve knotty problems arising from hitherto unthought factual situations. The courts in escaping from such an abyss, would interpret the law to fit particular situations, which means they would in the nature of things develop the law.

Thus it can be seen that adjudicatory process consists of a number of prescribed steps that do not really admit of rigidity if the processes must work. Cases do not usually have laws tied to them,

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1. Adegbite, Dr. Lateef. op.cit.

the processes of discovering the law that is applicable is quite onerous. It has been shown that it is problematic for the attorney, the police and the court to select which of the several laws that are available will fit a particular case. Even where cases can be regarded as seemingly identical, and there had existed decisions of the same court or a superior court to guide the present, the court still has the option of deciding cases from its own point of view, the principle of stare decisis notwithstanding. In fact, the principle itself makes room for this, even though its essence lies in certainty and predictability. Even though the common law aims at certainty, nevertheless it relies on the peculiarity of cases to apply. It will not apply if:

(a) there are conflicting decisions between which the court is bound to choose which to follow;

(b) a previous decision was given per incuriam i.e. in ignorance of statutory provisions, or it would seem of a previous decisions which would have been binding on the court;

and (c) a previous decision has been overruled by a superior court.

It must however be emphasized that this deviation is not ordinarily done. Formally, the courts subscribe at any rate, when it is convenient to do so, to the theory that a proposition of law is only binding in so far as it was necessary to a decision, and even then only as to the particular facts dealt with. Any attempt however to tie the

ratio decidendi to such a theory is bound to be unduly mechanical for reasons that court's decisions in seemingly identical cases can never be the same in all its facets. An unalloyed loyalty to precedence therefore may deny the law its flexibility of purpose and thereby rob the court of the freedom of arriving at decisions from their own reasoned viewpoint. The point is that the court may apply the precedent in one instance and reject it in another all depending on whether distinctions can be made between the reason for the previous decisions and the basis for this decision. Normally a court will be content to treat as ratio the actual utterance of the court in which he purported to formulate the reason for his decision, but this will not prevent another court from qualifying this reason or rejecting it and substituting an alternative ratio where this course commends itself to the court. The law itself provides many formulae to make this process possible without appearing to disrupt the doctrine of stare decisis. Non-adherence to this principle adds to the uncertainty of legal prediction while the problems of the attorneys with their clients become more complicated.

This court/lawyer, prosecution/defence, lawyer/litigant relationships have been shown to be problematic for the smooth running of the judiciary as an organization. It involves a delicate balancing and hard bargaining. The cooperation of the Bench and Bar in all

facets is invaluable to the effective performance of the organization. The systemic approach has enabled us to show how this interdependence generates tension. The judiciary contains more than judicial officers and staff. We have perceived it as containing all the agencies of social control. Asumugba[1] said:

> . . . the effective and efficient administration of justice inevitably involve a dynamic, virile and independent judiciary. Added to this is a well groomed, courageous Bar full of lawyers, fearless in their pursuit of justice but full of respect for the Bench . . .

In this study therefore, the performance of the judiciary has been problematic for various reasons which include the social organization of the legal profession itself. The lawyer-client relationship has also been shown to have affected the smooth performance of the court. More often than not, this has resulted in delay. It has also been shown that the duty of the attorney to advise his client will enhance judicial processes if done well. If lawyers have honesty of purpose and discharge duties to their clients well, all parties to the litigation will be the better for it in the sense that judicial processes would work smoothly. This study has also shown that the court-police-bar relation is intricate and complex. It is a relationship of mutual suspicion and uneasy confidence with an ineffective control being exerted by the court. This study has also shown that the lack

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1. "The judiciary as an institution" In Daily Times, Sept. 13, 1973.

of effective control and the mutual suspicion have unsavoury consequences for the court. The tenuous relationship notwithstanding, the organizations and individuals have come to accept the indispensability of their relationship. The focus of the study that organizational performance is a function of organizational interdependence in addition to intra-organizational strains and stresses seems to have been borne out.

This study has also identified some causes of delay in the judicial processes. These are delays concomittant with dispensation of justice; unavoidable delay brought about by prevailing circumstances of each case, and unnecessary and unjustifiable delay. It has also been demonstrated that the maxim "justice delayed is justice denied" cannot hold in all cases for some cases require this delay if justice - the rule of natural justice and equity - must prevail. The problem of delay has also been categorised into two - tolerable and intolerable delays. These are measured subjectively. What can be regarded as reasonable delay is difficult to measure and a Chief Magistrate (as he then was) put it thus:

> We all know that when an act must be done within a reasonable time, " and the "reasonable time" is not stated, what is reasonable time must greatly depend upon the circumstances of each particular case.[1]

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1. Akpata, E.A. "Delay in the administration of justice" In The Nigerian Observer. August 28, 1970.

It has, in fact, been proved that the bulk of the delay results from the magistrates' courts where the bulk of the cases are heard and these courts have not been credited with causing the delay. The delay is caused by inter-organizational and environmental constraints coupled with minor intra-organizational tensions. According to the Chief Justice of the Mid-West State:

> Here as in England, the Magistrate's court is the cinderella of the judicial system. It is a very busy court and speedy trial is the watchword.[1]

The problem of delay has also been shown to have resulted from insufficiency of personnel and inadequacy of courts. Distance to courts and its concomittant financial drain have been shown to have grave consequences for the adjudicatory processes.

The study has also shown in a modest way that the judiciary does not fit into the classical bureaucratic theory of organization and that the model that a formal organization with a hierarchical authority structure will function undisturbed has been queried by this study. Professionalism and individualism have been shown to inhibit bureaucratization and this has encouraged segmentation and fragmentation. The reasons for this are in the nature of the judicial functions whereby a judge has the absolute power, governed by existing rules, to decide

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1. Justice Mason Begho. Address to the magistrates' conference held at Benin on November 21, 1970.

cases according to the dictates of his conscience. The segmentation that has been identified is as manifested in the Higher Bench/Lower Bench dichotomy as well as the professional/non-professional polarization. These have been seen to generate internal but tolerable strains.

In conclusion, the judiciary, to function undisturbed, requires both internal and external overhauling. Internally, it should increase the scope of its operation by expanding in personnel as well as infrastructurally. Judicial officers should be given adequate notice of transfer with the warning to complete all part-heard cases before going on transfer to avoid adjourning cases sine die or starting cases de novo which the sudden transfer of judicial officers invariably brings in its train. Rules of court should be liberalised and made more flexible. The police/public relations need be improved to encourage mutual understanding. The police/court ties should be removed from the realm of mutual suspicion. In fact, the various organizations collaborating with the court in law enforcement processes need internal re-organizations, to enhance law enforcement and to ensure speedy justice. For instance, the police should be organized in such a way that the criminal investigations branch and its members should at one particular time have no other engagements outside investigation and prosecution. This is not to say that police officers should ba made permanent in the investigation branch. If

they are transferred to other branches of the police, they should be warned to complete every assignment on hand in that branch before proceeding on transfer. The provincial police units should have direct access to the Director of Public Prosecutions or his representatives. In fact, the latter should decentralize such that each provincial police unit will have an adjoining office of the Director or Public Prosecutions. If speed is restored, the efficacy of the system will be enhanced. Finally it is desirable that financial aid be granted to intending litigants with lean resources while automatic legal aid should be granted to all accused persons in criminal cases. These will eliminate the possibility of justice being the exclusive preserve of the rich and will also enhance the quality of performance of the organization.

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APPENDIX 'A'

INTERVIEW SCHEDULE

Mark (x) where appropriate:

1. Sex:
   - Male
   - Female

2. Age (last birthday):
   - Under 20
   - 20 - 29
   - 30 - 39
   - 40 - 49
   - 50 - 59
   - 60 and above

3. Marital status:
   - Single (unmarried)
   - Married
   - Separated
   - Divorced
   - Widowed

4. Educational background:
   - Non-literate
   - Primary/Modern
   - Secondary/Teacher Training
   - Technical
   - University

5. If educated formally, highest qualification attained:
   - Primary school leaving certificate
   - Modern III/Secondary Class IV
   - School Certificate/G.C.E.
   - Professional Certificate
   - University Degree
   - Higher Degree
   - Others

6. What work do you do?

7. How did you obtain the job?

9. What is your position on this job?

10. What is your present income?

Under ₦300
₦301 - ₦1,300
₦1,301 - ₦2,300
₦2,301 - ₦3,300
₦3,301 - ₦4,300
₦4,301 - ₦5,300
₦5,301 and above.

11. How related is your job to the field of specialization at school/university?

Same field
Related field
Different field
Others (specify)

12. (a) By virtue of your position, you have had contact with the judiciary. Yes No

If yes, in what capacity?

13. What was the nature of contact?

14. Could you make any comments about the transaction/s that took you to the court?

Yes No

15. What are the comments?

16. It is often argued that the processes in the courts are protracted. Do you agree?

Yes No

17. If 'yes' to (16) what in your view are responsible for the delay?

18. Do you think the delay can be eliminated? Yes No

19. If 'yes' to (18), what are your suggestions for such elimination?

20. If 'no' to (18), what do you think about the delay itself?

21. What in your view should court processes aim at?

Reconciliation
Mediation
Arbitration
Any other (specify)

22. Can you compare the present adjudicatory system with the traditional adjudicatory system?

Yes No

23. If 'yes' to (22) which of the two systems will you prefer?

24. If modern adjudicatory system, why?

25. If traditional system, why?

26. Which of the two systems do you think has the most advantage?

27. What are the distinguishing marks of the two systems?

29. Do you know how court judges/magistrates are recruited?

Yes No

30. Can you describe the procedure? Yes No

31. If 'yes' to (30), please relate this to me.

32. What do you think should determine who to be appointed as a judge/magistrate apart from the constitutional and educational requirements?

33. In the discharge of court functions, is it possible for two judges to differ in their opinions about a single matter?

Yes No

34. If yes, what do you think are the factors that can influence such varying opinions?

35. If variations in judicial decisions are possible, do you think this have any consequences for the legal system?

36. Do you think any pressure is exerted on judges/magistrates while performing their judicial functions?

Yes No

37. If yes to (36) could you list some of the pressures you know?

38. Will you agree that there is an increase in the cases filed in the courts?

Yes No

39. If 'yes' to (38) what are the factors that are responsible for the increase?

40. Do you think the increases have any consequence for adjudicatory processes?

Yes No

41. What are the consequences?

42. What do you think should be considered in a place before courts are established there?

43. Do you think a community should agitate for the establishment of court in its area?

Yes No

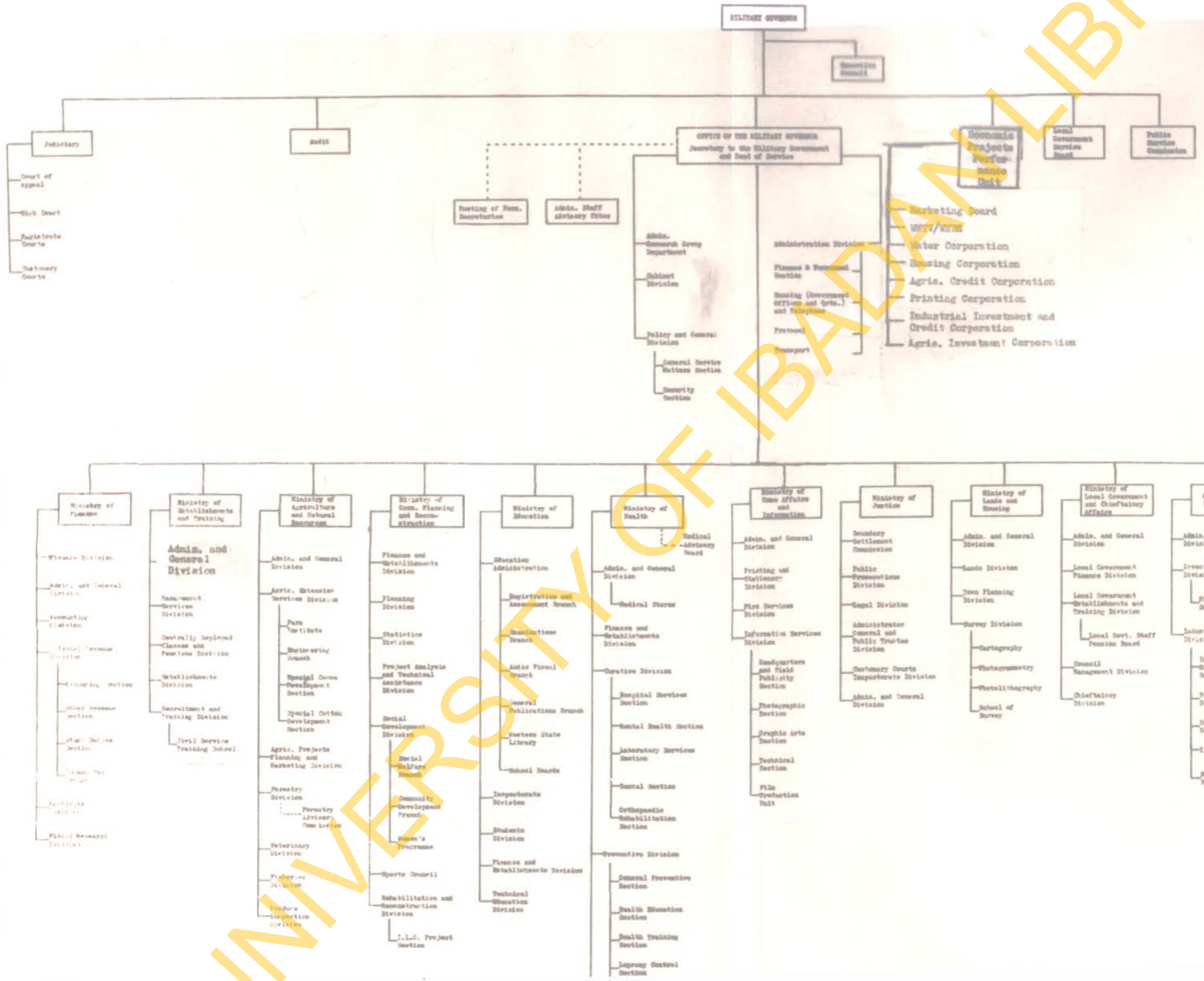
44. Here are some statements: Indicate whether they are true or false.

	True	False
(a) People are now having greater recourse to court than hitherto.		
(b) Most of the cases going to courts are mostly of the frivolous type that traditional judicial system would not have entertained		
(c) The cost of litigation was lower in the traditional system than modern system		
(d) Complexity of modern society enjoins people to have more recourse to courts in spite of the cost		
(e) There are more issues for judicial contention because of the increasing technological changes		
(f) The traditional court system cannot cope with these trend hence an increasing scope in the judicial sphere of intervention		
(g) The traditional court system has almost disappeared because of the weak nature of the webs of kinship		

45. Please indicate your position on the following statements:

	Agree	Indifferent	Disagree
(a) Most of the cases before the courts today are brought by the rich members of the public who can finance them			
(b) Generally most people people do not succeed in litigation			
(c) To succeed in litigation, one has to belong to the wealthy class			
(d) In this state today, most judicial processes are within easy reach of everybody			
(e) With minimum expenses and worries most people can obtain justice without fear or favour			
(f) To receive fair and equitable justice in this state, it is not sufficient to be wealthy, you must also be influencial in the society.			

Organisation Chart of the Machinery of Government
Western State of Nigeria
1st September, 1974



APPENDIX 'C'

Scheme of Service

1. Senior registrar

To supervise and organise the Registry of a group comprising not less than 3 High Courts in any one station;

Alternatively, if posted to the Registry of the Court of Appeal for the State, to supervise and organise the Registry under the direction of the Chief Registrar of the Court of Appeal.

2. Higher registrar

To supervise and organise the Registry of a Chief Magistrate's court and to assist the Chief Magistrate in the exercise of administrative supervision of all Registries within his Magisterial group; or

To be responsible to the Judge of the High Court to which he is posted for the efficient performance of similar duties in respect of the High Court to those specified in sub-paragraph 2.2.1.1. - 2.2.1.6 above and, in particular, for the application of the Western State High Court Law and allied legislation, and to check all records of appeal from all the Magistrates' and Customary Courts in the Judicial Division to which he is posted, and to compile records of appeal from the High Court to the Court of Appeal for the State.

Alternatively to 2.3.1. and 2.3.2. above, if posted to the Registry of the Court of Appeal for the State, a Higher Registrar will be

required to perform such duties as may be assigned to him by the Chief Registrar.

3. Registrar

To be responsible to the Magistrate in charge of the District to which he is posted for the following duties:

The organisation, management and control of the Magistrates' Courts Registry;

The planning and distribution of work in the Registry;

Staff and office control including the application of General Orders, Financial Instructions and Departmental Circulars;

The collection and safe custody of fees, fines and Court deposits;

The safe custody of Court Exhibits;

The conduct of correspondence on most matters relating to the Registry;

The duties specified under section 17 of the Magistrates' Courts (Western State) Law, 1954;

Application of the provision of the Magistrates' Courts Law and allied legislation;

To carry out the duties of Commissioner of Oaths for the Magisterial District to which he is posted.

4. Assistant registrar

To assist a Senior Registrar in charge of a group of High Courts or a Higher Registrar in charge of a High Court or Chief Magistrate's Court. Alternatively, to perform the following duties:

To assist in the Probate Registry in processing applications for grant of Probate or Letters of Administration and nothing up the Deed Registrar; or

To discharge the duties of Registrar of Marriages in accordance with the Marriage Ordinance.

5. Court cashier

Assessing writs and processes; collection of revenue-fees and fines; collection of court deposits; posting of cash book, deposit ledger and imprest cash book; registration of monetary papers; preparation of vouchers for State witnesses; entering the departmental vote book; treasury and bank transactions; preparation of monthly returns:

(a) fees and fines
(b) receipt books used or cancelled
(c) rent of government quarters
(d) court deposits
(e) warrants issued

6. Clerk of court

Preparation of daily cause list; registration of overnight charges; calling of cases, swearing of the witnesses; marking of exhibits tendered in court; filling of court and magistrates claims; keeping the exhibits registers; pasting cause list in the court record books; take action as directed by the court on Exhibit after the cases have been completed; issue of warrants to convicts after judgment; pasting and enrolment of all court orders and judgments; heading of court record books; keeping of conviction register; rendering of returns -

(a) returns of cases.
(b) returns of P. Is and appeals
(c) returns of adult probation

touring with the Chief Magistrate and Magistrates; communicate between the judge, magistrate and the registrar.

7. Process clerk

Issuing of summonses and other processes:

(a) Civil summonses
(b) Motions
(c) Writ of attachments
(d) Writ of possession
(e) Divorce petitions
(f) Election petitions

registration of criminal and civil cases; issuing and despatching of hearing notices to all witnesses - prosecution and defence; registration of civil and criminal appeals; checking and taking custody of Exhibits until they are required by Court; Enrolment of judgments; keeping of fixture ledger for fresh cases; sealing of courts orders and summonses; opening of case files; keeping of inquest register and files; requisitioning for judicial books and forms; rendering of returns monthly and quarterly.

8. Record clerk

Main duty is to check record of appeals and proceedings applied for by members of the public; maintains a register of all record books in use in the courts; assisting generally in other duties that may be assigned to him by the Registrar.

9. Correspondence clerk

Registration of letters; indexing of letters; filing, despatch; B.U. and P.A. service; keeping and issuing of stationery.

10. Interpreter

Indexing of record book; interpretation of court proceedings; endorsement of files; library duties; amending law books; touring with the Chief Magistrates.

11. Typist

Typing of:

(a) Routine letters
(b) Quarterly and monthly returns
(c) Court orders and copies of judgment
(d) Daily cause list
(e) Proceedings intended for Government use;

Counting and assessing the cost of work assigned to piece typists; typing of vouchers; compilation of record of appeal and depositions; typing of proceedings paid for; other typing work assigned by the Registrar.

12. Messenger

Collection of office keys from the Police Station; opening and closing of doors and windows; cleaning of the offices; collection and returning of mail bag; passing of files- despatch of letters outside the office; general errands and such other duties as the registrar may assign.

APPENDIX 'D'

TYPES OF OFFENCES

Criminals

- Murder
- Manslaughter
- Suicide
- Assaults
- Rape and indecent assaults
- Abortion
- Burglary, stealing, etc.
- Forgery of currency notes and counterfeiting
- False pretences, cheating, fraud, etc.
- Child stealing
- Slave dealing

Other offences

- Tax defaulting
- Others

APPENDIX 'E'

IN THE HIGH COURT OF JUSTICE
WESTERN STATE OF NIGERIA
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

CALENDAR OF PRISONERS
AT THE
IBADAN ASSIZES

BEFORE THE HONOURABLE MR. JUSTICE OLAYIMIKA ODUMOSU

JUDGE

HOLDEN AT THE HIGH COURT IBADAN
ON MONDAY THE 11TH DAY OF MARCH, 1974:

BY ORDER OF THE COURT

I. S. BAKER
AG. SENIOR REGISTRAR

HIGH COURT REGISTRY,
IBADAN.
27TH FEBRUARY, 1974

1. I/21c/73: The State

Vs.

Amusa Ajagbe (On bail)

Charges: 1. Manslaughter, punishable under section 263 of the Criminal Code, Cap. 28, vol. I, Laws of Western Nigeria, 1959.

2. Dangerous Driving, punishable under Section 18 of the Road Traffic Law, Cap. 113, vol. V, Laws of Western Nigeria, 1959.

Information filed: 8th August, 1973
Plea:
Witnesses: 5
Date of Hearing:
Sentence/Order of Court:

2. I/1c/74: The State

Vs.

Lasisi Adeshina

Charges: 1. Manslaughter, punishable under Section 263 of the Criminal Code, Cap. 28, vol. I, Laws of Western Nigeria, 1959.

2. Dangerous Driving, punishable under Section 18 of the Road Traffic Law, Cap. 113, vol. V, Laws of Western Nigeria, 1959.

Information filed: 27/2/74.
Plea;
Witnesses: 4
Date of Hearing:
Sentente/Order of Court:

3. I/2c/74: The State

Vs.

Yisau Ajadi (On bail)

Charges: 1. Manslaughter, punishable under Section 263 of the Criminal Code, Cap. 28, vol I, Laws of Western Nigeria, 1959.

2. Dangerous Driving, punishable under Section 18 of the Road Traffic Law, Cap. 113, vol. V, Laws of Western Nigeria, 1959.

3. Negligent Driving, contrary to regulation 24(1) (t) of the Road Traffic Regulation Cap. 114 and thereby committed an offence punishable under regulation 78 (1) of the said Regulations.

Information filed: 27/2/74.
Plea:
Witnesses: 5
Date of Hearing:
Sentence/Order of Court:

4. I/3c/74: The State

Vs.

Jacob Adeoye (On bail)

Charges: 1. Manslaughter, contrary to section 255, and punishable under Section 263 of the Criminal Code, Cap. 28, vol. I, Laws of Western Nigeria, 1959.

2. Dangerous Driving, punishable under Section 18 of the Road Traffic Law, Cap. 113, vol. V, Laws of Western Nigeria, 1959.

3. Negligent Driving, contrary to Section 24(1) (t) and punishable under Section 78 of the Road Traffic Regulation, the Road Traffic Law Cap. 113, vol. V, Laws of Western Nigeria, 1959.

Information filed:
Plea:
Witnesses:
Date of Hearing:
Sentence/Order of Court:

5. I/4c/74: The State

Vs.

Raufu Nosiru

Charges: 1. Manslaughter, contrary to Section 255 and punishable under Section 263 of the Criminal Code, Cap. 28, vol. I, Laws of Western Nigeria, 1959.

2. Dangerous Driving, contrary to Section 18 of the Road Traffic Law, Cap. 113, vol. V, Laws of Western Nigeria, 1959.

Information filed: 14/2/74
Plea:
Witnesses: 6
Date of Hearing:
Sentence/Order of Court:

6. I/5c/74: The State

Vs.

Amodu Sanni

Charges: Receiving stolen property punishable under Section 366 of the Criminal Code Cap. 28, vol. I, Laws of Western Nigeria, 1959.

Information filed: 14/2/74.
Plea:
Witnesses: 16
Date of Hearing:
Sentence/Order of Court:

- Five -

APPENDIX 'F'

CAPITAL OFFENCES:

PROCEDURE TO BE FOLLOWED BY

REGISTRARS OF HIGH COURTS

1321

Office of the Privy Council
Western Region
IBADAN: NIGERIA
27th May, 1957

CAPITAL CASES - PROCEDURE

I am directed to refer to Civil Secretary's Circular No. M.P. 10554A of October, 1952 and to say that it is now considered necessary to review the instructions contained therein. These present instructions will supersede those mentioned above. The instructions are divided into three main divisions:

(a) What is required to be done between the period of arrest and trial;
(b) What is required to be done after trial and conviction;
(c) treat-ment of petitions by condemned persons.

PART I

ARREST AND DETENTION - ACCUSED'S MENTAL CONDITION AND ANTECEDENTS

2. A report on the mental condition of each prisoner detained in a prison on a charge of murder will be compiled by the Medical Officer for the information of the Judge trying the case and the reviewing authorities.

3. In order that the report shall contain as much information as it is possible to obtain with regard to the mental condition of the accused the following procedure has been approved with regard to the duties of

(a) Administrative Officers and Police;
(b) Superintendents of Prisons
(c) Medical officers.

4. The Police (or other persons) investigating a case in which a capital charge is likely to be made will compile a note as to the accused's antecedent, with special reference to his mental condition, based on information obtained from his relations and neighbours. This note should contain information as to:

(a) the accused's health at the time of arrest;
(b) his health during the previous six months;
(c) whether any other member of the accused's family has ever shown signs of insanity or been known to make any dangerous attack on another person;

(d) whether the accused has previously behaved in any unusual way;
(e) his demeanour while in custody between the time of his arrest and his admission to prison.

This note should be sent, as soon as possible after the arrest, to the Administrative Officer in charge of the area in which the accused lives (i.e. Local Government Adviser in a Division).

5. The administrative officer should make such further enquiries as may be necessary and add the information he has obtained to that obtained bytthe police. He should then file three certified copies of the completed note in the prison where the accused is confined, to be available for the Medical Officer concerned both before and after the preliminary investigation and eventual trial.

6. Cases have occurred in which the reports on a prisoner's mental antecedents were signed by the officer in charge of the prison where the accused person was lodged, and not by either an Administrative or Police Officer. Every care should be taken to ensure that reports on the mental antecedents and family history of accused persons in respect of murder cases are compiled by the correct authorities.

7. After admission to a prison the accused both before and after sentence should be kept under special observation at all times. It is important that the Superintendent should keep a written record, for the information of the Medical Officer in which entries will be made from time to time of any action or behaviour of the accused which might have a bearing upon his mental state. If the Superintendent is absent from the station the record will be kept by the Senior African Prison Officer.

8. The Medical Officer should personally observe the accused as frequently as possible and keep a written record of any action or behaviour of the accused which he has personally observed, and which might have a bearing on the accused's mental state.

9. The Medical Officer, if he deems it advisable, may apply for a copy of the depositions taken before the Magistrate and Coroner in order to assist him in forming an opinion as to the mental condition of the prisoner. He should bear in mind, however, that the depositions are furnished only that he may be in possession of important trustworthy particulars of the prisoner's recent history, so far as it has a bearing upon his mental state while under observation in the prison.

10. In cases of special difficulty the Medical Officer in charge of the prison may apply to the Senior Medical Officer in charge of the medical division for another Medical Officer to examine the prisoner in consultation with him.

11. A prisoner awaiting trial shall, if necessary for the purpose of his defence, be allowed to see a registered Medical Practitioner appointed by himself or by his friends or legal advisers, on any week-day at any reasonable hour, in the sight but not in the hearing of a Prison Officer.

12. One week before the date of the trial the Medical Officer should submit six copies of his report on the mental condition of the accused to the Superintendent of the prison in which the accused is under observation. The Superintendent of the Prison should immediately forward one copy to the "Trial Officer," two copies to the prosecuting officer and retain three copies in the prison. The report should be based on the Medical Officer's personal observation of the accused, as entered in his written record, the completed note compiled by the investigating officers and the Administrative Officer and filed in the prison and (if they have been applied for) the depositions taken before the Magistrate and Coroner, and the opinion of the second Medical Officer called in for consultation. In cases in which the accused has any wounds or scars on his body the fact should be included in the report with the approximate date of their infliction.

13. The report should state whether or not any indication of insanity has been exhibited and whether or not the prisoner is fit to plead. It should not, however, express any opinion as to the prisoner's degree of responsibility at the time the offence was committee, this being a matter for the finding of the Court on the evidence submitted, but if, from symptoms exhibited while under observation in the prison, it is quite clear that definite insanity exists and has done so for some time previous to the offence, or if the Medical Officer is of the opinion that there is a distinct history of periodical attacks of insanity, followed by intervals of mental clearness, and that the prisoner has been enjoying a lucid interval while under observation in the prison, the report should embody this opinion.

14. I am to ask you to ensure, in consultation with the appropriate local head of the Medical Department, strict compliance with this instruction.

15. When a prisoner accused of a capital offence is imprisoned in a station where there is no Medical Officer, he will not be kept under medical observation if the circumstances of the case raise no question as to his state of mind. But it would be necessary in all cases, even if

there is no Medical Officer in the station, for Administrative Officers, the Police and Superintendents of Prisons to carry out the procedure outlined in the preceding paragraphs.

16. When, however, it appears from the circumstances of the case (e.g. absence of motive) that the prisoner is suffering from some mental defect, he should be removed to a prison in a station where a Medical Officer is available to keep him under adequate personal observation. In this connection, the Director of Medical Services has remarked that to be of full value the reports furnished by a Medical Officer must be based on frequent observation over a period of time.

PART II

TRIAL AND CONVICTION

17. If the accused is tried and is found guilty, the Superintendent of the Prison in whose custody the accused had been before trial should immediately send the original of the note (compiled by the investigating officers and the Administrative Officer), the original of the Medical Officer's report and the original and five copies of his own written record on the prisoner's state of mind to the Secretary of the Advisory Committee on the Prerogative of Mercy. The second copy of the note compiled by the investigating officers and the Administrative Officer should be retained in the prison for record in case of communication of sentence. The Superintendent of Prison should also send immediately a copy of the Medical Officer's report and a copy of his written record on the prisoner's state of mind to the Local Government Adviser of the Division in which the murder took place. These reports form a most important part of the proceedings in a murder case, and should be available to a Local Government Adviser before he makes his recommendation to His Excellency. The Local Government Adviser should forward the copies of the documents to this office as an appendix to his report on the case when transmitting the copy of the case proceedings to the Governor. The Local Government Adviser in forwarding his report to His Excellency should include in his covering memorandum (which should be furnished in sextuplicate) such background information regarding the case generally as will assist His Excellency and the Privy Council in reaching a decision. Examples of reports which were used in a capital charge will be found in the Appendix.

18. If no medical report has been compiled the original and five copies of the notes of the prisoner's state of mind should still be sent to the Secretary of the Advisory Committee on the Prerogative of Mercy, and a copy to the Local Government Adviser of the Division. In the covering letter it should be stated that no Medical Officer was available prior to the trial.

19. In the event of the prisoner's transfer to another prison or to an asylum these notes should be attached to the Transfer Warrant or Order.

20. In the past some doubts have occurred as to whether the responsibility for securing compliance with the terms of these instructions rests on the officer in charge of the prison where the accused is lodged while awaiting trial or on the officer in charge of the prison to which the condemned prisoner is committed after sentence. It is hereby emphasised that the former is personally responsible for securing compliance with the terms of these parts of this circular.

21. The procedure set out in Part I above will not be modified in any way in the event of an appeal to the Federal Supreme Court by a convicted person nor will any further report be required from the Medical Officer unless specific directions are given in individual cases.

22. His Excellency has approved the following procedure in the treatment of capital cases upon the conviction of an accused person or persons:

(i) A copy of the proceedings only will be sent to the Local Government Adviser concerned with each case by the trial judge.

(ii) The Local Government Adviser should forward this copy of the proceedings with the Notes and reports referred to in paragraph 17 above early to the Secretary of the Advisory Committee on the Prerogative of Mercy together with six copies of his report and/or recommendation.

(iii) the Judge's report will be rendered to the Governor alone.

23. The Local Government Adviser is not called upon to make any observations on the notes of evidence in a trial for murder, but in giving effect to the procedure outlined above, His Excellency considers that a Local Government Adviser's comments are specifically required -

(a) where he fears a mis-carriage of justice;

(b) where native custom or beliefs are involved, e.g. in twin murder or in cases closely connected with witchcraft or juju;

and (c) where some degree of publicity for an execution is desired. I am to stress, however, that His Excellency will not recommend that members of the public should be present at an execution unless the very strongest reasons are given.

24. His Excellency directs that Local Government Adviser should ensure that no time is wasted in transmitting to this office their copies of the proceedings together with their report and/or recommendation, and that, for obvious reasons, this should be done under confidential cover.

25. The decision of His Excellency in Council regarding the confirmation or commutation of capital sentences, or of the Federal Supreme Court regarding commutation of such sentences, will be notified to Local Government Advisers concerned as soon as these are received in this office.

26. In connection with the notification to be given to the relatives and fellow villagers of a condemned convict of the decision of His Excellency in Council regarding the confirmation or commutation of the capital sentence, it has been suggested that in some cases (in particular those in which trial and execution take place in a province other than that of which the accused is native) such information never reaches the relatives until long after the event. The following procedure should be observed:

When a prisoner is sentenced to death the Superintendent of the prison in which he is confined should obtain from him the names and addresses of any relatives to whom he wishes news of confirmation or commutation of sentence communicated. This information should accompany his transfer warrant if he is transferred to another prison, either to a Convict Prison on committal by the trial judge or to Lagos for the hearing of his appeal. On receipt of the Governor's order for execution or for the commutation of sentence the Local Government Adviser should at once obtain from the Superintendent of the Prison the names and addresses of the relatives and should inform them by telegram of the terms of the Governor's Order. If the order is for execution, the date fixed for the execution should be stated in the telegram, so that relatives living reasonably near may be able to visit the prisoner before his execution if they so wish.

A specimen form which is thought may cover all particulars, etc. of relatives is set forth below:

PARTICULARS OF RELATIVES AND NEXT OF KIN OF A CONDEMNED CONVICT

1. Number and Name in full of the condemned convict.

   .....

2. Name of family group .....

3. Name of village .....

4. Customary Court area .....

5. Division .....

6. Province .....

7. Name in full of village head .....

8. Name in full of head of family .....

9. Name in full of next of kin .....

10. (a) Relationship of next of kin .....
(state whether father, mother, brother, sister or cousin)

(b) Full postal or telegraphic address .....

PETITION BY CONDEMNED PERSONS

27. When a prisoner is sentenced to death or if he has appealed and the application has been refused the Superintendent of the prison in which he is confined should forthwith inform him of his right to petition His Excellency. If the prisoner does not wish to petition, a certificate to that effect by the Superintendent of the prison should be forwarded in sextuplicate to the Secretary of the Advisory Committee on the Prerogative of Mercy.

28. In order to avoid delay in the treatment of petitions by condemned persons Prison Officers have been instructed to forward such petitions direct to the Secretary of the Advisory Committee on the Prerogative of Mercy, sending a copy of the petition to the Local Government Adviser of the Division in which the prison is situated for his information. The Prison Officer concerned will at the same time inform the Secretary of the Advisory Committee on the Prerogative of Mercy, by telegram that a petition is being sent to him.

29. Petitions addressed to His Excellency on behalf of condemned prisoners will be forwarded by the Local Government Adviser with all despatch. Upon receipt of such petition the Local Government Adviser will telegraph the Secretary of the Advisory Committee on the Prerogative of Mercy, informing him that a petition has been received on behalf of the prisoner concerned.

30. The following is the procedure in practice at present:

(i) Petition received before consideration of the case in Advisory Committee on the Prerogative of Mercy. In the telegram announcing His Excellency's decision the fact that the prisoner's petition received consideration is stated. Written confirmation of this usually takes the form of an additional typed paragraph to the pro forma letter to the Local Government Adviser under cover of which the Warrant of Execution or of Commutation is forwarded.

(ii) Petition received after consideration of the case in Advisory Committee on the Prerogative of Mercy. His Excellency's decision is communicated by telegram to the Local Government Adviser. An immediate written confirmation of the contents of the telegram is despatched.

31. With regard to the procedure outlined in sub-paragraph (ii) above in connection with a petition received after consideration of the case in Advisory Committee on the Prerogative of Mercy, I am to say that a Local Government Adviser should not await written confirmation of a decision properly conveyed by means of repeated telegrams. His Excellency has advised that once a Warrant has been issued its directions must be carried out unless and until it is replaced by some other formal document but that nevertheless when any further decision has been taken and the Local Government Adviser is so informed by telegram (which telegram has been repeated and confirmed) he should act on that telegram while awaiting the formal document; similarly a Local Government Adviser should act on telegraphic advice (properly confirmed) that His Excellency is not prepared to vary the direction contained in a Warrant already issued.

32. The Superintendent of the prison in which a person charged with a capital offence is lodged is personally responsible for bringing this circular to the knowledge of the Medical Officer.

33. A summary of the duties of all officers is at Appendix II.

(Sgd.) G. H. Buck
Secretary of the Advisory Committee
on the Prerogative of Mercy

APPENDIX I

No. .....
May, 1957

The Secretary of the Advisory Committee
on the Prerogative of Mercy

I attach herewith, the following documents of the trial for .
..... charged before the High Court for ... ...
Judicial Division with the murder of a man called ..... .
The accused were found guilty and sentenced to death. The enclosures are:

(a) Police Report on Mental Antecedents
(b) Medical Officer's Report
(c) Proceedings of the High Court.

2. The murder is connected with a belief in sorcery. The daughter of the first accused was sick and "called the name" of the deceased as having caused her sickness by spell. According to the evidence of the first accused, the deceased had a previous reputation as a sorcerer but no evidence in corroboration of this was called. There is no doubt that the peasantry believe in the power of certain persons to cause sickness and death by spells and it was this belief which led to the assault on the deceased. The first accused, however, expressly warned by the Village Head of ..... against this belief and both accused are Muhammadans whose religion does not recognise such sorcery. I therefore do not consider that their belief in sorcery constitutes an extenuating circumstances. There is a suggestion of insanity as regards the first accused in the Court's report (paragraph 2(c) but this does not apply to the second accused. In view of the Medical Officer's report I consider that both accused were sane and fit to plead.

3. A precis of the facts of the case is contained in the report attached. The Court convicted the accused after they had freely confessed to the crime, the first accused admitting to striking the deceased on the head with a stick and the second accused to shooting him with an arrow. According to Moslem law once a confession has been made before the Court there is no need to examine other evidence, except to determine the type of homicide. The Court found, rightly, that it came under homicide by conspiracy. This renders both accused liable to the law of retaliation (see Ruxton, page 314, Section 1732). The relatives have demanded capital penalty. On the passing of the sentence the two accused stated they wished to appeal. The grounds of the appeal are that the deceased committed suicide by piercing himself with an arrow in the stomach.

4. I support the finding and sentence of the Court.

5. If the appeal is not upheld but the death sentence not confirmed an alternative term of imprisonment of fifteen years is recommended.

6. If the death sentence is confirmed, hanging in Lagos Gaol is recommended.

.....
LOCAL GOVERNMENT ADVISER

LOCAL GOVERNMENT ADVISER'S REPORT ON THE CASE

The circumstance that led up to this murder was the accusation by the girl ..... daughter of the first accused that she had been bewitched by the deceased. This "calling the name" of a person believed to have brought misfortune is quite common among the peasantry. The cure is for the sorcerer to walk over the body of the victim and thereby release the spell.

2. The first accused reported to the village head of ..... that the daughter of the first accused was "calling the name" of the deceased. The Village Head warned him to ignore this superstition and not to cause trouble. But the first accused ignored the Village Head's advice and went immediately to collect his nephew, the second accused, and then proceeded to the hamlet of the deceased. On the early morning of the 20th of April, 1950, neighbours heard shouts and on assembling at the deceased's house found him dead with a matchet wound on the head and an arrow through the right side of his body. They saw the two accused running off and later they caught and arrested the accused.

3. The accused confessed to the Court that they assaulted the deceased, the first accused stating he had hit him on the head with a stick and the second accused that he had shot him with an arrow.

4. The Court accepted this confession as proof of guilt supported as it was by strong circumstantial evidence. It then decided that the type of murder came under the category of "Conspiracy" the penalty for which is capital punishment for all conspiring. It accordingly passed the sentence of death upon the two accused.

5. The two accused then asked leave to appeal and the Supreme Court has been informed accordingly. When asked by the Local Government Adviser, Auchi, on what grounds the appeal was being lodged the accused stated that they wish to withdraw their confession and that the deceased after attacking them had committed suicide.

APPENDIX II

SUMMARY

Duties of police officers -

When a prisoner is charged with a capital offence the Police Officer in charge of the case shall take action as set out in paragraph 4 above and shall forward the following document:

(i) Report on the Mental Antecedents of the prisoner to the Local Government Adviser.

Duties of superintendents of prisons -

When a prisoner is charged with a capital offence and admitted to a prison the Superintendent should maintain a written record as set out in paragraph 7 above. On receipt of six copies of the Medical Officer's report he shall distribute them as follows:

(i) One copy to the 'Trial Officer'.
(ii) Two copies to the prosecuting officer
(iii) Three copies should be retained in the prison.

He also has duties under paragraphs 26, 27, 28 and 32 and should f forward the following documents direct to the Clerk to the Privy Council:

(i) Six copies of the prisoner's petition to His Excellency or certificate to the effect that the prisoner does not wish to petition in lieu thereof.

(ii) Six copies of his written record.

Duties of medical officers -

When a prisoner is charged with a capital offence the Medical Officer attached to the prison should keep him under careful observation as set out in paragraphs 8 - 12 above. One week before the date of the trial he should complete his report in accordance with paragraphs 13 and 14 above and distribute copies as follows:

(i) Six copies to the Superintendent of the Prison

(ii) Five copies to the Secretary of the Advisory Committee on the Prerogative of Mercy.

Duties of local government advisers

On receipt of the Report on Mental Antecedents of a prisoner charged with a capital offence the Local Government Adviser should take action as set out in paragraph 5 above. On receipt of the Trial Judge's Notes of Evidence from the Registrar of the High Court the Local Government Adviser shall draw up a report addressed to His Excellency making any recommendations which he feels necessary as set out in 11, 22, 23 and 24 above. He should then forward the following documents to the Secretary of the Advisory Committee on the Prerogative of Mercy:

(i) The original and five copies of his Report
(ii) His copy of the Trial Judge's Notes of Evidence
(iii) His copy of the Report on Mental Antecedents
(iv) The Medical Officer's report
(v) The note compiled by the investigating officers.

Duties of high court registrars -

When a prisoner has been found guilty of murder the High Court Registrar should forward the following documents as soon as possible -

(i) The original and five copies of the Judge's Report addressed to His Excellency, to the Secretary of the Advisory Committee on the Prerogative of Mercy.

(ii) Five copies of the Trial Judge's Notes of Evidence to the Clerk to the Privy Council.

(iii) Six copies of all documentary exhibits to the Secretary of the Advisory Committee on the Prerogative of Mercy.

(iv) One copy of the Trial Judge's Notes of Evidence to the Local Government Adviser in whose Division the crime was committed.

The Secretary of the Advisory Committee
on the Prerogative of Mercy
Western Region
Ministry of Justice
IBADAN

APPENDIX 'H'

IN THE HIGH COURT OF JUSTICE WESTERN STATE
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(DIVORCE)

SUIT NO. I/189/72

BETWEEN:

VICTORIA ADENIKE BALOGUN ... PETITIONER

And

SAIDU AYODELE BALOGUN ... RESPONDENT

REGISTRAR'S CERTIFICATE

I hereby certify:

(1) That a copy of the Divorce Petition was served on the respondent on 8th June, 1972.

(2) That the respondent filed an Acknowledgement of Service on 15.6.72.

(3) That the respondent also filed an Answer and Cross-Petition on 15.6.72.

(4) That a copy of the Respondent's Answer and Cross-Petition was served on the petitioner through his Solicitor on 20.6.72.

(5) That the petitioner filed a Reply to Cross-Petition on 15.7.72.

(6) That the suit is now ripe for hearing as a Defended Cause and it will be listed for a convenient date.

(7) That the petitioner proposes to call 4 witnesses all of whom are resident in Ibadan excepting the petitioner herself who resides in Lagos.

(8) That the estimated length of trial is about two days.

Dated at Ibadan this 14th day of May, 1973.

Sgd.

SENIOR REGISTRAR