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BEYOND POWER AND PRIVILEGE: DISCOURSES OF RIGHTS AND LIBERTIES IN WESTERN NIGERIA
1900 – 1966

by

A. Bonny Ibhawoh

Submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy

at

Dalhousie University
Halifax, Nova Scotia, Canada
January 2003

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DEDICATION

Deservedly to Omoaruni, Ehiane and Osezua
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Abstract

Contemporary human rights discourse has produced a rather triumphant vision of the role of rights talk in securing progressive and transformative social change. Human rights have become the dominant language for public good around the globe and a language of choice for making and contesting entitlement claims, spawning what has been described as the “rights revolution.” Within African studies, academic interest in the rights discourse has, for the most part, focussed on contemporary understandings of “universal human rights” in a way that overlooks how the language of rights has historically been deployed to further more complex and sometimes contradictory agendas.

The thesis draws attention to the multi-layered discourses about rights and liberties employed by both the colonial state and Africans in the colonial and immediate post-colonial period. It examines how diverse interest groups within Nigerian society — colonial officials, missionaries, African elites, women groups, and later, nationalist activists — deployed the language of rights and liberties to serve varied socio-economic and political ends. It argues that the rights discourse was not a simple monolithic or progressive narrative.

In both the colonial and immediate post-colonial dispensations, the language of rights was simultaneously deployed for purposes of legitimizing the status quo, opposing it and even negotiating it. Discussions about rights and liberties were central to the institution and promotion of British colonial hegemony. Colonial social and political objectives were couched in the language of rights and liberties. British incursion was justified on the grounds of liberating local peoples from despotic chiefs and protecting their rights as British subjects. In this regard, the language of rights, like that of “civilization” and “modernity,” was an important part of the discourses deployed to rationalize and legitimize Empire.

However, the language of rights was not only a tool for legitimization. It was also an instrument of opposition, engagement and negotiation. Africans appropriated colonial rhetoric of rights and deployed it to challenge imperial policies and negotiate their positions within a changing society. The rhetoric of “native rights” and, later on, “universal rights” that underlined colonial propaganda became an important instrument with which Africans expressed dissent and articulated nationalist aspirations. Rights talk, which was a crucial factor in the rise of Empire, was also a factor in its eventual collapse. However, the rights discourse was not only relevant in the tension between colonizers and colonized. In both the colonial and immediate post-colonial periods, Nigerian elites also used rights talk to further class, ethnic, generational and gender interests. Thus, rights discourse facilitated domination at one moment, had a liberating effect at another and in between, was used to promote different agendas. By examining these long-standing traditions of rights talk and the complexities that underlie them, this thesis seeks to put the contemporary human rights discourse in Nigeria in historical context.
**Abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>Abe. Dist.</td>
<td>Abeokuta District Files</td>
</tr>
<tr>
<td>Abe. Prof.</td>
<td>Abeokuta Province Files</td>
</tr>
<tr>
<td>AC</td>
<td>Appeal Cases</td>
</tr>
<tr>
<td>AG</td>
<td>Action Group</td>
</tr>
<tr>
<td>ANLR</td>
<td>All Nigeria Law Report</td>
</tr>
<tr>
<td>AS-APS</td>
<td>Antislavery Society- Aborigines Protection Society</td>
</tr>
<tr>
<td>Ben. Prof.</td>
<td>Benin Province Files</td>
</tr>
<tr>
<td>CMS</td>
<td>Church Missionary Society</td>
</tr>
<tr>
<td>CO</td>
<td>Colonial Office</td>
</tr>
<tr>
<td>Com. Col.</td>
<td>Commissioner for Colony Files</td>
</tr>
<tr>
<td>CSO</td>
<td>Colonial Secretary’s Office</td>
</tr>
<tr>
<td>ENLR</td>
<td>Eastern Nigeria Law Report</td>
</tr>
<tr>
<td>HL</td>
<td>Humanitarian League</td>
</tr>
<tr>
<td>Ijebu Prof.</td>
<td>Ijebu Province Files</td>
</tr>
<tr>
<td>JHSN</td>
<td>Journal of the Historical Society of Nigeria</td>
</tr>
<tr>
<td>NAI</td>
<td>National Archives Ibadan</td>
</tr>
<tr>
<td>NCBWA</td>
<td>National Congress for British West Africa</td>
</tr>
<tr>
<td>NCNC</td>
<td>National Council for Nigerian Citizens</td>
</tr>
<tr>
<td>NNDP</td>
<td>Nigerian National Democratic Party</td>
</tr>
<tr>
<td>NLR</td>
<td>Nigerian Law Report</td>
</tr>
<tr>
<td>NPC</td>
<td>Northern People’s Congress</td>
</tr>
<tr>
<td>Oyo Prof.</td>
<td>Oyo Province Files</td>
</tr>
<tr>
<td>PRO</td>
<td>Public Record Office, London</td>
</tr>
<tr>
<td>SBC</td>
<td>Southern Baptist Convention</td>
</tr>
<tr>
<td>SMA</td>
<td>Société des Missions Africaines</td>
</tr>
<tr>
<td>SP</td>
<td>Southern Provinces</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UP</td>
<td>United Presbyterian</td>
</tr>
<tr>
<td>War. Prof.</td>
<td>Warri Province Files</td>
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<tr>
<td>WMMS</td>
<td>Wesleyan Methodist Missionary Society</td>
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<tr>
<td>WP</td>
<td>Western Provinces</td>
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Acknowledgements

This thesis has been long in the making. What started as a passing interest in the activities of the human rights and pro-democracy NGOs that sprang up in Nigeria during the dark years of military dictatorship in the early 1990s has dragged on into this thesis. Within this period, I have shifted frequently between the relatively secure world of the academia and the “trenches” of human rights activism. Along the way, I have accumulated many debts among friends, colleagues, mentors and institutions of both the “gown” and “town.”

I am deeply grateful to the Izaak Walton Killam Trust for a generous doctoral scholarship, which provided much of the funding for my doctoral studies and this research. I am also grateful to the Edo State University, Nigeria and the University of North Carolina at Asheville for providing me with institutional support and affiliation. I thank my supervisors, Professors Jane Parpart and Phil Zachernuk for their intellectual guidance, patience and support that often went beyond their duties as academic supervisors. I also thank Prof. David Black and other members of my committee. I owe a debt of gratitude to Professor Omoniyi Adewoye, former Vice Chancellor of the University of Ibadan who, as my teacher and academic advisor, ignited my interest in the study of human rights and legal history.

My association with a number of institutions over the years has provided me with the opportunities for research and scholarly interaction that have been so crucial to this thesis. I am grateful to: the Centre for African Studies of the School of Oriental and African Studies, University of London, for offering me an associate membership position from 1996 and 1998; the Danish Centre for Human Rights (DCHR), Copenhagen for offering me a visiting research fellowship in 1998; the Carnegie Council for Ethics and International Affairs, New York, for offering me a Human Rights Fellowship in 2000 and the Constitutional Rights Project for a series of collaborative consultancy work that provided opportunities for research into the more recent history of human rights in Nigeria.

I am also indebted to many individuals and institutions that made possible, my research in Canada, Denmark, Sweden, the United Kingdom and Nigeria. I thank the staff at the DCHR library; the Raul Wallenberg Institute library; the Killam Memorial Library at Dalhousie University, the National Archives Ibadan (and particularly the archivist, Mike Elumadu who helped with finding some important but obscure documents); the High Court Archives Lagos; the National Human Rights...
Commission, Abuja; the Public Record Office, London and the informants who granted me interviews at short notices in Nigeria.

Around the world, the support, friendship and assistance of many friends and colleagues have made the pursuit of this study a truly enjoyable and worthwhile pursuit. I thank Wilson Ogbomo, Jerry Dibu, Mark Gibney, Amen Uhumwangho, Larry Edosomwan, Larry Edokpayi, Albert Onobhayedo and Tunde Oduntan.

In Halifax, I have enjoyed the love and warm friendship of the families of Philip and Carol Zachemuk, Jane Parpart and Timothy Shaw, Anthony and Dorothy Hache, Lewis and Faith Chiekwe, Julius and Tabitha Egbevemi, Shedrack and Nkiru Agbakwa, Sunny and Robert Edokpayi, Kunle and Catherine Adesanyan, Dele and Yetunde Kasumu, and Ikechi Mgbeoji. Special thanks too to Mary Wyman and Tina Jones in the History Department, and my colleagues, Raphael Njoku, Amani Whitfield and Joseph Bangura.

Finally, I am grateful to my family; my wife and sons – Omo, Ehiane and Osezua for their love and understanding; my parents for the guidance and unrelenting support; my siblings who have all been constant sources of motivation and inspiration. I can only hope that this work is a fitting tribute to their love and support.
CHAPTER ONE

INTRODUCTION: THE SUBJECT OF RIGHTS AND THE RIGHTS OF SUBJECTS

[T]he colonial encounter does appear everywhere to have involved a discourse of rights – a discourse in which local peoples were cast as ethnic subjects, racinated, and engaged in an often antagonistic dialectic of construction and negation.... The inherently contradictory character of colonial discourse of rights, the multiplicity of its registers and the forms of consciousness to which it gave rise, ensured that it would be engaged, on all sides, in the efforts to forge viable moral communities, identities, modes of being-in-the-world. It still is. Everywhere.

John and Jean L. Comaroff, Of Revelation and Revolution, Vol. 2. 1

1.1 The Research Problem

Since the end of the Second World War and the adoption of the United Nations’ Universal Declaration of Human Rights (UDHR) in 1948, the subject of rights has become a theme of great popular and academic interest. Rights have become the dominant language for public good around the globe.2 It has also become the language of choice for making and contesting entitlement claims. The language of rights has attained such importance that today it underlies almost every facet of public and private discussion, from claims within the family unit to national and global political debates. Indeed, as Michael Ignatieff has argued, the past five decades have spawned a global “rights revolution” – a revolution of norms and values that has redefined our

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2 The main significance of the UDHR is that it took the unprecedented step of identifying a core set of rights to which every person is entitled by virtue of being human and acknowledging that the protection of these rights is a global responsibility.
understanding of ethics and justice.\(^3\)

Within the context of African studies, academic interest in the rights discourse has for the most part focussed on this contemporary understanding and concern about "human rights." Legal scholars and social scientists have explored various aspects of "human rights," "civil rights" and "constitutional rights" in the African state mainly within the context of post-UDHR developments.\(^4\) However, the tradition of rights discourses in the continent goes much further back. In Nigeria, as elsewhere in Africa, rights discourses underlined several aspects of local history -- the workings of traditional social and political systems, missionary incursion and activities, the antislavery movement, colonial conquest and control, the colonial legal system, contestations over land, press activism and the nationalist movement. These aspects of the rights discourse (which predate more recent concerns with "human rights"), have received very little attention. Yet, many scholars agree that a thorough historical treatment of these themes is crucial to our understanding of contemporary human rights. The primary object of this thesis therefore is to produce a historically grounded study of rights in an African society.

Specifically, the thesis aims to do two things. First, it aims to find and recover traditions of rights talk in Nigeria that preceded and shaped contemporary notions and discourses of "universal human rights." Secondly, it seeks to draw attention to the historical complexities and nuances that have underlined rights discourses in colonial and


\(^4\) Some of these works are discussed later in this chapter under the section on "Review of Relevant Literature."
immediate post colonial Nigeria. This latter task is significant because contemporary human rights discourse has, for the most part, produced a rather triumphant vision of the role of rights talk in securing progressive and transformative social change.\(^5\) The philosopher Ronald Dworkin argues that rights are “trumps” against the tyranny of the majority.\(^6\) To “exercise one’s rights” has come to be taken as something inherently good, an index of social and political progress. What has not been sufficiently explored or emphasised is the way in which rights talk has been deployed to further more complex and sometimes contradictory agendas – progressive and reactionary. I argue the need to move away from the linear progressivism that underlines contemporary human rights scholarship. In Western Nigeria as elsewhere in colonial Africa, the rights discourse was not a simple monolithic, progressive narrative. The language of rights was variously deployed for purposes of legitimization, opposition and even negotiation. Rights discourses served to insulate and legitimize power just as much they facilitated transformative processes.

This bears some relevance to Cooper and Packard’s arguments about the dialectics of control and contestation in colonial development discourse. Cooper and Packard argue that “development” in the 1940s was a framing device with which the colonial regimes tried to respond to challenges and reassert control and legitimacy, but it


was device that could itself be challenged and seized by the colonized for different ends.\textsuperscript{7} Like other justifications of empire, development came to have as strong an appeal to nationalist elites as to the colonizers. In the end, Africans took over the development project along with the state apparatus built by the colonial regime.\textsuperscript{8} Much the same can be said of the rights discourse. For the most part, the colonial regime in Nigeria used the language of rights and liberty to justify and legitimize its economic, social and political agendas. However, some Africans were able to appropriate this language of rights and deploy it in their demands for social inclusion and political participation in ways that the government did not originally intend. In some cases, they were also able to use the language of rights to assert status, acquire property and assert control over others.

Against this background, the thesis seeks to explore from a distinctly historical perspective the complexities, changes and continuities that have attended notions and discussions about rights and civil liberties in Nigeria from the introduction of colonial rule in 1900 up to the early post-colonial period of the mid 1960s. It draws attention to the multi-layered discourses about rights and liberties employed both by the colonial state and its African subjects in the colonial era and in the immediate post-colonial period. It focuses on the complex dynamics engendered by the intersection between existing African notions of rights and the more formal regimes of rights introduced within Christian humanism, colonial customary law and the imported English common law


\textsuperscript{8} Frederick Cooper, “Modernizing Bureaucrats: Backward Africans and the Development Concept,” in Cooper and Packard, \textit{International Development and the Social Sciences}, 64.
systems. It seeks to examine how diverse interest groups within Nigerian society – including colonial officialdom, missionaries, African elites, women’s groups, and later, nationalist activists -- employed the language of rights and entitlements to serve varied social and political ends. Its broad object is to connect the significance of the evolution of the rights discourse within the colonial and immediate post-colonial contexts in Nigeria to the current quest for a viable human rights regime in the country as elsewhere in Africa. This object is addressed in two main ways. The first is by looking at longer-standing debates about rights, in order to put the current human rights discourse in historical context. The second is by exploring the existence of traditions of rights discourse in Nigeria that were different from the post-Second World War tradition that is often emphasized in contemporary human rights scholarship.

1.2 Justifications of the Study

One obvious reason for undertaking a study of rights and liberties is the renewed significance that these ideas have come to assume in our world. There is the belief that a better understanding of rights traditions can ultimately improve the protection of human rights. This is particularly pertinent in Africa where there have been calls for African states to develop regimes of human rights that are rooted in their societies and relevant to the present challenges of nation building. It is my hope that this study will improve our understanding of the multiple traditions of rights in Nigeria and thereby provide a basis

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9 This is one of the major themes of the argument for the cultural relativism of human rights that has been advanced by several African and Africanist scholars. This is discussed in detail in chapter 2, “Conceptual and Theoretical Background.”
for fashioning better strategies for protecting individual and group rights in the country as elsewhere in Africa.

A second and perhaps more compelling reason for this study is the point that has been repeatedly made about the need for scholars of imperial histories to look beyond traditional historiographical paradigms and explore the tensions and ambiguities of empire, not merely its triumphs.\textsuperscript{10} Paul Landau argues that we can no longer talk of colonialism in Africa like we used to. It is not enough to document conquests, administrative methods, land tenure, industry, the growth of political resistance movements, and nationalism. Today, he argues, students of empire must pay attention to more complex and intimate matters. They must look at changes in the quotidian habits of Africans, the reformations of their rituals, the alterations of their perceptions and their attempt to define themselves. "They must examine the social constructions of work, gender, space, time, value and belief."\textsuperscript{11}

The hope here is that by focusing on the changes and continuities that attended discourses of rights and liberties in colonial Nigeria, we can gain new insights into African perceptions and definitions of themselves and others, as well as the social constructions of values and beliefs within the colonial setting. This is because discourses about rights and liberties provide unique perspectives into historical encounters and experiences. The way in which individuals and groups defined and articulated their rights


and other entitlement claims reveals a lot about their definition of themselves, their understanding of others, and their relationships with each other.\(^\text{12}\)

Discussions about rights occur in almost every facet of human life. Individuals and groups are constantly asserting what they consider to be their rights in the constructions of personhood and possession, and in daily dealings with each other. Individual and collective rights are continuously invoked, both verbally and textually, in discussions about issues as diverse as social status, political authority and the use of private and public resources. Much of these are issues of “civil liberties,” broadly understood as the freedom to think or act without being constrained by force. Given the sheer ubiquity and diversity of the appeal to rights and civil liberties in daily encounters and in varied settings, any study of this theme is necessarily confronted by problems of scope and context. What aspects of the many discussions about rights and liberties are being examined here? In what discursive context are the appeals to rights and liberties being examined? To address these questions, this introductory chapter sets out the discursive contexts in which the study is located and the methodological parameters which guide it.

A study like this, which seeks to examine rights discourses mainly within the context of colonialism, risks major paradigmatic pitfalls. First, it risks lapsing into an antiquated colonial historiography of “trusteeship” as the main definition of European rulership. It risks centring the discussion about rights on the “liberating power” of the

\(^{12}\) For instance, it has been suggested that rights discourses were central to the construction of ethnic identities in colonial Africa. See John L. and Jean Comaroff, Of Revelation and Revolution: The Dialectics of Modernity on a South African Frontier, Vol. 2 (Chicago: University of Chicago Press, 1997), 400-401.
civilizing mission, modernization and colonial development agendas. The inadequacy of this approach is obvious – it takes us back to a bankrupt historiography that centred on the objectification of the colonized as monolithic and defined by their “otherness.” A second, and less obvious, risk is becoming entangled in the postmodernist/Foucauldian account of human rights as, at best, an ethnocentric concept in universalist disguise, or worse, a discursive instrument of colonial/capitalist power.\textsuperscript{13} This position -- that rights discourses may have the ultimate purpose of subjecting supposedly liberated individuals to increased control by external authority -- has resonated in contemporary debates over the universality and cultural relativism of human rights.\textsuperscript{14} The danger in this latter approach is not unlike the former. At its worst, this instrumentalist paradigm ignores the complexities, nuances and contradictions inherent in rights discourses.

This study is located within two intellectual traditions and discursive contexts that I hope, address these concerns. While one is long-standing and universal, the other is


\textsuperscript{14} For instance, in the debate on the universalism and cultural relativism of human rights, some scholars argue for “a reasonable degree of cultural relativism” as opposed to universalism because claims of universalism, particularly from the West are, in fact, often based on the claimant’s ethnocentricity. See Abdullahi A. An’Naim, “Towards a cross-cultural Approach to Defining International Standards of Human Rights. The Meaning of Cruel, Inhuman or Degrading Treatment of Punishment” in Abdullahi A. An-Naim (ed.) Human Rights in cross-cultural Perspectives. A Quest for Consensus (Philadelphia: University of Pennsylvania Press, 1992), 26.
emergent and peculiar to Africa. The first context is the debate about the historical development of universal human rights which has dominated contemporary human rights scholarship. In the past five decades, many scholars of area/regional studies, including Africanists, have become fully engaged in the thriving interdisciplinary discussion about the philosophical and historical antecedents of the contemporary concept of universal human rights. The central concern here can be posed in the form of simple questions: What is the origin of human rights? Where does the concept come from? The engagement of Africanist scholars in the human rights discourse has spawned a whole new genre of scholarship that has been described as the “Africanist human rights discourse.” This discourse provides one framework for this study.\(^{15}\)

The second discursive context for this study emerges from more recent developments in African studies. The publication of Mamood Mamdani’s *Citizens and Subjects* in 1995 and the Comaroff’s *Of Revelation and Revolution* (Vol. 2) in 1997 opened the floodgates on debate about rights in both the colonial and postcolonial African contexts. In his now famous thesis, Mamdani argues that the colonial state in its mode of governance was bifurcated. He identifies the role of the colonial state as it relates to the ascription of rights and liberties as a “double-sided affair.” Its one side – the state that governed a racially defined citizenry -- was bounded by the rule of law and an associated regime of rights. Its other side -- the state that ruled over subjects -- was a

regime of extra economic coercion and administratively driven justice. Mamdani argues that within this framework, the language of civil rights was a specific language which the colonial state employed in its dealings with urban-based "citizens" as opposed to the language of "custom and traditions" which it employed in its dealings with rural based "subjects." This thesis has provoked a significant volume of literature on human rights and rights discourses within the colonial and post-colonial African societies.

Jean and John Comaroff make a related point. In their second volume Of Revelation and Revolution, they argue that colonialism, from the genesis of the civilizing mission to the age of apartheid, bequeathed South Africa a double consciousness to match the two-faced character of the colonial discourse of rights. Missionary and colonial efforts to implant modern, right-bearing individualism might have pointed towards a society of universal citizens, while the conjuring of primordial "tribal" identities gestured towards the creation of ethnic subjects. This legacy, the Comaroffs


argue, has spelt profound implications for contemporary politics in South Africa. In the contemporary struggle for South Africa, the two dominant styles of formal black politics – represented by the African National Congress (ANC) and the Inkata Freedom Party (IFP) – are each heir to one of the registers in the colonial discourse on rights. The ANC has stuck close to the ideology of liberal modernism first implanted by the missionaries. It continues to talk the language of rights and universal citizenship and in negotiating its political future its leaders have paid attention to the promulgation of a liberal democratic constitution.

By contrast, the IFP owes its origins to the creation of apartheid “homelands” and the politics of “primal sovereignty.” Its ideology is ethno-nationalist in tenor: since cultural identity runs deeper than any other kind of attachment, their bearers have a “natural” right to determine their own affairs and be ruled by their own “traditional” authorities. The objective here is to secure collective entitlements – rather than unencumbered universal suffrage or individual rights – in a federated pluralistic polity.20 Although Mamdani and the Comaroffs write from different intellectual traditions and make different overall arguments, the common thread that runs through their arguments on the colonial rights discourses underscores the salience of the theme.

In a more recent essay on human rights and colonialism, Ralph Austin emphasizes the centrality of colonialism to the emergence of the contemporary human rights corpus. He argues that international human rights have an inherently colonial dimension since they involve challenges to the practice, and sometimes even sovereignty, of particular regions in the name of universal standards deriving from, and largely

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enforced by the West. In the case of Africa, such asymmetrical moral discourse has its roots in the literal history of colonialism. Austin argues that the questions which need to be pursued should involve the double relationship of human rights issues to, on one hand, colonized African societies and their own sense of the "human," and on the other, European colonizers whose agenda included more than the concern for the rights of subjected "Others" in Africa and elsewhere.\textsuperscript{21} Echoing this view, Makau Mutua has argued that although not often realized, the anti-colonial struggle in Africa was also a veritable human rights movement.\textsuperscript{22} A more detailed discussion of these themes is taken up in the review of literature (later in this chapter), and the section on "The Rights Discourse and Colonial Africa" in chapter two.

It suffices for present purposes to state the two levels of argument which provide the main framework for this study within the context of African studies. First, are the arguments about the contested nature of rights within the colonial state, which have been characterized by the paradigm of universal \textit{citizens} and ethnic \textit{subjects}. Second, are arguments regarding the centrality of the colonial encounter in Africa to contemporary human rights in the continent and elsewhere. This introductory chapter locates the thesis within these discursive frameworks. It reviews the dominant concepts and theories of rights and liberty on both the general level of the universal human rights discourse and

\begin{footnotesize}
\begin{enumerate}
\item Ralph Austin, "Human Rights and the Moral Economy of Colonialism," 1.
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the more specific level of the discourse over the rights in Africa. This includes the debate over whether notions of rights and liberty are universal and ipso facto cross-culturally applicable, or whether they are relative to cultures and social contexts. One reason for this approach is the recognition that studies about rights can be better undertaken when the peculiar philosophical meanings and contextual variables that underlie the concept in a particular study area are understood and appreciated.

1.3 Research Framework

To give this study a particular focus and place it within certain limits, the thesis is guided by a number of geographical, chronological and methodological parameters. First, it focuses on Western Nigeria. This includes the colony of Lagos, which became a British colony in 1861, and the Western territories (later Western Provinces) of what the British declared as the Protectorate of Southern Nigeria in 1900. Second, the thesis covers the period between 1900 and 1966. The year 1900 is significant because it marked the beginning of effective British colonial control over much of the territory that later became Nigeria. It also marked a new phase in a long period of European contact with communities in Nigeria dating from the fifteenth century. In January 1900, the British Colonial Office took over from the Foreign Office responsibility for the administration of the Niger Coast Protectorate and the territories hitherto under the chartered company rule of the Royal Niger Company (RNC). The Niger Coast Protectorate and the Lagos Colony

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and Protectorate became a single administrative unit, called the protectorate of Southern Nigeria, in 1906. In fact, the word "Nigeria" first came into official use on 1 January 1900 when the new protectorates of Southern and Northern Nigeria formed by Orders in Council became operative.24 The terminal date for this study is also significant because 1966 witnessed the first coup d'état in Nigeria when the military suspended the national constitution. This effectively abrogated the regime of constitutional rights that had been introduced at independence in 1960. The area of Western Nigeria has additional cogency as a historical stage because of the cultural similarities and pre-colonial connections between constituent peoples like the Yoruba, Benin, Ijaw, Itsekiri and the western Niger Ibos. This is significant because one of the objects of this thesis is to identify trends and patterns in discussions about rights in ways that transcended colonial administrative boundaries.

This thesis focuses primarily on the public, formal, and documented discourses about rights ushered in by colonial intervention in 1900s. However, it is recognised that discussions about rights in Western Nigeria go far back into the pre-colonial traditions of local peoples. Although colonial incursion had a vital impact on rights discourses in Western Nigeria, particularly the codification of specific rights regimes, it did not mark the beginning of formal discussions about rights within local communities. There were long-standing notions and traditions of rights talk in pre-colonial African societies. Such concepts of rights and the limits set on these rights by various communities on the basis of birth, social status, communal and ethnic affiliations were central to the institution of

slavery and other forms of servitude in many African societies. Pre-colonial notions and conditions of rights and liberties are also important to our understanding of African responses to the Atlantic slave trade and its eventual abolition.\textsuperscript{25}

African interaction with European adventurers, merchants and missionaries from as early as the seventeenth century ushered in a new phase in discussions about rights and liberties. Trade and other social relations made it necessary for individuals and groups to articulate and promote various rights regimes. For instance, the early Courts of Equity set up in the Niger Delta in the 1850s to administer some form of rough justice between African and European merchants were dominated by competing claims of proprietary rights.\textsuperscript{26} Similarly, missionary activities and the abolitionist movement in the early nineteenth century were underlined by discourses about rights and liberties within the framework of European liberal traditions and Christian humanism. Thus, this thesis proceeds from the premise that later discourses about rights and liberties in the twentieth century colonial era, which forms the main focus of the thesis, only marked a new chapter in an on-going story. These rights discourses built on earlier traditions of rights talk. For this reason, although this thesis focuses on rights discourses in twentieth century


Western Nigeria, it also necessarily goes beyond the “colonial moment” to engage ideas and discussions about rights within specific pre-colonial contexts.\(^{27}\)

1.4 Research Methodology

A number of methodological parameters guide this thesis. First, the thesis focuses mainly on discussions about rights and civil liberties rather than the objective conditions of rights and liberties in the study area. It focuses more on how people understood and used the language of rights and liberty in their oral and written discussions, than on the actual conditions they encountered in their daily lives. However, I recognize that it is difficult to examine discourses of rights without drawing links between what people talked and wrote about on one hand and the conditions they actually encountered on the other. Thus, although the primary concern of the study is discourses about rights and civil liberties, it also seeks to examine how these discourses reflected or failed to reflect actual conditions on the ground.

Another methodological parameter guiding this study is its focus on public discourses about rights and civil liberties. The term “discourse” goes beyond simple oral and written communication. “Discourse” here is speech or writing seen from the point of view of the beliefs and values that they embody. It constitutes the organization and representation of people’s experiences and understanding of their world. Speech and writing are not taken at their face value but analyzed on the basis of the practices and

\(^{27}\) This is evident in the discussion on “Missionaries, Humanitarians and Native Rights” and “Antislavery” in Chapter three. The intersection between pre-colonial notions and traditions of rights and the codified rights regimes later introduced under colonial rule, is a theme that runs through the whole of this thesis. However, chapter five which deals with economic and social rights discourses focuses more on this.
rules which produced these texts and the methodical organization of thinking underlying these texts.\(^\text{28}\) This approach to discourse is along the lines of colonial and post-colonial discourse analysis represented in the works of Edward Said, Peter Hume, Adam Ashforth and David Spurr.\(^\text{29}\)

“Public discourses” here refer to discussions about rights conducted openly, in for example, official documents, pamphlets, open debates, court records and newspapers. This may be contrasted with discussions about rights between individuals in a private realm and out of public view. However, I recognise that public discussions sometimes arise from and often reflect private discussions. For instance, discussions about land and property rights that were reflected in newspapers and court records were often extensions of individual claims that begin at the private level. For this reason, I have focused on discussions about rights in the public realm without losing sight of how they influence

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\(^{28}\) Sara Mills, Discourses, (London: Routledge, 1997), 107

\(^{29}\) In his now famous work, *Orientalism*, Said describes the discursive features of the body of knowledge produced in the nineteenth century by colonial scholars, travel writers, poets and novelists, which effectively produced the Orient as a repository of Western knowledge rather than a society and culture functioning on its own. Said argues that there are a number of features which occur in text about colonized societies that were due to large-scale belief systems structured by discursive frameworks and were given credibility and force by the power relations within imperialism. Although Said’s work has been criticized for characterizing colonial discourse as a homogenous group of texts, it has influenced several other studies of colonial and postcolonial discourse. See Edward Said, *Orientalism* (London: Routledge & Kegan Paul, 1978); Peter Hulme, *Colonial Encounters: Europe and the Native Caribbean 1492-1797* (London: Methuen, 1999); Adam Ashforth, *The politics of Official Discourse in Twentieth Century South Africa* (Oxford: Claredon Press, 1990); David Spurr, *The Rhetoric of Empire: Colonial Discourse in Journalism, Travel Writing and Imperial Administration* (Durham & London: Duke University Press, 1993). For a critique of Said’s work, see Kate Darian-Smith, Liz Gunner and Sarah Nuttall (eds.) *Text, Theory, Space: Land, Literature and History in South Africa and Australia* (London: Routledge, 1996).
and have been influenced by private encounters and discourses. In the discussion on land rights, I compare land claims made in private correspondences and individual petitions with similar arguments about land rights made in newspapers and collective petitions in colonial courts. In some cases, it was evident that what was presented in the public domain as collective customary rights to communal lands were, in fact, originally individual claims in the private domain that were subsequently articulated in the language of communal rights. The presentation of these claims as communal rather than individual rights was intended to accord them more legitimacy before a colonial state preoccupied with upholding “customary” land tenure systems. In such cases, I have tried to emphasize the link between discussions at the private level and public discourses of rights.\textsuperscript{30}

Although some of the primary data for this study comes from courts records, this thesis is not primarily concerned with discussion about rights in strict legal contexts and usage. The focus goes beyond legal rights, although it does not preclude them. Discussions about rights in Western Nigeria during the period of our study did not always take place in the law courts. For one thing, the colonial legal system was still at its formative stages even as late as the 1940s and few people had access to it or understood how it worked. Rather, most rights claims were made in petitions to colonial officials, newspaper editorials and letters to editors, pamphlets, and at meetings of town unions, trade unions and political groups. Moreover, the colonial court records are not as reliable as one would expect. The Native Courts records, where one would expect to find detailed narratives of court cases, do not provide such information. In order to make the Native Courts simple and inexpensive, they were only required to keep basic administrative

\textsuperscript{30} See sub-section on “Asserting Land Rights: The Language of Petitions” in chapter 5.
records such as the names of parties to a dispute, the fees paid and the judgement given.\textsuperscript{31} The details of each case were not recorded. For these reasons, the thesis focuses on rights discourses, not necessarily bound by court etiquette or jurisprudential rules but more by common usage and understanding.

The thesis employs both oral and documentary sources. I consulted archival sources consisting of private papers, missionary memoirs, official government documents and newspapers at the Nigerian National Archives in Ibadan, Abeokuta and Benin City; the Africana pamphlet collection at Dalhousie University and University of Ibadan; the Herskovits collection at Northwestern University; the Cooperative Africana Microfilm Project based at the University of Chicago; the Supreme Court Archives in Lagos; the Lagos Land Registry and the Public Record Office in London. I examined records at the Supreme Court Archives and the Land Registry to get information on claims to land rights and how these rights were contested among individuals and groups. At the National Archives and the Public Record Office, I consulted colonial administrative files on “Petitions,” “Native Court Matters,” “Civil Cases,” “Intelligence Reports” and the Annual Department Reports series as sources of information on how both officials and local peoples engaged in discussions about rights. In the newspapers, I paid attention to editorials, commentaries and letters to editors where debates over issues of rights, liberties and other entitlements were conducted.

\textsuperscript{31} Other writers have noted this same inadequacy of the Native Court records. See for instance, Philip Igbafe, \textit{Benin under British Administration, 1897-1938: The Impact of Colonial Rule on an African Kingdom} (Atlantic Highlands, N. J.: Humanities Press, 1978), 200.
In order to retrieve the often-ignored voices of ordinary people and subaltern groups in the society, I have placed particular emphasis on petitions available in the archives. Many of these petitions -- addressed to Native Authorities, colonial residents, District Commissioners and governors -- were written by professional letter writers for client petitioners. In some cases, people wrote petitions themselves in earnest if sometimes Pidgin English. These petitions, together with the responses they elicited from colonial officials, provide unique insights into the issues of rights that dominated this period. Evidence from commissions of inquiry set up by the colonial authorities to address specific native grievances also provides insights into discussions about rights. To complement these documentary data, I conducted oral interviews in Nigeria with scholars, workers, politicians, traditional rulers and ordinary people who were either actors in or witnesses to the debates about civil rights in the period of nationalist agitation from the 1940s to 1960. Their accounts provide important primary data for this study.

Although petitions provided an important source of primary data, they also posed significant challenges, given the study’s emphasis on language and discourse. Because most Africans during the colonial period were illiterate, many people had to contract the services of professional public letter writers to write their petition. To regulate the “trade” of public letter writing and protect illiterates from being exploited, the colonial government introduced the Illiterate Protection Ordinance in 1910. The ordinance provided for specific fees and standards for public letter writing. Public letter writers had to provide their names and initials at the bottom of every letter they wrote for paying illiterates. Such letters also had to state the fees paid or if it had been written gratis, an attestation that the letter was a “factual and accurate translation” of the vernacular, and
have the right thumb mark of the petitioner. The government strictly enforced these regulations and only petitions that met these strict conditions were accepted in the courts and by colonial officials. However, many public letter writers invariably used their own words to convey the ideas of the petitioners for whom they wrote since it was often impossible, given linguistic limitations, to do a word-for-word translation of local languages into English language. This fact is borne out by the similarity of the words and phrases used in some of the petitions, particularly those written by the same public letter writer. I have therefore been cautious about attaching too much value to the precise words and phrases used in such petitions. Rather, I have focused on the general ideas conveyed in them. I have paid more attention to the words, terms and phrases used in petitions where there is evidence that such petitions were written by the petitioners themselves.

In a largely non-literate society, the spread of a sub-culture or set of ideas is not easy to document. The evidence of such spread, and the changes and continuities that underlie it, are also sometimes difficult to discern.32 Some other challenges that I encountered in the course of this research had to do with the use of oral accounts and official colonial records. Sometimes, the oral evidence gathered in the field seemed to be more reflective of contemporary values than of past values, even when respondents were specifically asked about the past. This was particularly true when informants talked about “human rights.” The reason for this is not hard to see. Within the past decade “human rights,” both as a term and an idea has gained currency within the Nigerian public. The

opposition movement against military dictatorship in the country in the 1980s and 1990s was led by human rights and pro-democracy NGOs whose activities centred mainly on human rights advocacy. This resulted in an unprecedented awareness about human rights within the society.

This research coincided with the inauguration of democratic civilian rule in Nigeria after three decades of military dictatorship. It was a time when “human rights” and “democracy” were buzzwords in the public imagination. Many respondents I interviewed often referred to “human rights” even when they discussed ideas and events that took place when the term had not gained currency. For instance, one nationalist politician regarded “issues of fundamental human rights” as the source of conflict between his political party and the colonial government in the 1940s. The challenge posed by such accounts is that one is often not sure if, how, and to what extent present human rights values affect the memories of informants. Did the nationalist politicians in the colonial 1940s understand and articulate their demands in the same language of “human rights” as present day activists, or are these accounts simply reflections of contemporary values?

One way in which I sought to get around this problem was to strive to corroborate oral evidence and cross check pieces of data from one source with related information from other sources. For instance, in the case of nationalist politicians, I found it helpful to scrutinize the manifestos and petitions by local politicians of the 1940s to find out the extent to which their demands and agendas were actually articulated in the language of “human rights.” It became apparent that contemporary emphasis on human rights tended to make it a term of choice for my informants even when they talked about an era when
entitlement claims were not made in exactly the same terms. The approach therefore is not to take the use of these terms at their face value.

The same approach informed checking the obvious biases of some colonial records. I found original petitions written by petitioners themselves or their appointed agents quite useful in corroborating official records and reports. This became particularly necessary in researching into discourses about slavery, debt-bondage and pawnship in Western Nigeria. Official colonial records tended to be at variance with the accounts from petitions, confidential memos and newspaper reports. The reason for this soon became clear. In the 1920s and 1930s, the League of Nations Commission on Slavery and Related Forms of Servility made a series of enquiries for its annual reports on the state of slavery around the world. Governments around the world were required to submit reports on slavery, debt bondage, forced labour, and other issues related to enforced servility. In most of these reports, officials carefully disguised the extent of slavery and debt bondage within their jurisdictions. The attention that was brought to bear on this subject also had serious political undertones. Thus, as others have acknowledged, colonial records on this subject are notoriously unreliable.\textsuperscript{33} Petitions and newspaper reports provided more reliable data. Even when successive official reports to the League of Nations in the 1930s stated that slavery and debt-bondage were “virtually non-existent” in parts of Nigeria, numerous newspaper reports and petitions indicate the contrary.

A final task that I had to confront in the course of this research was the recurring challenge in historical inquiries of whether to present the thesis thematically or

chronologically. Given the historian’s preoccupation with time, dates and sequence, my first instinct was to adopt a chronological approach. However, the problem with a wholly chronological approach here is that it would diffuse detailed examination of certain dominant themes on which discussions about rights were prominent. On the other hand, a wholly thematic approach might not reflect the gradual historical development of rights discourses, which is one of the main objectives of the thesis. The approach adopted here therefore has been to combine both the chronological and thematic approaches with specific themes examined chronologically. A discussion about rights and liberties can be built around a number of key themes: early rights discourses within the context of missionary activities and the anti-slavery movement; land and property rights discourses; discussions about rights to free expression within the press; the effects of post-war nationalism on the rights discourse; and the development of constitutional rights in the immediate post-colonial period.

Discourses about rights in Nigeria, as in many other colonial societies, were so widespread and diverse that it is impractical if not impossible to thoroughly examine all its many facets in one study. To adopt a more “do-able” approach, the thesis examines and interprets rights discourses on specific themes in Western Nigeria based on the available evidence – colonial records, missionary accounts, newspaper reports, petition etc. However, I recognise that even available records do not tell the whole story. Much more remains to be said about the conceptions, opinions and expressions of rights and liberties in Nigeria. This thesis may well be the tip of a huge iceberg of historical inquiry into rights in Nigeria and colonial Africa — a possibility that even further underscores its salience.
1.5 Review of Relevant Literature

Most studies on rights and liberties in Nigeria and indeed in Africa focus specifically on late twentieth century notions of human rights. Many of these studies have been undertaken from legalistic perspectives by jurists, lawyers and legal scholars. Some of the pioneering studies by legal and social science scholars on the theme of human rights in Africa generally include Osita Eze, *Human Rights in Africa* (1984) and Issa Shivji, *The Concept of Human Rights in Africa* (1989) and more recent contributions by Howard, Mutua, An-Naim and Deng.\(^{34}\) A more detailed discussion on the literature on human rights in Africa is provided in the next chapter.


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However, all these works tend to concentrate on the legal and political aspects of human rights with little or no attempt at a historical analysis of the notion of human rights. Most of these studies begin from 1960 focusing solely on the constitutional rights introduced at independence. Few go beyond this period to explore the antecedents of this constitutional development. Discourses on the conceptual/theoretical foundations of human rights have also been dominated by lawyers and confined to jurisprudence and positivist legal questions. There are a number of studies in legal anthropology that address broad questions about rights in the African context. Historical works dealing with the theme of rights are few and far between. The closest historical works to the theme of rights in Nigeria and Africa generally deal with law, the judiciary and public order rather than rights *per se*. However, some of these historical works like Omoniyi Adewoye, *The Judicial System in Southern Nigeria*\(^{36}\); Kristin Mann and Richard Roberts eds. *Law in Colonial Africa*\(^{37}\); Martin Chanock, *Law, Custom and Social Order*\(^{38}\); Sally Falk Moore, *Social Facts and Fabrications*\(^{39}\); Margaret Jean Hay and Marcia Wright, *African Women and the Law*\(^{40}\); Francis Snyder, *Colonialism and Legal Change*\(^{41}\); John Comaroff, *The

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\(^{40}\) Margaret Jean Hay and Marcia Wright, *African Women and the Law: Historical Perspectives* (Boston: Boston University, 1982).

\(^{41}\) Francis Snyder, *Colonialism and Legal Change: An African Transformation* (London:
Discourse of Rights in Colonial South Africa\textsuperscript{42} and John L. and Jean Comaroff, Of Revelation and Revolution (Vols. 1 and 2) provide significant reference points for this study. The studies by Mann and Roberts, and Chanock in particular examine discussions about rights within the context of the development and operation of European and customary laws in various African societies. The Comaroffs provide what is perhaps the most detailed and thematically specific treatment of colonial rights discourse in Africa in a chapter aptly titled, “New Persons, Old Subjects: Rights, Identities, Moral Communities.”\textsuperscript{43}

Many of these studies note the centrality of law and rights in the colonization of Africa, its role in the making of new Eurocentric hegemonies, the creation of the colonial subject and the rise of various forms of resistance. In their separate studies, both Chanock and Mann and Roberts observe how missionaries, colonial officials and other agents of empire inculcated ideas about private property and possessive individualism; how these liberal reformers, intent on cultural conversion, introduced new notions of ownership, citizenship, testamentary and civil rights.\textsuperscript{44} Mann and Roberts argue that law was central to colonialism in Africa as conceived and implemented by the Europeans and as understood, experienced and used by the Africans. Law formed an arena in which Africans and Europeans engaged one another – a battleground as it were, on which they

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\textsuperscript{42} John Comaroff, The Discourse of Rights in Colonial South Africa: Subjectivity, Sovereignty and Modernity (Chicago: American Bar Foundation, 1994)

\textsuperscript{43} See chapter eight in Comaroff, Of Revelation and Revolution, 234-165.

\textsuperscript{44} Chanock, Law, Custom, and Social Order, et passim; Mann and Roberts Law in Colonial Africa, 14-15; Comaroff, Of Revelation and Revolution Vol. 2, 367.
contested access to resources and labour, relationships of power and authority, and interpretations of morality and culture. The colonial legal system was underlined by a perception of fundamental difference between the rights enjoyed in civilised and savage societies, and this determined the rights that were recognized in Africa. The colonial state refused to recognize certain rights over people while endorsing others. For instance, it recognized labour only if secured by contract of a particular sort. It also engaged with the question as to what rights over land would secure legal protection. Africans too were actively engaged in the interpretation of rights within the colonial legal system. The fact that Native Authorities served as judges in Native Courts and implemented customary laws gave them extraordinary opportunities and in some cases, statutory authority to define and enforce rights obligations and relationships. Thus, discussions about rights within the context of colonialism had many dimensions, underlined more by nuances and complexities than by a simple tension between colonizer and colonized.

Similarly, in Law, Custom, and Social Order, Martin Chanock employs the “Invention of Tradition” paradigm in his argument that customary law imposed under colonial rule had little to do with pre-colonial traditions and customs. He posits that

45 Mann and Roberts Law in Colonial Africa, 3.


47 Mann and Roberts, Law in Colonial Africa, 22.

48 Several writers have drawn attention to the historical process of the “invention” of customs and traditions by dominant groups in African societies through colonial social and legal restructuring. In his seminal work on the invention of tradition in colonial Africa. For instance, Terence Ranger argues that, “once the traditions relating to community identity and land rights were written down in the court records (by the
traditions and customary laws transcribed and codified in the early colonial period in Malawi and Zambia were the result of neo-traditionalist African elites and British colonial officials acting to support their own interests. Law was used in struggles over patriarchy, resources and labour, and these struggles in turn proved central to the making of customary law itself. Europeans and Africans constructed arguments in courts and councils and before commissioners about the way they wanted rights in resources and people to be, based on their beliefs and interests. They claimed that these rights were customary or the way things have always been, to give them greater validity with Europeans and Africans.49

However, one of the most contested aspects of the invention of tradition paradigm or the constructivist thesis which Chanock employs in his study, is the suggestion that the formalization and codification of colonial invented traditions (in this case, customary laws and rights regimes) made them rigid and inflexible and therefore amounted to the “invention” of new and unchanging traditions. This rigidity contrasts with the fluidity and flexibility of customs and traditions in many pre-colonial African societies. This assumption is open to debate. Sally Falk Moore in Social Facts and Fabrications argues that colonial and post-colonial recognition of customary law did not necessarily mean the end of flexible custom and the emergence of a rigid code operating in the interest of colonial authorities) and exposed to the criteria of the invented customary model, a new and unchanging body of tradition was created.” These traditions were thus invented because, by documenting them as written laws, they were denied of the flexibility and fluidity that characterized their operations in traditional societies. See Terence Ranger, “The Invention of Tradition in Colonial Africa” in Terence Ranger and E. Hobsbawn (eds.) The Invention of Tradition (New York: Cambridge University Press, 1983), 251.

49 Chanock, Law, Custom, and Social Order, Chapter 8.
patriarchy. Rather, it meant the setting apart of a sphere, restricted and tolerated, in which an assumed static customary code in fact dealt flexibly with matters below or beyond the concern of the state. In effect, customary law continued to be applied quite flexibly even after codification because the colonial state did not police or strictly enforce the "invented" customary law but rather, left it largely up to local Native Authorities. These local authorities continued to exercise discretion and flexibility in the interpretation of customary laws within the rhetoric of changelessness. Given these insights, one of the concerns of this study is to examine whether the definition, interpretation and codification of rights regimes within the colonial legal system in Western Nigeria followed a pattern of "invention" and "imagination" of tradition as some writers have suggested or whether, and to what extent, it allowed for continued flexibility.

Jean and John Comaroff in both The Discourse of Rights in Colonial South Africa and Of Revelation and Revolution (Vols. 1 and 2) provide a different perspective to the

50 Sally Falk Moore, Social Facts and Fabrications.

51 Terence Ranger, himself one of the earliest proponents of the invention of tradition thesis, later conceded that the term "invention" is problematic for being too one sided. If the inventors of customary traditions in Africa were the colonial administrators and missionaries, then it implies that Africans were merely "laboratory assistants" in the process. Besides, the term invention makes little allowance for the process of continuity. Once invention has occurred, all that remains is for the inventor to apply for a patent to protect his invention. Thus, the term "invention" gets in the way of a full historical treatment of colonial hegemony and African participation. For this reason, Ranger moves away from the notion of the "invention of tradition" employed in the original article to the notion of the "imagination of tradition," more in line with Benedict Anderson's "Imagined Communities." See Terence Ranger, "The Invention of Tradition Revisited: The Case of Colonial Africa," in Terence Ranger and Olufemi Vaughan (eds.) Legitimacy and the state in Twentieth-Century Africa: Essays in Honour of A.H.M. Kirk-Greene (Hampshire: Macmillan, 1993) and Benedict Anderson, Imagined Communities: Reflections on the Origins and Spread of Nationalism (London & New York: Verso, 1991).
rights discourse in colonial Africa. Reference has been made earlier to their arguments about the contested nature of the rights discourse within the colonial state. In addition, unlike many other Africanist scholars, they do not limit their treatment of rights discourses to colonial law. They engage and transcend it. Although they acknowledge that “European template for making the savage into a civilized citizen of empire, and of Christendom was cutimaginatively from the culture of legalities,” they also extend their discussion to other important aspects of the colonial encounter – constructions of personhood and the social persona, notions of procession and property rights, influence of rights discourses in shaping ethnic identities and rights discourses in contemporary political consciousness, control and contestation. This detailed study of the rights discourse in South Africa provides a basis for my comparative analysis in this thesis.

Besides drawing on current debates in the historiography of colonialism in Africa generally, this thesis also engages some recent empirical studies on rights in Nigeria. With the growing academic interest in human rights by scholars, and the rise of human rights activism by Non-Governmental Organisations (NGOs) in Nigeria in the 1980s and 1990s, much attention began to be placed on human rights research and documentation. This has led to a significant increase in the literature on rights and civil liberties in Nigeria. However, much of this literature has been of the expository kind, aimed at cataloguing and documenting contemporary human rights violations rather than providing in-depth analysis. A thorough historical treatment of these themes has clearly

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53 Issa Shivji has made this same point in his review of the human rights discourse in Africa generally. He concludes that although human rights have become one of the main growth points of academic history in the last fifteen years, the dominant studies have
been lacking. Many of these studies also discuss "human rights" only within the limited context of the formal introduction of constitutional rights at independence in 1960. The need to fill the vacuum created by the dearth of analytical works on rights and liberties in Nigeria and the need to provide a concrete historical basis for future research on contemporary human rights is a major motivation for this work.

Although this thesis is a historical study of rights discourse in Nigeria, I hope its findings will be of interest not only to historians but also to legal scholars, social scientists, public administrators and others involved in discussions about contemporary rights. One of the main reasons for undertaking this research is the hope that it will be relevant to the on-going discussion about human rights in Africa -- a discussion that has largely excluded historians. For this reason, I have adopted an inter-disciplinary approach to the existing literature drawing from debates about concepts and theories of human rights in the fields of sociology, anthropology, legal philosophy and jurisprudence.

I had the unique opportunity of being exposed to some of these contemporary human rights debates in the course of visiting research fellowships at the Danish National Centre for Human Rights in Copenhagen; the Carnegie Council for Ethics and International Affairs in New York and collaborative multi-disciplinary research at the School of Oriental and African Studies at the University of London and the Centre for the Study of Human Rights at Columbia University in New York. My work with these organisations provided academic forums for me to discover the perspectives of human rights scholars in other disciplines on some of the issues I address in the thesis.

The thesis is divided into seven chapters. Chapter two reviews the dominant conceptual and theoretical debates about the notion of rights. It focuses broadly on conceptual and theoretical discourses about rights in both the global and African contexts. This is necessary in order to locate the study within the broad context of contemporary human rights scholarship. Chapter three provides a historical background of the process of colonial incursion into western Nigeria and some of the early issues of rights associated with colonial rule. It looks at discussions about “native rights,” “treaty rights” and British “rights of interference” in the process of colonial imposition and consolidation. Chapter four examines rights discourses with regard to law and the colonial legal system. It looks at how the colonial state used law as an instrument of control and the ensuing debates about the implications of these laws on individual liberties and press freedom. Chapter five focuses on economic rights. It examines debates about land and property rights within the context of colonial land policies and local reactions to these policies. Chapter six examines specific social themes over which rights discourses were deployed and contested. These include debates over marriage and divorce, family rights and the agitation for social inclusion by marginalized groups. Chapter seven takes on discourses about civil and political rights. It focuses on discussions about issues of African participation in the colonial government and the nationalist movement for independence. The main object here is to assess the influence of global developments like the Second World War, the Atlantic Charter and the Universal Declaration of Human Rights (UDHR), on local debates about rights. This will provide an empirical basis for evaluating the influence of the UDHR on the human rights movement in Nigeria. The chapter also examines the developments leading to the
introduction of constitutional rights at independence and the debates that continued to
trail the enforcement of these rights until the military coups of 1966.54

Apart from thematic considerations, a chronological pattern also justifies the
arrangement of chapters in the thesis. For instance, antislavery discussed in chapter three,
peaks in the late nineteenth century and early colonial period. Land rights, discussed in
chapter five, become particularly topical around a slightly overlapping time leading up to
the early 1940s, while nationalism and political rights discourses, which are the focus of
chapter seven peak after this period.

54 The thematic division of the chapters of this thesis into social, economic and political
rights discourse is mainly for heuristic purposes. They are analytic categories which do
not always reflect actual patterns in the discussions about rights. Oftentimes, rights
discourses were underlined by more complex combinations of social, economic and
political themes.
CHAPTER TWO

UNDERSTANDING RIGHTS: CONCEPTUAL AND THEORETICAL BACKGROUND

Without a well defined concept of a right, it is hard to proceed to analyse the concept of human rights.

Alison Dunes Renteln

2.1 Introduction

There is substantial disagreement over the concept of rights and the origins of the term. While many trace its philosophical foundations to natural law and Western liberal traditions, others argue for a more eclectic understanding of the term, focussing on differing notions of rights within both western and non-Western societies. Even more contentious is the debate over the meaning of “human rights” and the appropriateness of employing the concept within the context of the history of colonial societies. Some writers have argued for a precise and historically specific definition of human rights as distinct from general notions of right. They contend that the notion of human rights is a relatively recent idea founded on post-Second World War developments, and specifically, the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations in 1948. Others argue for a more fluid and flexible definition of human rights that focuses not to much on the restricted context of post-war usage as on the continuing ideas that have historically underlined the concept of human rights and social justice in various societies. This chapter reviews some of the dominant arguments in this debate, particularly the arguments for a distinctly African concept of human rights. The object is

to come out with an operational definition of rights and map out certain parameters for the use of the term in this thesis.

2.2 Notions and Theories of Rights

The discourse on the origins and philosophical foundations of rights has focussed mainly on natural law theory. Most writers have traced contemporary conceptions of rights and liberties from natural law and ancient Greek stoicism through the medieval period and the Enlightenment. Natural law philosophy is characterized by a belief that laws and rules of conduct are embedded and derivable from the nature of man. Since the nature of man is the same the world over, the laws derived from that nature are seen as universal and true to all men [and women], at all times and places. Thus, they are objective and eternal and are neither changeable nor alterable.² Some suggest this philosophy underlies the concept of rights as expressed in the socio-political and philosophical developments in fifteenth and sixteenth century Europe. The Renaissance and the decline of feudalism inaugurated a long period of transition to the liberal notions of freedom and equality, particularly in the use and ownership of property. This created an unprecedented commitment to individual expression and world experience which was subsequently reflected in diverse writing -- from the teachings of Thomas Aquinas and Hugo Grotius to the Magna Carta, the Petition of Rights of 1628, and the English Bill of Rights of 1689.³

The European philosophers of the seventeenth and eighteenth centuries developed their theories of rights and liberties within this tradition of natural rights -- the notion that


every human being is endowed with certain natural rights essential and fundamental to his rational existence. For these philosophers, natural law traditions and the idea of natural rights translated into political liberalism, which was based on the theory of individualism and the notion of the equality of all men before the law. In the writings of Hobbes, Locke and Rousseau, the autonomous individual in pursuit of his survival and happiness enters into a social contract to escape from his "brutish nature" to establish order (Hobbes), to install a limited government (Locke), or, as in Rousseau, to constitute the general will without divesting himself of his natural rights.⁴

These writings inaugurated a new intellectual and political tradition in which the individual as a political actor was abstracted from the holistic totality of medieval society. Locke argued that certain rights self evidently pertained to individuals as human beings and that chief among them were the rights to life, liberty (freedom from arbitrary rule), and property. Upon entering civil society, humankind surrendered to the state, in a "social contract," the right to enforce these natural rights. The state's failure to safeguard the interests of its members gives rise to a right to responsible, popular revolution.⁵ Hobbes saw a "right of nature" as the "liberty each man has to use his own power as he will himself, for the preservation of his own - that is to say, of his own life."⁶ He further


defined liberty as "the absence of external impediments to motion." Having rights meant that there are no impediments on the individual's "natural motions." These ideas of the rights of man played a key role in the late eighteenth and nineteenth century struggles against political absolutism in Europe.

All these liberal ideas deeply influenced the Western world from the seventeenth to nineteenth centuries, provoking a wave of revolutionary agitation that swept across America and Europe. They inspired the English Petition of Rights (1627), the United States Declaration of Independence (1776), the United States Constitution (1787), the French Declaration of the Rights of Man and Citizen (1789), and the United States Bill of Rights (1791). All these documents were based on the image of the autonomous man endowed with certain inalienable rights. The U.S Declaration of Independence, for instance, stated: "all men are created equal, they are endowed by their creator with certain inalienable rights, among these are life, liberty and pursuit of happiness; men are born and remain free and equal in rights."

The defining character of contemporary notions of the rights of man in society has also been significantly shaped by the reformist impulse of the late nineteenth century. The abolition of the slave trade, the development of factory legislation, mass education, trade unionism and universal suffrage, all served to broaden the dimensions of individual rights and stimulate an increasing international interest in their protection. However, the rise and fall of Nazi Germany perhaps had the most profound impact on the idea of

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universal human rights in the twentieth century. The world united in horror and condemnation of the state-authorized extermination of Jews and other minorities, the promulgation of laws permitting arbitrary police search and seizure and the legalization of imprisonment, torture and execution without public trials. Nazi atrocities, more than any previous event, brought home the realization that law and morality cannot be grounded in any purely utilitarian, idealist or positivist doctrines. Certain actions are wrong, no matter the social or political context, and certain rights are inalienable no matter the social or political exigencies. It also led to a growing acknowledgement that all human beings are entitled to a basic level of rights and that it was the duty of states and societies to protect and promote these rights. Postwar decolonisation movements in Africa and elsewhere in the colonized world also had a significant impact on the development of the idea of universal human rights as colonized people drew on the language of rights emerging in the West, in their ideological struggles against imperial powers and their demands for national self government. This process of appropriating and deploying the language of universal rights to serve varied ends, by both Africans and Europeans in colonial Western Nigeria, is one of the primary concerns of this thesis.

The new postwar international consciousness of the need to protect the basic rights of all peoples by means of some universally acceptable parameters partly influenced the 1945 Charter of the United Nations which reaffirmed a “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large or small.” It further stated the United Nations’ commitment to fostering the development of friendly relations among nations,

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9 Patterson, “Freedom, Slavery, and the Modern construction of Rights,” 176-177
based on respect for the principle of equal rights and self-determination for all peoples and the promotion of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.\textsuperscript{10} The commitment to the promotion of human rights expressed in the United Nation’s Charter were followed by the Universal Declaration of Human Rights in 1948 and international human rights conventions that have come to be collectively known as the International Bill of Rights.\textsuperscript{11} These conventions which were subsequently complemented at regional levels in Europe, the Americas and Africa constitute the core indicators of contemporary international human rights standards.\textsuperscript{12}

The contemporary meaning of rights and civil liberties has thus evolved over the years. The naturalist philosophies of the sixteenth century, the bourgeois revolutions of the seventeenth and eighteenth centuries, the socialist and Marxist revolutions of the twentieth century and the anti-colonialist revolution that began after the Second World War, have all combined to broadly define the modern concept of human rights. Like all normative traditions, the rights tradition reflects the process of historical continuity and change that is the product of varied cumulative human experiences. The contemporary idea of human rights also stems from a universalization of rights defined through a political process by international agreements. Indeed, most contemporary studies on

\textsuperscript{10} Article 1 of the Charter of the United Nations.

\textsuperscript{11} These include the International Covenants on Civil and Political Rights and the International Covenant on Social and Cultural Rights introduced in 1976.

\textsuperscript{12} In 1950, the Council of Europe agreed on the European Convention on the Protection of Human Rights and Fundamental Freedoms. This convention created the European Commission of Human Rights and the European Court of Human Rights. This was followed by the American Declaration on the Rights and Duties of Man (1948) and the African Charter for Human and People’s Rights, also known as the Banjul Charter which was adopted by the Organisation of African Unity in 1981.
rights refer specifically to “human rights” and define them as those embodied in the UDHR and its subsequent conventions. However, the approach in this thesis goes beyond the restricted definition of human rights in the UDHR. The definition of rights here embraces broad ideas about rights and liberties that predated the UDHR. In finding an operational definition of the concept of rights for the purpose of this study, it is necessary to review, albeit cursorily, the dominant theoretical and philosophical debates in the contemporary human rights discourse.

2.3 Human Rights: Issues of Change and Continuity

This study focuses broadly on discussions around rights as popular entitlements that individuals and communities hold in relation to the rest of society, rather than on the contemporary concept of “human rights” per se. However, like most studies in “human rights,” it confronts some of the historiographical questions that have been raised about fitting historical actors into twentieth century categories or analysing their experiences with twentieth century notions and concepts. Pieter Boele van Hensbroek has described this as “the problem of anachronism” in writing African intellectual history. Hensbroek points out that historians sometimes unavoidably infuse individual orientations into the presentation of historical material. Notions about the historical process, such as the idea of modernization or of the continuity of traditions, preclude understanding historical authors and actors within their own frame and within their own historical contexts. The historian, in such cases, enters the field of inquiry with a prior substantial theory of history — having some a priori knowledge about what this period in history is “really” about. Hensbroek cautions therefore that historians must leave open the possibility that
the people who are subject to historical studies may have considered themselves to be actors in a different drama. The possibility should be left open that as historians we may be burdening the past with the present by projecting our problem definitions upon them. For instance, can one speak of “nationalism” when the actors did not have the concept of a nation? Can there be Pan-Africanists when the idea of an all-African identity had not been formulated? Can there be modernists without the notion of modernity, and traditionalists without the idea that African societies were “traditional”? These questions are pertinent to this study. In this case, can we speak of rights or specifically of “human rights” when the actors may not have employed these notions in the precise sense that we employ them today?

This question has been extensively debated in relation to the study of human rights in African and other non-Western societies. In reaction to arguments for cultural relativism in the definition of human rights, some writers – mainly legal and social science scholars -- have argued that although the humanistic values that underlie the concept of human rights may be universally shared, a distinction must be made between the moral standards of human dignity, which all cultures share, and contemporary human rights that are enforceable legal or quasi-legal entitlements held by individuals in relation to the state. The concept of human rights, it is argued, is essentially a modern one founded on specific historical developments in the West -- enlightenment libertarianism, the Magna Carta, the French and American Revolutions and, ultimately, the Universal Declaration of Human Rights of 1948. It is therefore argued that reference to “human

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14 Orlando Patterson argues that the idea of human rights and the freedom of the
rights” in pre-1948 contexts is anachronistic. For this reason, scholars are divided on the appropriateness of employing the concept of “human rights” within the context of the history of pre-1948 colonial societies in Africa or elsewhere.

In response to arguments for an African concept of human rights, Rhoda Howard states quite categorically that what has been described as an African concept of human rights is actually a concept of human dignity that defines the inner moral nature and worth of the human person and his or her proper relations with society. Human dignity and human rights are therefore not coterminous as dignity can be protected in a society that is not based on rights. In her words:

There is no specifically African concept of human rights. The argument for such a concept is based on a philosophical confusion of human dignity with

individual to think and speak as he deemed right seems to have been a product of the growth in individualism, Puritan beliefs, and Enlightenment debate. He justifies this by arguing: “…in all non-Western cultures where it was found necessary to find a word for freedom, that word always had connotations of loss, unredeemable failure, nastiness, delinquency, debasement, and licentiousness. Only in the West did the word come to be cherished as the most precious in the language, next only to the sound of the name of God.” Patterson however does not provide any empirical evidence for this rather sweeping claim. Interestingly, he makes this argument in one of the few works that sets out to address contemporary human rights from a “historical perspective.” See Patterson, “Freedom, Slavery, and the Modern construction of Rights,” 135.


16 Jack Donnelly argues that “most non-Western cultural and political traditions lack not only the practice of human rights but the very concept. As a matter of historical fact, the concept of human rights us an artefact of modern Western civilization.” Donnelly, “Human Rights and Human Dignity,” 303.

human rights, and on an inadequate understanding of structural organisation and social change in African society.¹⁸

Jack Donnelly makes the same point when he distinguishes between the concepts of *distributive justice* and human rights. He argues that distributive justice involves giving a person that which he or she is entitled (his or her rights). Unless these rights are those to which the individual is entitled simply as a human being, the rights in question will not be human rights. In much of pre-colonial Africa for instance, rights were assigned on the basis of communal membership, family, status or achievement. These were therefore, strictly speaking, “privileges” granted by ruling elites, not human rights.¹⁹ The idea of human rights, properly so called, has its roots in the adoption of the UDHR by the United Nations in 1948. These arguments for a restricted definition of human rights may be categorized as the “UDHR as epoch” school. Proponents of this school see the UDHR of 1948 as an epoch making event that created the concept of human rights and should therefore define our understanding of it. The UDHR, it is argued, articulated for the first time in human history a regime of basic and inalienable rights to which all human beings are entitled by virtue of their humanity regardless of race, sex, social status or orientations.

However, there are other scholars who see the developments of 1948 more as an episode or just another phase rather than an epoch making event in the history of human rights. This may be termed the “UDHR as episode” school.²⁰ This school of thought

¹⁸ See, for instance, the definition provided in Rhoda Howard, *Human Rights in Commonwealth Africa*, 23.


²⁰ I have borrowed the terms “epoch” and “episode” from the debate between Ali Mazrui and J.F.A Ajayi over the epochal or episodic nature of colonialism in Africa.
argues for a more fluid and flexible definition of human rights that focuses not so much on the restricted context of post-World War II usage, but on the continuing notions and ideas that have historically underlined the concept of rights in various societies. Although the UDHR was a groundbreaking document, it was built on pre-existing traditions of rights in Europe, North America and the rest of the world. The UDHR was more a re-articulation of an old concept than the creation of an entirely new one.

In line with this thinking, Lakshman Marasinghe challenges the argument for a distinction between the concepts of “human rights” and “human dignity.” He argues that in both traditional and non-traditional system of laws, human rights are not “rights” as properly conceived but “powers.” The “power holder,” by exercising his powers to speak openly, associate freely, or use such other powers possessed in a given society, places the state or other individuals under a “liability” that keeps them from preventing the “power holder” from exercising that power. Once the law finds a legal duty in the holder of that liability, the original power holder acquired the right to have his power enforced. Human rights, therefore, always remains as a power in the human being who exercises them. Marasinghe concludes that in this form, human rights exists in all civilized systems and “most certainly in all traditional societies in Asia and Africa.”

In another study that challenges the assumed dichotomy between pre and post-UDHR conception of human rights, Alice Conklin employs the notion of human rights with reference to the Republican and liberal ideals that underlined colonial policies in

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French West Africa. She points out that at a time of ascendant liberalism in France, republican elites maintained that Africans should be freed from the material and moral want that had once oppressed the French nation. Africans were still to evolve within their own -- different -- cultures, but they were to do so in a way that respected the universal rights of all individuals. French policy in West Africa, in realms as different as education and forced labour, sufficiently expressed these beliefs to convince committed democrats that colonialism was actually advancing the cause of human rights and liberation when it was, in fact, depriving Africans of their basic freedoms.

The problem, it seems to me, is largely one of ontology – of labels that we choose to designate ideas rather than the ideas that underlie the labels. Although it may be useful to distinguish between the abstract ideals of human dignity or distributive justice and the more precise legal principles of human rights, we must not overlook the close connection between these sets of concepts and the ways they reinforce each other. Indeed, one would argue that the whole debate over distinction between the concept of human rights before and after 1948 arises from a failure to put the evolution of the idea of human rights in historical context. There has been a tendency by some scholars to conceptualize human rights within the narrow sense of modern legal language, the emphasis being on the strict

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legal definition of the term rather than the idea that underlies it. This approach is
problematic because it tends to emphasize change while ignoring underlying continuities.

Admittedly, the UDHR was a groundbreaking document. The idea that underlined it
--- that all human beings are entitled to some basic inalienable rights by virtue of their
humanity -- marked a shift from earlier notions of rights because, at least in theory, it was
applicable to everyone irrespective of gender, race and social status. However, this idea
of universal inalienable rights enshrined in the UDHR did not emerge as a bolt out of the
blue. It did not develop in vacuum. Rather, it was an expansion and re-articulation of
earlier traditions of rights. The idea that human beings are born free and equal did not
emerge in 1948. Its articulation as a universal principle under the auspices of a body
representative of most nations of the world is what is unique about 1948.  

Moreover, to many people in the non-Western world who were not represented at
the United Nations and still under colonial domination in the 1940s, the adoption of the
UDHR did not mean much. As I argue later in this thesis, Nigerian nationalists were
sceptical and ambivalent about a declaration purportedly affirming the rights of all human
beings drawn up by the same imperial powers that denied them of their right to self-
determination. 

It is important, therefore, not to overstate the significance of the UDHR. A more
historical approach to the study of the evolution of the contemporary concept of human
rights will find no difficulty in drawing the link between earlier notions of human dignity

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24 Even this point is subject to dispute. At the singing of the UDHR in 1948, many
countries in Africa and Asia were still under colonial rule and were not members of the
United Nations. They were therefore not party to the drafting of the original document,
although most of these nations have since ratified the declaration.

25 See “Political and Civil Rights Discourses” in chapter six.
or distributive justice and the modern idea of human rights which are, in fact, merely contextual reinterpretations of the age-long notions of defining human worth and value. The object is to understand and appreciate the distinct historical contexts in which this idea has manifested itself. But in a field long dominated by legal and social science scholars, with their predilection for structural analysis, contemporary human rights scholarship tends to be driven by the quest for neat models and precise labels. The messy middle has, for the most part, been left out. While structural analyses may be useful in systematizing our study of rights, a fuller understanding can only come from going beyond these structures to explore the complexities and nuances that underlie them. This is where a historical perspective becomes particularly relevant. Even if we agree, as some have argued, that the UDHR was an epoch-making event, the historian cannot start or stop the story at such break points. It is the historian’s task to look for continuities (and discontinuities) and for the various roots of such supposedly epoch-making events.

Seen from this perspective, it becomes difficult to accept the view that the concept of human rights is a notion created only three centuries ago by philosophers in Europe and given a stamp of universal legitimacy in 1948. Rather, it becomes apparent that what was unique about the Enlightenment and the writings of the French and American revolutions was not the idea of human rights itself, but the discussion of human rights in the context of a formally articulated philosophical system. However, in drawing the crucial link between what have been described as traditional notions of “human dignity” or “distributive justice” and the modern idea of human rights, there is a need to understand and appreciate the distinct historical contexts in which the ideas that have

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26 This theme is further explored later in this chapter with reference to some of the arguments of the Africanist philosopher Paulin J. Hountondji on this subject.
underlined public discussions about rights have been manifested. As Hensbroek cautions, it is important to leave open the possibility that peoples and societies being studied may not have construed rights in the precise sense and terms in which they are generally conceived and employed today.

2.4 Towards a Contextual Definition of Rights

Rights have been defined simply as "legally enforceable claims to something, on someone or some group."27 "Rights" occupy the same semantic field as the sometimes nearly synonymous terms "freedom" and "liberties." However, as we have seen from the preceding discourse, what has confused the definition of rights are the attempts by philosophers, political theorists and practitioners to theorize, specify, and justify a special category of fundamental or essential rights that pertain to individuals simply by virtue of their humanity. This confusion poses a significant conceptual challenge for this study.

The definition of rights in this study is necessarily a broad and inclusive one. Rights, like laws, are viewed not as a body of immutable rules, institutions, and procedures but as dynamic historical formations, which at once shape and are shaped by economic, political and social processes. Because of the many debates that have been associated with the meaning of rights, we need to clarify the use of the term in this study. It is the contention here that rights generally, and "human rights" in particular, are best defined and understood within the linguistic and social context of popular usage by the

27 Patterson, "Freedom, Slavery, and the Modern Construction of Rights," 156.
historical actors who employed the language. In other words, rights claims derive their meaning only within specific universes.\(^\text{28}\)

In this study, I have chosen to refer more to "rights" generally rather than "human rights" \textit{per se} for two reasons. The first is to avoid the controversy and confusion often associated with the contemporary usage of the concept of human rights. The second reason is because this study focuses on "rights" defined broadly as popular entitlements that individuals and communities hold in relation to other individuals and groups or in relation to the community as a whole. This goes beyond the conventional definition of human rights as enforceable legal or quasi-legal entitlements that individuals hold against the state.

Since rights are articulated in language and are socially constructed, the emphasis in defining rights in this research is based primarily on how people employed the language of rights or articulated their claims to it, whether orally or in documents. The definition of rights here is guided by the ideas and notions to which people referred when they talked about those entitlements (beyond privileges) that they considered intrinsically theirs. It focuses on the specific contexts in which these rights were asserted, whether individually or collectively. As the title of the thesis suggests, the definition of rights here is also guided by the relationship of rights claims to power — whether deriving from traditional, colonial or post-colonial hegemonies. Power here refers to more than just control over other people and their actions. It also embraces the Foucauldian conception of power as the production of knowledge.\(^\text{29}\) The concept of rights and freedom achieves


\(^{29}\) Foucault argues that power and knowledge directly imply one another. There is no
its conceptual coherence through the idea of power. Rights claims are often articulated in relation to prevailing orthodoxies that are sustained by ascendant regimes of power. People consider themselves free and at liberty primarily when they are released from the power of another, or not prevented by the power of another to do what they want.\textsuperscript{30} In this sense, rights are those entitlement claims that go beyond power and privilege.

This thesis seeks to identify specific trends and patterns in discussions about rights in Western Nigeria. First, it seeks to understand where people's ideas about rights and liberties come from and how they went about legitimating right claims. What references are used to legitimate rights? Were they "traditional" or "modern," indigenous or imported? Here, I recognise the need to guard against the tendency to lapse into the binary opposites of tradition and modernity. Multiple and diverse influences shaped the rights discourse in many African societies and these cannot simply be reduced to choices between tradition and modernity. However, notions of "modernity," "civilization" and later, "development" did at various times influence notions of rights and liberties. The extent to which individuals and groups could claim certain rights against the colonial state, particularly in the early colonial period, depended largely on the level of "civilization" and "modernity" they were considered to have attained.

Another consideration that guides the study of rights in the thesis is the role of exclusion in discourses about rights. It is important to understand what people claimed as

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\textsuperscript{30} Patterson, "Freedom, Slavery, and the Modern construction of Rights," 133.

\textsuperscript{power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute, at the same time, power relations. These power-knowledge relations can therefore not be analyzed simply on the basis of a subject of knowledge because such knowledge is not free from relation to the power system. See Michel Foucault,\textit{ Discipline and Punish: The Birth of the Prison}, (New York: Pantheon Books, 1977), 27-8.}

\textsuperscript{30} Patterson, "Freedom, Slavery, and the Modern construction of Rights," 133.
rights. It is also just as important to understand what they did not. It is necessary to recognize that some rights claims did not apply to everyone or excluded particular individuals and groups. It is also important to identify claims that are made and understood as discretionary privileges rather than as rights. Certain entitlements enjoyed by members of particular social groups or classes were clearly understood to be privileges, which were discretionarily given and contingent on certain conditions. For instance, in some communities, foreigners who settled in the community were entitled to a piece of land, granted *gratis*, to enable them to farm for their livelihood. Such entitlements were clearly understood by all parties involved as a privilege. With changes in circumstances, this privilege could be lost. In other cases however, individual entitlements to land were understood and claimed as a matter of right rather than privilege. "Legitimate" sons born within wedlock were usually entitled to land as an inalienable right. The concern in either case is to understand how individuals and groups perceived particular entitlements and the language in which claims to such entitlements were made.

A related consideration in the definition of rights in this thesis is the question of categorization and prioritization of rights. A number of attempts have been made to establish a hierarchy of human rights or, alternatively, a list of basic rights that cannot be violated under any circumstances, as opposed to rights that are of secondary importance or derivatives of core rights. The central question here is whether rights are of equal importance or whether some rights take precedence over others. What criteria may be employed in categorizing human rights according to their levels of importance and relevance within each socio-economic context? Most writers argue for a categorization
rather than a hierarchical classification of different kinds of rights. This is because a hierarchical arrangement of human rights, save for academic purposes, would present some rights as being less significant than others. This would be a decided disadvantage to social justice, since most of these rights are interdependent.31

Some writers make a distinction between political/civil rights on one hand, and economic/social rights on the other. Others refer to generations of rights. Osita Eze for instance groups human rights into five categories: civil, political, social, economic and cultural. Civil and political rights include such rights as the right to self-determination; the right to life; freedom from torture and inhuman treatment; freedom of movement and the freedom of thought conscience and religion. Economic rights include the right to just conditions of work; the right to fair remuneration; the right to an adequate standard of living. Social and cultural rights include the right to education; the right to gender equality; the right to participate in cultural life and to enjoy the benefit of social development.32

Similarly, Claude Welch refers to three generations of rights based on the historical development of the notion of rights. The first generation stressed civil and political rights and liberty against state incursions on the lives of individuals. These rights derive primarily from eighteenth century reformist theories and they reflect the dominant political philosophy of liberal individualism and the laissez-faire economic and social doctrine that characterized this era. The second generation emphasized economic, social and cultural rights with a new emphasis on equality rather than liberty. This originates


from socialist traditions and is a response to the abuses and misuses of capitalist development and its uncritical conception of individual liberty. Human rights are conceived in terms of positive rights requiring the intervention, not the abstention of the state for the purpose of assuring equitable participation in production and distribution. The third generation involved social solidarity both among developing states as a group and among all states in general. These rights reflect the emergence of “Third World nationalism” and its demand for a global redistribution of power and wealth. They include the right to political, economic and social development; the right to participate in and benefit from “the common heritage of mankind”; the right to peace and the right to a healthy and balanced environment. The French jurist Karel Vasak makes a similar classification of human rights into three generations based on the three normative themes of the French Revolution: the first generation of civil and political rights (liberté); the second generation of economic, social, and cultural rights (égalité); and the third generation of solidarity rights (fraternité). These classifications broadly provide the thematic reference points for this thesis. Specific chapters deal with political, economic and social rights discourses.

2.5 Rights Discourse in the African Context

The discussion in this section bears some relevance and similarity to the earlier discussion on the debates over the concept of human rights and the epochal or episodic nature of the UDHR in the definition of human rights. However, the discussion focuses

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on Africa. It examines how the conceptual and theoretical debates that have raged in the human rights discourse have been extended to a specifically African context, and their implications for the definition and understanding of rights in this study.

The central theme in the discussion about rights in the African context has centred on the distinction between an African concept of human rights founded on communal values, as distinct from Western notions of rights that were subsequently introduced into the continent with the European incursion. This debate has, for the most part, been a response to arguments for a restricted definition of human rights as typified by the “UDHR as epoch” thesis and the assumption that the philosophical foundations of the modern concept of human rights are traceable uniquely to the liberal traditions of Western Europe. This position has been interpreted as implying that the modern concept of human rights was extraneous to pre-colonial Africa and other non-Western societies.


35 The term “traditional African society” can be problematic. The argument has been made that if the term refers to the “pre-capitalist, primitive communal stage of slave and feudal modes of production,” the historical attributes which we identify as being
As we have seen, some proponents of the “UDHR as epoch” thesis argue specifically that what are usually put forward as traditional African conceptions of human rights are nothing more than notions of human dignity and worth which existed in all societies. They argue that all human societies, including those in Africa, have gone through a stage when, because of the low level of productive forces, collective ownership of the means of production and the communal organisation of society was necessary for subsistence. 36 This communal social structure allowed for the development of humanistic ideals, which are not necessarily coterminous with contemporary notions of human rights.

Another variant of this school argues that traditional African societies, as indeed most pre-modern societies, could not have evolved perceptions of human rights because they did not recognise the concept of a “human being” as a descriptive category. Instead, persons were defined by social status or group membership. Thus, traditional societies generally did not recognise rights one held simply as a human being. 37 The kind of social relationship between the state and the individual, which is the basis of the notion of human rights, was therefore never created within the context of such traditional societies. 38 According to this approach, human rights were thus alien to Africa until traditionally African may in fact not be peculiar to Africa since this stage of social development was common to all societies. Our conceptualization of African tradition here therefore, is in a dynamic sense. It is refers not only to the social attributes of the primitive pre-capitalist stage of development but also the more “modern” social changes and continuities in African traditions.


38 Quoted in Makau Wa Mutua, “The Banjul Charter and the African Cultural Fingerprint.”
Western modernizing incursions dislocated community and denied newly isolated individuals access to the customary ways of protecting their lives and human dignity.\(^{39}\) One of the implications of this argument is that the origins of the concept of human rights in Africa must be sought beyond Africa’s pre-colonial history.

However, several writers have argued that the concept and philosophy of human rights are neither alien to traditional African societies nor exclusive to western liberal traditions. They reject the notion that the concept of human rights, having originated, developed and been refined in the West, was thereafter “transplanted” to Africa. This view has been variously described as paternalistic, inherently ahistorical and philosophically bankrupt.\(^{40}\) S. K. B Asante, for instance, rejects the notion that human rights concepts are peculiarly or even essentially bourgeois or western, and without relevance to African traditions. Such a notion, he argues, confuses the articulation of the theoretical foundations of Western concepts of human rights with the ultimate objective of any philosophy of human rights which is, quite simply, concerned with asserting and protecting human dignity on the basis of the intrinsic worth of the individual. This is an eternal and universal phenomenon that is as applicable to Western traditions as it is to

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\(^{39}\) Howard and Donnelly have suggested that pre-industrial African societies could not generate the complex process of human rights. Donnelly specifically dismisses the notion that pre-colonial societies knew the concept of human rights, an argument he thinks moot because communitarian ideals had not been destroyed and corrupted by the money economy and Western values. See R Howard, “Group versus individual identity in the African Debate on Human Rights” in A.A An-Niam and F.N Deng (ed.) *Human Rights in Africa*. Also see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989).

African and other non-western traditions.\textsuperscript{41} Mahmood Mamdani and Paulin Hountondji both share this view. Mamdani argues broadly that wherever oppression occurs -- and no continent has had a monopoly over this phenomenon in history -- a conception of rights emerges. In his view, it is difficult to accept that the concept of human rights is a theoretical notion created only three centuries ago by philosophers in Europe.\textsuperscript{42} What was unique about the Enlightenment, and the writings of the French and American Revolutions, was the discussion of human rights in the context of a formally articulated philosophical system. As Hountondji puts it:

[Western philosophers] produced not the thing but discourse about the thing, not the idea of natural law or human dignity but the work of expression concerning the idea, the project of its formulation, explanation and analysis . . . in short, a draft of the philosophy of human rights.\textsuperscript{43}

Within this context, M’Baye points out that pre-colonial African societies knew of human rights adapted to the political and social situations existing in that period. These rights were recognised and protected, but must be looked at in the context of societies that were hierarchical and at the same time unified by mythological beliefs. Within these societies, the object of law was to maintain society in the condition in which the ancestors bequeathed it. The concept of human rights within such social contexts was thus


\textsuperscript{42} Mahmood Mamdani, “The Social Basis of Constitutionalism in Africa,” 360.

necessarily communal and humanist, fostering a mutual respect and recognition of the
rights and liberties of each individual within the wider context of the community.\textsuperscript{44}

This distinction between a Western or contemporary notion of rights on one hand
and the African conception of rights on the other is reflected in the different philosophical
worldviews of Western European and African societies, particularly with reference to the
collectivist rather than individualistic nature of rights and duties in Africa. The modern
western-oriented conception of human rights, it is argued, contains three elements that
make it quite distinct from traditional African concepts of rights.\textsuperscript{45} First, in the Western
conception of rights, the fundamental unit of the society is the individual, not the family
or community. Notions of rights and justice within Western law are constructed around
the fetish of the abstract individual.\textsuperscript{46} Second, the primary basis of securing human
existence in society is through rights, not duties. Third, the primary method of securing
these rights is through a legal process where rights are claimed as inalienable entitlements

\textsuperscript{44} Keba M’Baye, “Organisation de L’Unite Africaine” in \textit{Les Dimensions International

\textsuperscript{45} References to “Western values” in the human rights discourse is problematic in that it
often presents a picture of an undifferentiated West – what J.G Carrier has called the
“Occidentalised West.” “The Occidentalised West is an imagined entity, that in its
memorable clarity, ignores the vast areas of Western life that conflicts with its vision.”
Other writers have taken this point further to argue that just as orientalising was a part of
imperialism and colonialism, so occidentalizing is a part of the emergence from colonial
rule and cultural power (Chanock). Within this context, the “West” is used as a
“rhetorical counter” and Occidentalism becomes a “mnemonic for the cultural
contradiction engendered by colonial domination.” (Spencer) See J.G. Carrier,
\textit{Occidentalism: Images of the West} (Oxford: Claredon Press, 1995), 28; J. Spencer,
“Occidentalism in the East: The uses of the West in the Politics and Anthropology of
South Asia” in J.G. Carrier, \textit{Occidentalism}, 236; Martin Chanock, “Culture and Human
Rights: Orientalising, Occidentalising and Authenticity,” in Mamdani, \textit{Beyond Rights
Talk and Culture Talk}, 22.

\textsuperscript{46} B. Fine, \textit{Democracy and the Rule of Law: Liberal Ideas and Marxist Critiques
and adjudicated upon, not reconciliation, repentance and education as in many African societies. For these reasons, contemporary rights talk continues to be problematic in non-Western settings.

Makau Wa Mutua’s position is similar. He argues that an examination of the norms governing legal, political and social structures in pre-colonial African societies demonstrates that the concept of rights informed the notion of justice and even supported a measure of individualism. He argues further that in traditional Africa, the concept of rights was founded not on the individual but on the community to which the individual related on the basis of obligation and duties. Rights in this context included but were not limited to the right to political representation often guaranteed by the family, age groups and the clan. The society developed certain central social features that tended to foster the promotion of both individual and collective rights. These included deference to age,

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49 Mutua points out that the contemporary human rights corpus shares with pre-colonial Africa the importance of personal security rights. The right to life for example was so valued in Akan and Akamba societies that the power over life and death was reserved for a few elders and was exercised only after elaborate judicial procedure with appeals from one court to another and often only in cases of murder and manslaughter. See Makau Wa Mutua, “The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Rights and Duties,” Virginia Journal of International Law, 35, 2 (1995), passim. Also see Makau Wa Mutua, “Limitations on Religious Rights: Problematizing Religious Freedom in the African Context,” Buffalo Human Rights Law Review, 5 (1999), 75 –105.
commitment to the family and the community and solidarity with other members of the community. These ideals strengthened community ties and social cohesiveness, engendering a shared fate and a common destiny. Under these circumstances, the concept of rights did not stand in isolation. It went with duties. For every right to which a member of society was entitled, there was a corresponding communal duty. Expressed differently, "the right of one kinship member was the duty of the other and the duty of the other kinship member was the right of another."\(^{50}\) Although certain rights were often gendered, and attached to the individual by virtue of birth and membership of the community, there were also corresponding communal duties and obligations. This matrix of entitlements and obligations fostered communal solidarity and sustained the kinship system that was the basis of the African conception of human rights.\(^{51}\)

The philosophy behind this concept of rights is based on the presumption that the full development of the individual is only possible where individuals care about how their action would affect others. Thus, in contrast with the Western conception of rights, which conceives rights in terms of abstract individualism without corresponding duties\(^{52}\), the dominant traditional African conception of human rights combined a system of rights and obligations.


\(^{51}\) This position of the Africanist philosophy on the communitarian nature of the traditional African Society was made the cornerstone of the African Charter on Human and People’s Rights, which stipulates certain rights as being the rights of the people as a community. Some writers contend that this emphasis on group rights in the African Charter derogates from the more familiar notion of individual rights. See Rhoda Howard, Human Rights in Commonwealth Africa, 16.

\(^{52}\) The argument here is that Western liberal thought firmly holds that rights attach to the individuals rather than the organized society. The individual constitutes both the unit of organized society and the primary holders of rights. The autonomous individual exists, independent of organized society and comes into it with his rights.
obligations, which gave the community cohesion and viability. As Mutua points out, this conception -- that of the individual as a moral being endowed with rights but also bounded by duties proactively uniting his needs with the needs of others -- was the quintessence of the formulation of rights in pre-colonial African societies. Josiah Cobbah makes the same point when he argues: “As a people, Africans emphasize groupness, sameness, and commonality.... The African worldview is tempered with the general guiding principle of the survival of the entire community and a sense of cooperation, interdependence, and collective responsibility.

This argument for a communitarian rather than individualistic conception of human rights is not merely another case of African exceptionalism. Similar arguments have been made for “Asian values” in the conception of human rights. Some leaders and scholars of East and Southeast Asian countries stress Asia’s incommensurable differences from the West and argue for a distinct understanding of human rights in the Asian context. It is also argued that the importance of the community in Asian culture is incompatible with the primacy of the individual upon which the Western notion of human rights rests. This relationship between individuals and communities constitutes the key difference between Asian and Western cultural values. This thinking provides the basis

53 Makau Wa Mutua, “The Banjul Charter and the African Cultural Fingerprint,” 363. Interestingly, such arguments for a community based, rather than individual-centred notion of rights are neither a novel nor exclusively Africanist position. F H Bradley, The British Idealist wrote in 1894: “The rights of the individual are today not worth serious consideration...The welfare of the community is the end and is the ultimate standard.” Quoted in Burns J. Weston, “Human Rights,” Human Rights Quarterly.


55 For a more incisive exposé on the Asian values and human rights debate, see William Theodore De Bary, Asian Values and Human Rights: A Confucian Communitarian
for the Bangkok Declaration, seen by many as a counter-document to the UDHR by Asian countries.\footnote{The Bangkok declaration argues, in essence, that the notions of human rights enshrined in the UDHR have not and have never been universal, and have no roots or sanction in the traditions of most countries of the world. It also argues that if these ideas are to be taken seriously, they must be expanded to include other non-Western notions of human right. See Joanne Bauer, “The Bangkok Declaration Three years After: Reflections on the State of the Asia-West Dialogue on Human Rights,” Human Rights Dialogue, 1, 4 (March 1996),}

However, arguments for a peculiarly communal African concept of human rights are confronted with their own theoretical and empirical limitations particularly in their relevance to contemporary African societies. Rather than the persistence of traditional cultural values in the face of modern incursions, the reality in contemporary Africa, as in the rest of the developing world, is a situation of disruptive and incomplete Westernization, “cultural confusion,” or even the enthusiastic embrace of “modern” practices and values. In other words, the ideals of traditional culture and its community-centred values, advanced to justify arguments for the cultural relativism of human rights in the African context, far too often, no longer exist.

E.A El-Obaid and K. Appiagyei-Atua argue that the much-vaunted communal concept of human rights never existed in traditional African communities in the ways that have been suggested. They posit that African notion of human rights does not over-emphasize the community, as “most African leaders and writers would have us believe.” Rather, traditional African rights models primarily emphasized individual rights and there

was always a balance between individual and the community rights. Timothy Fernyhough also expresses serious doubt whether the “myth of Merrie Africa” is as valid as theorist and ideologues suggest. He acknowledges that group-centred life is heavily accented in African traditions but adds that the individual and his/her dignity and autonomy are carefully protected in African traditions, as are individual rights to land, individual competition for public office, and personal success.

Although scholars have been at the forefront of exploring the cultural relativism of human rights in the African context, the assertion of “African values” gains prominence when it is articulated in the political rhetoric of African leaders and elite. It has been suggested that in asserting these values, leaders from the continent find that they have a convenient tool to silence internal criticism and to fan anti-Western nationalist sentiments. Some writers have even suggested that the picture of an idyllic traditional communitarian society has been presented by African rulers and elite “from Kaunda to Nyerere” only to hide and rationalize their own unbridled violations of human rights. In the scathing words of Rhoda Howard:

Some African intellectuals persist in presenting the communal model of social organization in Africa as if it were fact, and in maintaining that the group oriented, consensual, and re-distributive value system is the only

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59 This point has also been repeatedly made with reference to the argument for “Asian values” in the discourse on the cultural relativism of human rights. See Xiaorong Li, “Asian values” and the universality of human rights, *Business and Society Review*, 102, 103 (1998).
value system and hence it ought to be the basis of a uniquely African model of human rights. These ideological denials of economic and political inequalities assist members of the African ruling class to stay in power.\textsuperscript{60}

In a similar vein, Jack Donnelly has pointed out that arguments for the cultural relativism of human rights within the African context are far too often made by urban economic and political elites that have long left traditional culture behind. Their appeal to cultural practices is often a mere cloak for self-interest and arbitrary rule. In traditional cultures, communal customs and practices usually provided each person with a place in society and a certain amount of dignity and protection. This traditional protection has largely been undermined by rulers in the continent such that the human rights violations of most African regimes are as antithetical to the cultural traditions which they idealize as they are to the “Western” human rights conceptions which they despise. Donnelly therefore cautions that:

We must be alert to a cynical manipulation of a dying, lost or even mythical cultural past. We must not be misled by complaints of the inappropriateness of “western” human rights made by repressive regimes whose practices have at best only the most tenuous connection to the indigenous culture; communitarian rhetoric too often cloaks the depredations of corrupt and often westernized elite. In particular, we must be wary of self-interested denunciations of the excessive individualism of “western” human rights.\textsuperscript{61}


\textsuperscript{61} Donnelly cites several examples of African rulers who have employed appeals to traditional practices as a justification for arbitrary rule. In Malawi, President Hastings Band utilized “Traditional courts” in order to deal with political opponents outside the regular legal system. In Zaire, President Mobutu created the practice of \textit{salon go}, a form of communal labour with supposedly traditional basis. In fact, it had little or nothing in common with indigenous traditional practices, rather it was more or less a revival of the colonial practice of \textit{corvee} labour. Jack Donnelly, “Cultural Relativism and Universal Human Rights,” \textit{Human Rights Quarterly}, 6, 4 (1984)
Martin Chanock makes the same point when he argues that culture-based arguments are often a pretext for withholding certain fundamental rights. Culture has become simply a cover for elite privilege, "a language of rulers, particularly in the ex-colonial world." Howard, Donnelly, Chanock and others who have made similar arguments are clearly, and perhaps quite justifiably, suspicious of the political elite of African countries who use the constant references to culture, "communal values" and the primacy of socio-economic well-being over civil and political rights, to mask systematic violations of human rights in the interest of the ruling elite.

But persuasive as the critique against "culture talk" in the human rights discourse may be, it fails to address an important question. If the accent on culture in the human rights discourse is nothing but a demagogic posture of dominant and hegemonic local interests, why does it resonate with others beyond their narrow confines? Why do "subaltern" women and minority groups also find the language of culture appealing in articulating rights claims? The failure to address these questions has been attributed in part to the "self-righteousness and intolerance of the rights movement"-- its tendency to dismiss every local cultural assertion as masking a defence of privilege and inequality at the expense of the individual rights of the disadvantaged in the same society.  

Given the limitations of the arguments for "cultural relativism" in the human rights discourse on one hand, and the problems of applying "Western" or supposedly "Universal" concepts of human rights to "non-Western" societies on the other, some

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63 Mamdani, Beyond Rights Talk and Culture Talk, 3.
writers have suggested the opening up of a "third space" from which a critique of both tradition and modernity can be made.\textsuperscript{64} If culture talk involves more than just a defence of local privilege, and rights talk too is more than just a Western assertion, how do we explore the possibilities of each discourse? To the extent that culture talk is about dignity and difference and rights talk about equality and sameness do we not need a language that transcends (or encompasses) both rights and culture? Against this background, Mahmood Mamdani argues the need to go beyond the confines of "rights talk and culture talk" and embrace instead, a "language of protest" which bears a relationship to the "language of power."\textsuperscript{65}

Attractive as this suggestion is, its main limitation is that it assumes that the discourses about rights can be understood simply in terms of power and protest. This is not always true. Although rights talk is often related to power, it certainly goes beyond protest. As we shall see in the course of this thesis, the language of rights in colonial Nigeria was not only a language of protest. It was also variously deployed as a language of negotiation, engagement and even to legitimise the status quo.

In sum, we can identify three levels of argument in the Africanist discourse on human rights. At the first level is the debate as to whether or not the roots and foundations of human rights conceptions are also to be found in the African historical experience. On this, it is difficult to escape the conclusion that the extreme Africanist argument for a distinctively communitarian African concept of human rights which stands in contrast with the concepts and traditions of the West or the rest of the world, has

\textsuperscript{64} See Nivedita Menon, "State, community and the Debate on the Uniform Civil Code in India" in Mamdani (ed.) \textit{Beyond Rights Talk and Culture Talk}, 77.

\textsuperscript{65} Mamdani, \textit{Beyond Rights Talk and Culture Talk}, 1.
its limitations. If anything, the notion of the absolute cultural relativism of human rights comes through as a misunderstanding inspired by cultural nationalism. What its proponents see as radically distinctive communitarian African traditions and conceptions also clearly possess ideals that are universal. When President Nyerere of Tanzania and Colonel Acheampong of Ghana argued for a concept of human rights that is peculiar to Africa in the immediate post independence years, they were clearly echoing the sentiments of cultural nationalism that was the general spirit of the era. Much of the humanistic and communitarian values that were exclusively ascribed to African societies also generally apply to most pre-industrial societies in Europe, Asia or elsewhere in the world.

66 As part of his ideology of African socialism or Ujamaa in the 1960s and 1970s, Julius Nyerere promoted the idea that Africa could not afford to be “burdened” by the political and civil rights concerns advocated in the West while it was confronting more urgent economic and social problems. He argued that given the peculiar constraints of poverty and underdevelopment in Africa, what was more imperative in Africa was greater attention by its leaders to the basic economic and social welfare of the people. In his now famous quote he stated:

What freedom has our subsistence farmer? He scratches a bare existence from the soil provided the rains do not fail; his children work at his side without schooling, medical care or even good feeding. Certainly he has freedom to vote and to speak as he wishes. But these freedoms are much less real to him than his freedom to be exploited. Only as his poverty is reduced, will his existing political freedom become properly meaningful and his right to human dignity becomes a fact of human dignity.


67 It is significant to note that most of the attributes that are now frequently ascribed to the West, as “Western values” are in fact, relatively recent developments in the West. Democracy and universal adult suffrage and the full range of individual-centred political
On the other hand, it is difficult to accept the equally extremist argument that human rights are founded solely on the liberal traditions of Western Europe or that the concept of human rights was alien to specific pre-capitalist traditions in pre-colonial Africa. Such monolithic interpretations of human rights are unacceptable. They are also unhelpful. If the emerging universal “culture of rights” is to take roots in Africa and other non-Western societies – and in a sustainable way – the association of human rights with Western thought and the Western world-view in the public imagination constitutes a hindrance.  

Discussions about rights are the heritage of all humankind and the concept of human rights has been developed, struggled for and won by different people in different historical, political, social and cultural contexts. These struggles and victories should combine to give our contemporary understanding of human rights its essence and universal validity. There is little basis or need for the rather sweeping assertion that traditional Africa or indeed any “pre-modern” society for that matter has made no normative contribution to the contemporary human rights corpus or the global rights discourse. As M. Haile has argued, the fact that human rights have been part of western philosophic tradition from early times does not imply that non-western societies have no equivalent conception of human rights. Written treatises on natural law or natural rights

and civil rights, were not instituted in many parts of Europe until the middle of the twentieth century. Only a century back, many of the communal attributes now described as Asian or African values, could also easily have applied to societies in Europe and North America.

were no prerequisites to conceptions about or commitment to human rights elsewhere in the world.

To hold this middle-of-the-road position is not to be ambivalent and contradictory. Elsewhere, I have argued that in spite of the tendency of some of its proponents to stretch it too far, an Afrocentric conception of human rights is a valid worldview. Its significance to the discourse on the cultural relativism of human rights, however, demands careful consideration. Rather than being the basis for abrogating or de-legitimizing human rights values that have universal appeal, it should inform the cross-fertilization of ideas between Africa and the rest of the world. It can also provide the moral and philosophical basis for the legitimization of a universal human rights regime in the African context. The present challenge for Africanist human rights scholars generally is to articulate an African sense of human rights, which flows from the African historical experience and one that the rest of the international community can also use.

The construction and definition of human rights norms is a continuous and dynamic process. As a dynamic process, the cultures and traditions of the world must compare notes, and hopefully, come to some agreement on what constitutes human rights, and seek how best these values can find some form of cross-cultural legitimacy. This is one of the hopes of this thesis – that it will help us better understand patterns in discussions about rights that were unique to Western Nigeria and others that share commonalities with rights discourses elsewhere in the world.

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2.6 Citizens and Subjects: The Rights Discourse and Colonial Africa

As indicated earlier, a central concern of this thesis is the recent debate over the nature of rights in colonial Africa. In his study on the legacy of late colonialism in Africa, Mahmood Mamdani argues that governance by the colonial states was a double-sided affair. On one hand, the colonial state governed “citizens” through the rule of law and an associated regime of rights. On the other hand, “subjects” were ruled by a regime of coercion and administratively driven justice.71 The language of civil rights was a specific language, which the colonial state employed in its dealings with urban-based “citizens” as opposed to the language of “custom and traditions,” which it employed in its dealings with rural based “subjects.” This legacy was bequeathed to the postcolonial state. Although independence deracialized the state, it did not democratize it. Although it included the indigenous middle and working class within the parameters of the modern state and therefore potentially in the ranks of rights-bearing citizens, “it did not dismantle the duality of how the state apparatus was organized both as a modern power regulating the lives of citizens and as a despotic power that governed peasant subjects.”72

While the categories of citizen and subject may be useful in understanding imperial agendas and how various broad groups encountered the colonial state, I find them problematic in the context of this study for several reasons. First, the terms “citizen” and “subject” were not descriptive categories (in the sense that Mamdani uses them), in colonial rights discourse in Nigeria. Local colonial officials mainly talked about “British


72 Mamdani, Citizen and Subject, 136.
subjects” and “British protected person.” In fact, the term “citizen” rarely appears in colonial archives. Even Englishmen were referred to as “subjects of her majesty.” Beyond colonial officialdom, Nigerians used the terms citizen and subject interchangeably. The educated elites sometimes described themselves as “subjects of His Majesty Government” and at other times, as “citizens of Empire.”

Secondly, the distinction between British “subjects” and “protected persons” in Nigerian colonial discourse was not based on a rural/urban divide. Rather, it was based on the modes of colonial acquisition. Conquered or ceded territories like Lagos were considered extensions of the British Isles where the laws of England were applicable. Africans in these territories were considered British subjects entitled, in principle, to the same rights and liberties as Englishmen. This was different from territories acquired by treaty in which the affected people were not British subjects per se but “British protected persons.” In such territories, English laws were applicable only where they were specifically provided for, implying that “protected persons” did not necessarily enjoy the full rights and liberties guaranteed to British subjects. However, as I argue in the next chapter, even these distinctions were only recognized in principle. In practice, the British made no distinction in their dealings with “subjects” and “protected persons.”

73 For instance, the British Nationality and Status of Aliens Act of 1914 conferred the common status of “British subject” generally upon those persons who had specified connections with the Crown’s dominions. The status of British subject implied allegiance to the Crown. Murray Last, (the former editor of Africa) tells me that his British passport still describes him as “a subject of her majesty’s government.”

74 See subsection titled: “Citizens of Empire: War, Liberty and Justice” in chapter seven.

The third limitation of Mamdani’s thesis for this study is that unlike the situation elsewhere in colonial Africa, the rural sphere in Nigeria did not always constitute an enclave of illiterate masses distinct from an urban sphere dominated by rights-bearing educated African elites. Many educated elites resided in rural areas. Coleman points out that despite the tendency towards urbanization in the mid-colonial era, nearly 60 per cent of those listed as “educated” in Nigeria actually lived outside the main towns. In 1921 Calabar province for instance, more than 85 per cent of the educated elites lived in rural areas, and by 1953 the proportion had increased to 92 per cent.76 The rural-urban divide, at least in terms of the population of educated people, was therefore not as clear-cut in Nigeria as it may have been elsewhere in colonial Africa.

Finally, even if we accept Mamdani’s thesis as applicable to Nigeria for heuristic purposes, it remains problematic because it tends to reduce the discussions about rights and the ascription of these rights to rigid and polarized categories. Although Mamdani has made the further clarification that the organisation of colonial power bifurcated colonial governance rather than the nature of socio-economic processes or the political struggles against colonial power,77 his thesis still tends to obscure the more nuanced and multi-dimensional ways in which diverse interest groups engaged in discussions about rights in ways that crisscrossed the assumed divide between urban “citizens” and rural “subjects.” It forecloses the possibility that tradition-bearing rural “subjects” could break out of the citizen/subject divide to assert and claim rights supposedly exclusive to urban

76 J. S. Coleman, Nigeria: Background to Nationalism (Berkeley: University of California Press, 1958), 144.

“citizens.” Although the language of “civil rights” may have been one that the colonial state employed mainly in its dealings with urban populations, it was also one that could occasionally be mobilized by rural-based chiefs, peasants and women in the operations of Native courts and the customary legal system. Moreover, questions arise as to whether the discourse on civil rights was, in fact, one in which most urban dwellers were engaged. Under colonial rule, many urban-based Africans were just as alienated from discussions about civil rights as their rural counterparts. Thus, questions remain as to how well the citizen/subject dichotomy reflects the rights discourse within the context of the organisation of the colonial state, its socio-economic process or the political struggles against it.

In a study that echoes Mamdani’s, Jean and John Comaroff locate missionary and colonial discourses of rights in the struggle – endemic to colonialism – over the making of the “modernist African subject.” This played itself out in two antithetical “registers” -- the register of radical individualism and the register of primal sovereignty. The former has to do with the construction, by the Europeans, of the modernist African subject and his/her equivocal status as a citizen. The latter, which defined people by virtue of membership in “customary” political communities, concerned the attribution, by whites, of “traditional” collective beings to “natives.” It would express itself in the ascription of “primordiality” and “primitivism” to ethnic categories. The Comaroffs argue that the coexistence of these two “registers” laid a practical basis for the material and political subordination of Black South Africans. While promising to incorporate and enfranchise

them, it afforded white colonizers a means to legitimate and naturalize their command over an ever more racially divided world. Yet, it also created the various spaces and diverse terms in which colonized peoples could refigure themselves, mobilize and strike back. It is to these dissonances of the colonial discourse of rights and the struggles to which it gave rise, the Comaroffs conclude, that we might look for the seeds of contemporary identity politics in South Africa.  

Much has been made of the significant insights, as well as the methodological limitations of the Comaroff’s studies in colonial African history. This is not the place to go into the details of these arguments. It suffices here to state that the Comaroffs address important issues on the colonial discourse of rights in Africa, which are relevant to this thesis. For one, they treat rights discourses as a substantive theme in colonial African history rather than just a footnote. However, the great limitation of their study is that their treatment of the rights discourse neither sufficiently engages the contemporary debates on universal human rights nor the raging and fecund debates by legal scholars and political


scientists over human rights in the African state. For instance, although they make reference to "human rights," the Comaroffs do not define it as an analytic term or address the contested nature of the very concept. These omissions may however be the result of the thematic limits which the authors set for themselves since theirs is essentially a study in the history of colonial evangelism rather than rights per se. Useful as the Comaroffs contributions are, the story of colonial rights discourses in Africa is yet to be fully told, particularly in regard to the complexities that underlined discussions about social and economic rights.

This thesis aspires to tell a part of that story. It seeks to examine from a historical perspective discussions about rights and liberties in western Nigeria within two intellectual traditions -- the contemporary human rights discourse and the more specific debate about rights in the colonial and postcolonial African contexts. In going about this, the thesis is guided by certain methodological parameters -- the focus on public discourses, a broad and inclusive definition of certain rights, and a combined chronological and thematic approach. These parameters guide the discussions in the next chapter, which, as a prelude to the subsequent chapters, examines the process of European incursion into western Nigeria and the patterns of change it engendered in the notions and institutions of local communities.
Figure 1: Map of Nigeria (1963) showing the area of study
Figure 2: Map of Nigeria, 1958: regional and provincial boundaries

Figure 2: Map of Nigeria showing ethnic distribution

CHAPTER THREE

HISTORICAL BACKGROUND AND ISSUES OF RIGHTS AND LIBERTY

In the Lagos Protectorate... "treaty rights" became the alpha and omega of non-violent objections to any government measures.

Tekena Tamuno, *The Evolution of the Nigerian State*.¹

3.1 Introduction

This chapter provides a general historical background to the thesis and examines some early issues of rights and liberty in Western Nigeria. The first part explores the process of colonial incursion and conquest, the establishment of administrative structures as well as the reactions and engagement of Africans with this process. It pays particular attention to the debates over "treaty rights" and British "rights of intervention" that characterized this period. The second part examines some of the salient issue of rights, freedom and liberty that arose in this early period of British conquest and control of Nigeria. It examines discussions about rights within the context of missionary and humanitarian activities in Western Nigeria and explores rights discourses deployed within the anti-slavery movement. Although slavery was abolished at the end of the nineteenth century (well before the period of this study), there were continuing debates throughout the colonial period over the persistence of "slave-like" institutions of servitude and unfree labour like pawnship. Much of this discussion focused on the obligations of both state and society in implementing anti-slavery laws to protect individual rights and liberties. These early debates shaped later discourses of economic, social and political rights examined in succeeding chapters.

3.2. Historical Background: Western Nigeria in the 1900s

Western Nigeria in the late 1800s and early 1900s was a society in transition. It was characterized by the loss of autonomy by African states and societies following years of European intervention, culminating in the imposition of colonial control. Towards the turn of the nineteenth century, many indigenous states and societies in Western Nigeria saw their control over both external and internal affairs either lost or severely curtailed by growing European influence. Politically, internal dissension within these communities threatened their stability and made them more vulnerable to external influences. This was compounded by economic changes following the abolition and collapse of the slave trade. In one of the earliest of such interventions, the British, in their campaign against the Atlantic slave trade, intervened in the coast of Lagos in the 1820s. This gave the British a major foothold in Southern Nigeria from which to pursue their interests against the overseas slave trade, promote “legitimate” trade in agricultural produce and encourage missionary activities.

The process of British intervention in Lagos was quite complex. Apart from Britain’s desire to stop the slave trade and promote what they called “legitimate trade,” perhaps a more decisive factor in the cession of Lagos to the British in 1851 was internal political dispute. The long contest for power between two rival kings of Lagos, Kosoko and Akintoye, took a decisive turn when Britain lent its support to Akintoye who was considered more favourably disposed to British anti-slavery policies. Akintoye subsequently signed a treaty renouncing the slave trade and “guaranteeing to missionaries of all nations, freedom to follow their vocation of spreading the knowledge and doctrine of Christianity and extending the benefit of

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2 NAI CSO 6/3/1, Petition of Akintoye to Consul Beecroft enclosed in Beecroft’s despatch to the Foreign Office 22 February 1851.
This language of freedom, free trade, liberty and civilization characterized many other treaty agreements between the British and other states and societies of Western Nigeria. The enthronement of Akintoye as king of Lagos in 1853 laid the path for Britain's annexation of Lagos as a colony in 1861. This also facilitated British expansion into the interior of Yorubaland.

The early British administration in Lagos sought to suppress the slave trade, which thrived despite its abolition, and to remove all obstacles to free trade in the Yoruba interior. The British administration under Governor Glover was willing to pursue these goals even if it meant widespread intervention in the affairs of the interior states and societies. British penetration into many parts of Yorubaland was a combination of both coercion and diplomacy. Following the resolutions of the Berlin West African Conference of 1884, early British consuls and later colonial administrators signed several bilateral treaties of friendship and trade where the indigenous people "agreed" to come under British jurisdiction in return for British protection and friendship. For many Yoruba communities, this was an expedient decision given the prevailing conditions of civil war insecurity and economic decline.

In some other cases however, local states were not so accommodating of British intervention. African resistance inevitably brought on armed conflict with British troops. Between 1900 and 1920, no less than twenty-five military expeditions were mounted against different communities, especially east of the Niger. It was

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4 For instance, war exhaustion and the problems of internal security compelled the Egbado to surrender their independence to Britain in the 1880s. Unable to unite for defence against their common neighbouring foes, the Egbado sought and later secured the British protection. See K. Folayan, "Egbado and Yoruba – Aja Power Politics 1832-1894," M.A Dissertation, University of Ibadan, 1967, 271-272.
largely through this process that much of Southern Nigeria became conquered territory. For instance, the defiance of the Alafin of Oyo led to the bombardment of his domains in 1892. Similarly, the resistance of the Ijebu to British attempts to make them relinquish controls over the coastal trade routes led to a punitive expedition in 1892 which marked the dawn of colonialism and foreign domination in that part of Western Nigeria.⁵

Even at this early stage, one central issue in the conflict between the British and indigenous communities centred on the rights of local peoples and the limits imposed on their traditional liberties by the British. Tekena Tamuno has argued that the British punitive expedition against the Ijebu in 1892 was the result of the “Ijebu steadfastness in defending their economic and other rights.”⁶ The Ijebu, like other Yoruba states that opposed the British, saw their opposition primarily in terms of protecting their economic rights within the larger context of the regional political economy. Such concerns did not begin with British intervention. Similar issues of economic rights, independence and self-determination were at the roots of the protracted civil wars that ravaged Yorubaland in the mid-nineteenth century. As far as the Ijebu were concerned, the British expedition of 1892 was only the external aspect of an otherwise internal war to safeguard their commercial, social and political rights.⁷


⁷ Tamuno, *The Evolution of the Nigerian State*, 2
Equally concerned about its independence, the neighbouring Egba community also resisted the advance of European influence from Lagos. In 1867, the Egba chiefs expelled European missionaries who threatened their way of life and set strict conditions for their return to Egbaland. J.F.A Ajayi has noted that for these communities, the right to trade on their own terms was central to their conflict with the British. To give up their right to trade with whomever they wished and in whatever commodities they chose was considered a diminution of their sovereignty. At the end, unlike many other Yoruba states, the Egba were able to strike a diplomatic compromise with the British that allowed them to retain much of their autonomy -- even when the rest of Western Nigeria fell under colonial rule -- until 1914.

In the mid-western interior, the kingdom of Benin, once a powerful state whose influence stretched as far as Lagos, was undergoing a similar period of ferment and transition. By the late nineteenth century, Benin had been weakened as an economic and political power in the region by a combination of internal and external factors. Although Benin had a long history of contact with the Europeans dating back to visits by Portuguese missionaries and travellers in the fifteenth century, it was the contact with the British in the later nineteenth century that facilitated its demise.

Britain’s insistence on free trade and its anti-slavery campaign inevitably brought her into conflict with Benin. Initially, the British authorities and Oba Ovoramwen (the king of Benin), adopted diplomatic efforts to reconcile these differences. The British consul Lieutenant-Colonel H. L. Gallway signed a treaty of

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“friendship and protection” with the Oba wherein Benin “agreed,” among other things, to accept British protection and allow free trade. Controversy later emerged over the understanding and interpretation of this treaty. An attempt to use it to compel the Oba into submission led to the killing of members of a British expedition to Benin in 1896. A punitive expedition organized in 1897 conquered Benin and banished Oba Ovoramwen. Having already subdued the Yoruba states, the conquest of Benin in 1897 completed the British occupation of Western Nigeria.¹⁰

In the Niger Delta, the Itsekiri, Urhobo, Ijaw and other communities which had a long history of trade with Europeans, were brought under British control in the 1880s through various treaty arrangements.¹¹ This area became known as the Niger Coast Protectorate. However, British attempts to implement some of these treaty provisions guaranteeing free trade, brought them into conflict with some rulers in the Niger Delta. These conflicts led to the overthrow by the British of prominent rulers like King Nana of Itsekiri in 1894 and Jaja of Opobo in 1897. At the same time that consular jurisdiction was being formalized and strengthened, a British chartered company—the Royal Niger Company—was extending its activities into the interior and consolidating British presence in the area.¹² One of the greatest obstacles to the expansion of British jurisdiction in Lagos as in other parts of Western Nigeria during

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¹⁰ Igbafe, *Benin under British Administration*, 145.

¹¹ For a general history of this region see Obaro Ikime, “The Western Niger and the Hinterland in the Nineteenth Century” in Obaro Ikime (ed.) *Groundwork on Nigerian History*, 276.

this period arose from the “conflicting interpretations of treaty rights” under the agreements with local rulers.\textsuperscript{13}

3.2.1 Treaty Rights and “Rights of Intervention”

African rulers saw the British intervention as a threat to their authority and resisted in order to protect their political and economic prerogatives. Local rulers who sought to limit the expansion of British jurisdiction appealed to treaties, agreements and pledges made with British consuls. These treaties and agreements provided a basis for such rulers to demand political and economic autonomy as a matter of right rather than British concessions. For instance, the treaty of “peace and friendship” between Britain and the “King and chiefs” of Ife in 1888 recognised the independence of the kingdom of Ife which “paid tribute to no other power.”\textsuperscript{14} Also, in a letter to the chiefs and people of Ibadan in 1893, Acting Governor G.C. Denton pledged that the Lagos Government would not infringe upon their “traditional rights and liberties.”\textsuperscript{15} The “treaty of friendship and commerce” between the British authorities and the Egba in 1893 also fully recognized Egba independence. This treaty provided the basis for the formation and autonomous operation of the Egba United Government (EUG) even when the rest of the country had come completely under colonial control.\textsuperscript{16}

\textsuperscript{13} Tamuno, \textit{Evolution of the Nigerian State}, 69

\textsuperscript{14} NAI CSO. 5/1/15, “Treaty of peace, friendship and commerce with the Kingdom of Ife,” dated 22 May 1888.


Conflicting interpretations about the scope of these treaty rights became a major source of tension between the British authorities and local rulers. On their part, local rulers and elites interpreted African rights under these treaties quite broadly and saw growing British intervention in trade and politics as infringements on these rights. The Record, a leading Lagos-based, African-run newspaper challenged the constitutional right of the colonial Legislative Council to legislate for the Yoruba states on the grounds that they had never by treaty or otherwise conferred such rights upon the British Crown. The newspaper considered the exercise a "new and alarming extension of power" that should be resisted. The Standard, another local newspaper, stated that "all West African people" were bound to oppose British legislation because it was "in arbitrary disregard of solemn treaty obligations." Similarly, in seeking to maintain their political autonomy, Ibadan chiefs emphasized Acting Governor G. C. Denton's "pledge" that the Lagos Government would not infringe their rights.

The appeal to treaty rights as a basis for making specific entitlement claims was not limited to African chiefs and elites. European missionaries also referred to treaty rights to justify their demands from the colonial government. When the Alafin of Oyo expelled the Southern Baptist Convention from his domain in 1909 on the grounds that the group was "stirring up discontent among the people," the head of the mission, Rev S. G. Pinnock, petitioned the Resident Commissioner. He stated: "As a British subject, in the enjoyment of Treaty Rights I urgently request that steps be taken to secure my person and property from molestation in the hands of the Alafin…

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19 Johnson, The History of the Yorubas, 640.
and [his] interferences with our liberties.”

When the Resident Commissioner declined to intervene on his behalf and advised the mission to comply with the Alafin’s order “in the interest of the European population,” Rev. Pinnock refused on the grounds that the Alafin’s order contravened the treaty of 1891.

In general, the British authorities tended to be selective in their interpretation of African treaty rights and were sometime even dismissive of the language of treaty agreements. Responding to allegations of treaty rights infringement by Egba chiefs and the Aborigines Protection Society in 1902, Governor MacGregor insisted that Egbaland was never intended under the terms of the treaty to be an independent state but a “responsible authority.” Another official later stated that the term “independent” used in the Egba treaty was “a mere phrase.”

Paradoxically, the British administration also saw its role partly in terms of promoting the liberties of Africans under its influence through active intervention in local politics. Punitive expeditions against uncooperative communities and the deportation of their rulers were often justified on the grounds that they were undertaken to protect the rights and liberties of British subjects in such areas. For instance in 1891 the administration in Lagos deported and detained Asada Awopa, the Egbado (King) of Addo for, among other offences, “interfering with the liberty of British subjects.” Such British appeals to the language of rights and liberty were also evident in the process of conquest and pacification. In a treaty signed with chiefs of

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23 NAI CSO. 7/1/2, Legislative Council Debates, 14 March 1891.
Abeokuta in 1852 the British authorities insisted that the chiefs, in accordance with "British libertarian traditions," guarantee the freedom of movement throughout the country for Europeans and the African immigrants in their community.\textsuperscript{24} Although the main object of this provision was to further British goals of opening up the Yoruba interior to free trade, the language of freedom and liberty in which this treaty, like many others after it, was couched in terms that legitimized British intervention.

The view that British intervention was ultimately for the benefit of local peoples was not limited to colonial officials. Some African elites shared this view. When the British annexed Ilaro and Ado in 1885, the \textit{Record} hailed it as evincing a determination on the part of the British to "promote the interest and welfare of the people of the colony." It remarked that while there would be those who would frown at the action as an infringement of the rights of African chiefs, the "majority of intelligent natives" regarded it as "an imperative step" towards the future well-being of Yorubaland.\textsuperscript{25}

Thus, although most traditional rulers and sections of the local elite opposed the expansion of British influence as a contravention of existing treaty obligations and their traditional political rights, others, mainly among the growing class of educated elite, welcomed such expansion, seeing them as, among other things, a better guarantee of the rights and liberties of local peoples. Such paradoxes in the multiple understandings and uses of the language of freedom and liberty by colonial officials,


African chiefs and educated elites, missionaries and humanitarians characterized the rights discourse in the early colonial period.

3.2.2 Colonial Consolidation

In the period leading up to 1900 Britain strove to consolidate its political and economic hold on the areas under its control. This meant putting in place the rudimentary structures for colonial administration. As indigenous African political institutions became progressively weakened with colonial penetration, a new leadership of loyal African chiefs and educated elite emerged in some of these communities. Oftentimes, these were local chiefs and elites disposed to working with the British authorities. Where chiefs were not in existence, the British created them artificially. In some cases, these “chiefs” were village headmen to whom the British ascribed new levels of authority. This class of African chiefs, who became political agents in the newly established Native Councils, filled the vacuum created by the demise of traditional political institutions. By 1900 these Native Councils, each with its rudimentary treasury, fed by court fees, represented the main instrument of British administration throughout Western Nigeria.

As the local tier of government, the Native Councils had perhaps the most profound effect on colonial society. Through them the British authorities hoped to institute and maintain a new dispensation of law and social order based on the continued observance of “traditional” practices alongside new government regulations. In 1901, the Native Council system of local administration was placed on a definite legal basis with the introduction of the Native Council Ordinance and the creation of a central Native Council for Lagos. The Council was expected to advise the government in local administration.
However, much in the system was artificial and unacceptable to local people. For one, the members were often chosen in a haphazard fashion without proper inquiry into the indigenous political practices and systems of authority. Consequently, many members of the councils were not even village heads. Their authority derived entirely from the "warrants" or "certificates of recognition" given to them by the government. Secondly, even where members of Native Councils were traditional village heads, they were accorded artificial positions which gave them control over villages in which they traditionally had no authority.\textsuperscript{26}

For these reasons, many people found the Native Council System objectionable. Among the growing class of educated African elites in Lagos, many believed that the Native Councils weakened the authority and influence of traditional African rulers because they were more responsive to the needs of the colonial administration than those of the people. Criticizing the Native Council Ordinance in 1903 one newspaper opined that it served only to "bring the authority of native rulers into disrepute and make them objects of ridicule in the eyes of their own people."\textsuperscript{27}

The Native Council Ordinance was also severely criticized by Nigerian members of the legislative council, the Aboriginal Protection Society and the Manchester Chamber of Commerce.\textsuperscript{28} They contended that the law interfered with the internal affairs of the Yoruba states, contrary to the provisions of the nineteenth century treaties, agreements and pledges. In Lagos, verbal protest, petitions and mass


\textsuperscript{27} \textit{Lagos Standard}, 12 October 1904.

\textsuperscript{28} PRO CO 149/6, Legislative Council Debates, 24 September 1901.
meetings followed this and similar enactments.\textsuperscript{29} Even among the largely illiterate public, some drew attention to the principle of "treaty rights" in matters of conflict between the people and the government. As Tamuno notes, during this period in the Lagos Protectorate, "these 'treaty rights' became the alpha and omega of non-violent objections to any government measures."\textsuperscript{30}

3.2.3 Limits of Rights: Subjects and "Protected Persons"

The limitation which colonial administrative restructuring imposed on the traditional political authority of African rulers was the major grievance of some African rulers and elites in the early colonial period.\textsuperscript{31} Political and administrative changes made by government raised questions about the scope and limits of British intervention in local affairs. Conflicts often arose between African chiefs and educated elites on one hand and the colonial government on the other, over administrative decisions that tended to undermine traditional political authority and the rights of local chiefs. Although as we shall see in the course of this thesis, important differences existed between the attitudes of traditional chiefs and the educated elites towards the colonial government, yet the interests of both groups converged on the issue of maintaining the political rights and autonomy of traditional chiefs in the face of growing colonial influence.

An interesting case in point was that between the Owa (King) of Ijesha and the British authorities in 1905. The Owa and chiefs of Ijesha had petitioned the Acting

\textsuperscript{29} One of such mass meetings was convened in Lagos by the proprietors of Newspaper press in 1905.

\textsuperscript{30} Tamuno, \textit{The Evolution of the Nigerian State}, 173.

\textsuperscript{31} I recognize that educated African elites often did not speak with one voice. The diversity and complexity of their views regarding traditional rulers and the Native Authority are discussed later in this chapter.
Governor over the high-handed acts of the British representative in the area, Captain Ambrose, whom they accused of going beyond his jurisdiction as adviser and "assuming a position inimical to native authority." The Ijesha chiefs argued that he had "become a menace to the liberty of the natives." 32 The question at issue was the right of one of the chiefs (Olosi) to wear a crown that was considered a symbol of his traditional political authority. Captain Ambrose had unilaterally ordered the Olosi to stop wearing the crown and on the latter's refusal had detained and fined him. In a subsequent petition to the Acting Governor, the Owa and chiefs of Ijesha emphasized that Captain Ambrose's action had contravened the constitution of the Native Councils to the effect that "the British Government would not do anything through its representative that would weaken native authority." 33

In a separate petition to the Colonial Office over the matter, the Aborigines Protection Society (APS) condemned British intervention in the "internal affairs" of Ijesha. The APS argued that Ijesha came under British influence by treaties of written agreement in none of which the people had surrendered their "rights to manage their own affairs." 34 Continuing with the language of rights that was to become characteristic of its advocacy for the welfare of Africans, the Society opined that by the terms of its treaty agreements, the British authorities had no "right of interference" in Ijesha affairs, insisting that "a right of interference must be established before

32 The Lagos Standard, 19 April 1905. (Petition of the Owa and Chiefs of Ijesha to His Excellency Acting Governor Moseley dated 20 July 1904).

33 The Lagos Standard, 19 April 1905. (Petition of the Owa and Chiefs of Ijesha).

34 The petition however noted an exception regarding "the opening of trade route and the prohibition of such admitted offences as human sacrifice." Petition by the Aborigines Protection Society the Colonial Office on the Ijesha Question. The Lagos Standard, 25 March 1905.
interference on any grounds is legitimate.”35 The matter was eventually resolved when the Acting Governor intervened, promising that the colonial government would show “more sensitivity” to the wishes of Owa and his chiefs.36 Thus suggesting some British support for the African interpretations of treaty agreements.

Such questions about African treaty rights and the limits of British interference in the local affairs of its overseas territories also drew concern from the British government. Eager to portray Britain as a colonial power respectful of its treaty obligations with local peoples, British officials frequently put forward the protection of “native rights” as being central to British social obligations in its colonies. Articulating this position in 1885, Lord Chancellor Selborne sought to distinguish between “annexations” and “protectorates.” To him, an “annexation” meant the direct assumption of territorial sovereignty by Britain whereas a “protectorate” recognised “the right of the aboriginal, or other actual inhabitants, to their own country, with no further assumption of territorial rights [by Britain] than is necessary to maintain the paramount authority, and to discharge the duties of the protecting power.”37

This assumption that the scope of rights that natives could enjoy was somehow dependent on the nature of British jurisdiction over their territory had significant implications for British perception of “native rights” throughout British West Africa. For instance, in Western Nigeria territories came under British jurisdiction in three

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36 The Lagos Standard, 16 May 1905. (Reply by the Acting Governor to the Petition by Owa and his Chiefs on the Ijesha Question).

37 FO. 84/1819, note by the Lord Chancellor (Selborne) on the Law Officers’ report on the third basis of the Berlin West African Conference.
ways — by cession, conquest and treaty arrangement. While Lagos was acquired by
cession, and the midwestern kingdom of Benin and some of the Niger Delta states by
conquest, much of the rest of Western Nigeria was by bilateral treaties of friendship
and trade where the indigenous people “agreed” to come under British jurisdiction.
Within British official circles, there were accepted legal distinctions in the effect of
these different modes of colonial acquisition. Cession or conquest rendered the
conquered or ceded territories extensions of the British Isles thereby making the laws
of England acceptable. This was the case in Lagos where, two years after it became a
colony, the British introduced an Ordinance declaring that the “laws of England shall
have the same force and be administered in the settlement.” 38 Those who came under
this arrangement were considered British subjects, entitled to the same rights and
liberties as Englishmen in England and owing their allegiance to the British crown. 39
They were different from territories acquired by treaty in which the affected people
were not British subjects per se but rather “British protected persons.” English laws
were applicable in such territories only where specifically provided for. 40 Such
“protected persons” did not necessarily enjoy the full complement of rights and
liberties guaranteed to British subjects.

38 Ordinance No 3 of 1863. The Supreme Court Ordinance of 1876 which established
a Supreme Court for the Colony also spelt out that English common law, the doctrines
of General Application in force in England as at 1874 would be in force in the colony.

39 The use of the term “Englishman” here is significant because the legal rights and
liberties, which Englishmen enjoyed during this period, were significantly different
from those enjoyed by Englishwomen. The biases that were reflected in the rights that
availed men and women under the English legal system in this period were also
extended to Nigeria.

40 A. G Karibi-Whyte, The Relevance of the Judiciary in the Polity: A Historical
Perspective, (Lagos: NIALS, 1987), 12
In principle therefore, western Nigeria in the 1900s was an amalgam of a colony and a protectorate with two groups of Africans under British influence—subjects and protected persons. In practice, however, the Crown exercised unlimited jurisdiction in the protectorate in the same manner as in the conquered territory. While official colonial rhetoric emphasized the difference between annexations and protectorates and between the rights of British “subjects” and “protected persons,” in reality there was no such distinction in how the state engaged with colonized or “protected” peoples. There is no evidence that African “subjects” of the Lagos colony enjoyed more rights than the “protected persons” of Benin and the Niger Delta. As indicated earlier, this is one of the main limitations of Mamdani’s categories of citizen and subject in the case of Nigeria. But the larger point here is that the Native authority system was a new imposition that was resisted by appeal to treaty rights. This was countered by colonial arguments of British rights of intervention—an argument that belied jurisdictional distinctions regarding rights which the British failed to observe. All these issues were at the crux of some of the early debates about rights and liberties in the period of colonial incursion and expansion.

3.2.4 Indirect Rule and Native Administration

Certain important political developments followed the imposition of colonial rule over Lagos in 1900. In order to secure a central direction for its policies and pool economic resources, the British government adopted from 1906 a policy of gradually amalgamating the various administrative units in Nigeria. In May 1906, the Lagos Colony and Protectorate were amalgamated with the Protectorate of Southern Nigeria.
as the Colony and Protectorate of Southern Nigeria.\footnote{When the Southern Protectorate was created in 1900, it was administratively organized into three groups of provinces, each headed by a Resident who reported to a lieutenant governor. These were subsequently amalgamated into one united administration with a free-circulating bureaucracy and with headquarters first in Lagos and subsequently in Enugu.} The success of this amalgamation led to the further amalgamation of the Protectorate of Southern Nigeria with the Protectorate of Northern Nigeria in 1914. This amalgamation marked the birth of the Nigerian state as an administrative entity. The federal administrative system of amalgamated Nigeria recognised two autonomous provinces — North and South — with each headed by lieutenant governors based in Kaduna and Lagos respectively.

A central figure in these early administrative changes was Sir (later Lord) Frederick Lugard. Regarded as a model British colonial administrator, Lugard was also one of the main architects of the British indirect rule system and introduced it to Nigeria.\footnote{In his classic \textit{Dual Mandate in Tropical Africa} Lugard espoused the now familiar doctrine that “Europe is in Africa for the mutual benefit of her own industrial classes and of the native races in their progress to a higher plane.” See Frederick Lugard, \textit{The Dual Mandate in British Tropical Africa}, (London: Frank Cass, 1965 [1926]), 14.} Many of Lugard’s policies as a colonial administrator in Nigeria were geared towards making a success of indirect rule through the system of Native administration.\footnote{R.A. Adeleye, \textit{Power and Diplomacy In Northern Nigeria: The Sokoto Caliphate and its Enemies}, (New York: Humanities Press, 1971), 68-70.} In Northern Nigeria where the Native Administration system was first introduced, Lugard as High Commissioner, arrogated to himself the power to appoint chiefs and other persons to be the “native authority” of the area. In principle, Native Authorities, subject to the Resident Commissioner’s control and supervision, undertook the actual governance of the people. In practice though, the Native
Authority was merely an agent through whom the administrative orders and other instructions to the government were communicated to the people.44

With the amalgamation in 1914, attempts were made to extend the principle of Native administration to Southern Nigeria. These efforts led to a search for legitimate indigenous authorities through whom the policy could be implemented. The task proved relatively easy in Yorubaland, where the governments and boundaries of traditional kingdoms were either retained or revived. However, in the more decentralised and egalitarian Ibo communities of Eastern Nigeria, the search for acceptable local administrators was not as successful.45 In Western Nigeria as in the North, the devolution of administrative duties to the indigenous ruling elites inspired much of the early opposition to colonial rule. As with the earlier Native Councils, the introduction of the Native Administration system was not well received.

Some educated African elites, particularly those with influence in the emergent Lagos newspaper press, vigorously opposed the southward extension of the Native Administrative system of Northern Nigeria.46 They wanted the more liberal administrative system of Southern Nigeria extended to the rest of the country, primarily because it offered better welfare for the natives. In making this point, the

44 This was even recognized by the colonial government. One memorandum from the Colonial Office, stated that “a native administration is an instrument primarily that is a means to an end...the authority must be real in the eyes of the people affected -- one which they are willing to obey.” PRO CO 583/191/3. Memorandum from A. Fiddan of the Colonial Office to Governor D. Cameron. 18/5/1929.


46 A more detailed discussion of the role of the press in debates about “native” rights and liberties is undertaken in Chapter four. See section on “Press Restrictions” in Chapter four.
elites often emphasized the implications of these administrative changes on native rights and liberties. One newspaper suggested that Southern Nigeria’s liberal constitution should be adopted for the country in order to restore the “magna carta of rights and privileges enjoyed under the constitution of the old colony of southern Nigeria.”

The opposition of southern educated elites to the expansion of the Native administrative system which accorded a more prominent role to traditional chiefs and emirs, underscores the complexity of the elite’s position regarding the political rights of traditional rulers vis-à-vis British colonial rule. On one hand, some African elites, opposed the limitations imposed on the traditional political authority of African rulers by British rule. In a spirit of cultural nationalism, many argued that the British should adhere to the provisions guaranteeing the independence and autonomy of traditional African chiefs and institutions under existing treaty agreements. On the other hand, the elites resisted colonial administrative changes that sought to expand the powers and autonomy of Native Authorities and traditional rulers under the indirect rule system. Paradoxically, one of the main arguments advanced by the elite against such expansion of chiefly powers was that putting more political powers in the hands of Native Authorities could reverse the “advances in enlightened government that had been achieved in the South.”

Many of these elites bought into the “best from the West” notion that the Native Authorities should be modernized by British influence, but objected to abuses of this rather fuzzy ideal. They did not want traditional power defended wholesale, but brought under British influence and improved rather than

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47 Lagos Weekly Record, 28 October 1916.

48 Lagos Weekly Record, 28 October 1916.
being sidelined or made mere instruments of British administration.\textsuperscript{49} This paradox, as we shall see in the course of the thesis, underlines the discussions about rights and liberties among the educated African elite.

The educated elites and some colonial officials worried that the wide and unchecked powers ascribed to local chiefs under the Native Authority and Native Court often led to abuse. The powers of Native Authorities to “arrest known felons and vagabonds and remove them from the area of authority,” sometimes became grounds for arbitrary arrest and deportation of perceived political opponents and rivals in trade. This trend became widespread and obvious to the government only a few years after the promulgation of the Native Authority Proclamation. In a 1930 report, the government acknowledged that the shortage of experienced administrative officers limited the time for the supervision of Native Authorities resulting in widespread abuses of the system.\textsuperscript{50}

Indeed, from as early as the 1920s, the policy of indirect rule, as typified by the operations of the Native Authorities, begun to suffer significant reverses. Lugard’s immediate successor as Governor, Hugh Clifford (1919-25) was uneasy with the amount of latitude allowed traditional rulers and opposed further extension of the executive and judicial authority held by kings and chiefs. Instead, he encouraged building a class of African elite educated in schools modeled on European methods. This period marked a shift in British colonial policy with the government becoming more inclined to engage educated Africans in local administration. These educated


\textsuperscript{50} PRO CO 657/47. \textit{Annual Administrative Reports}, 1939-1940.
Africans had been relegated to the background in preference for traditional rulers under the Lugardian years. The early 1920s also witnessed a period of significant changes in the structure of colonial administration, beginning with constitutional and legislative reforms in 1922. But even with these reforms, Nigerian intellectuals continued their objections to Native Administration and the policy of indirect rule.\footnote{As late as 1947, the *West African Pilot* could still comment: "The natural rulers of Nigeria are treated as images by British officials. These rulers, like images, have mouths; but they cannot speak. They speak only when they sing the praise of British Imperialism. They are called rulers by name only." *West African Pilot*, 26 July 1947, 3.}

The late 1930s and early 1940s witnessed further administrative changes by the colonial authorities. In 1939, the government split the Southern Protectorate (later Southern Provinces) into the Western and Eastern Provinces. This divided Nigeria into four administrative units: the colony of Lagos, the Northern Provinces, the Eastern Provinces and the Western Provinces. This thesis is concerned primary with the Western Provinces, including Lagos, which became a separate administrative unit in 1939. They included the six provinces of Abeokuta, Benin, Ijebu Ode, Ondo, Oyo and Warri.

### 3.3 Issues of Rights and Liberty

As we have seen, concerns about treaty rights and questions over British jurisdiction and rights of intervention were some of the rights issues that underlined the process of colonial incursion. Apart from these, however, other issues relating to rights, freedom and liberty were prominent during the early colonial period. These included missionary and humanitarian debates over “native rights,” rights discourses within the anti-slavery movement and the agitation for social inclusion by some African communities in the early colonial period. Although some of these issues are linked to
others examined in detail in the later chapters of the thesis, highlighting them here provides a necessary background and context to our subsequent discussion.

3.3.1 Missionaries and “Native Rights”

Debates about the personhood of the native, his/her rights and freedoms were central to both missionary activities and colonial conquest and control in many parts of Africa. Colonization began with the ideological onslaught on the part of Christian missionaries, self-styled bearers of European civilization. With an agenda that mirrored the paternalistic character of their encounter with Africa, European missionaries set out to “convert” heathens by persuading them of their theological message, and even more profoundly, by reconstructing their everyday worlds. It was an ideological construct framed in “the European bourgeois imagery of rational belief and the reflective self; of a moral economy of individual choice that echoed the material economics of free market.”52 The overall impact of missionary activities in Western Nigeria has been thoroughly examined in several pioneering studies in the history of Nigeria.53 The discussion here centres on the ways in which missionary


activities and the social and cultural reengineering they sought influenced popular perceptions and discussions about rights and liberties in the early colonial period.

Rights discourses were an important part of both the ideological message and linguistic forms of missionary activities in early colonial Western Nigeria. Discussions about native rights in missionary circles, which were founded on Christian humanism and the notion of the “civilizing mission,” provided the foundation for the more formal and codified regimes of rights that were later introduced under colonial rule.

British colonial imposition in Nigeria was preceded by the activities of European missionaries who became involved in the entire colonial project. By the end of the nineteenth century, several missionary groups had gained footholds in Western Nigeria, particularly in Yorubaland and the Niger Delta area. These groups included the Anglican Church Missionary Society (CMS), the Wesleyan Methodist Missionary Society (WMMS), the Southern Baptist Convention (SBC) from the United States of America, the French Catholic missionary group Société des Missions Africaines (SMA) and the United Presbyterian Church of Scotland (UP). Of these groups, the CMS was the largest and most influential with the colonial government partly because of its British connections. It had more mission stations, churches and missionaries (both African and Europeans), than any other mission in Western Nigeria.

From the start, the Christian missions in Western Nigeria as elsewhere in Africa were caught up in local politics. The various denominations had diverse and frequently contradictory designs, and their activities sometimes brought them into ambivalent relations with other Europeans in the colonial stage. Some found common causes, and operated openly with traders and consuls. Other “nonconformist evangelists” ended up locked in battle with secular forces for what they took to be the
destiny of the continent. For instance, while the CMS was able to establish strong relations with the colonial government, others like the SBC were often at odds with the government.

Ade Ajayi has argued that missionaries in Nigeria did not always question the theory that “Christianity, Commerce and Civilization” would work together for the great benefit of Africans. But they liked nevertheless to emphasize their own philanthropy and how much it set them apart, in objectives, approach, methods and morals from their profit-seeking countrymen who came for trade and political power. Many saw themselves as the moral conscience of the civilized world. The truth however was that missionaries, traders and British consuls were all interdependent. The Christian missions made a considerable impact both on the trading situation and the process of British political conquest and control.

The reason for these links between missionaries and other political and commercial agents of empire lies partly in the underlining ideologies of missionary work. The ethical touchstone for missionary work, far from being purely religious, drew on the temporal model of the unfettered economy – a model that presumed the protection of the right to enter into contract and to engage in enterprise by free


55 When the Alafin of Oyo expelled the SBC from his domain in 1909, the head of the mission petitioned the Resident who refused to intervene advising instead that the mission complies with the Alafin’s order “in the interest of the European population.” It is arguable that the colonial authorities would have been more inclined to intervene if it was the CMS that had been expelled.

56 For instance, the CMS influenced the British government’s decision to strengthen its presence in Southern Nigeria through the Niger Expedition of 1841. In turn, the expansion of European trade and political influence greatly facilitated the work of missionaries. See Ajayi, Christian Missions in Nigeria, 57.
individuals. "Right" in the sense of good was elided into "rights" in goods, and properties of subjects into the subject of property. In the process, Christian and secular legalisms merged into one another to make for a powerfully law-centred worldview.\textsuperscript{57}

The point needs to be made, however, that missionary rights discourses were not synonymous with those of the colonial state. In fact, the former preceded the latter. Long before the establishment of effective colonial administration, missionaries and humanitarians sought to change a "backward" indigenous social and legal order to a more "civilized" and enlightened one. Early records of the CMS, including diaries and memoirs from Yorubaland contain numerous references to such social and legal interventions.\textsuperscript{58} However, early missionary discourses of rights ultimately intersected with later colonial discourse of law, rights and justice.

One of the most important consequences of missionary involvement in law and justice was that it changed African attitudes towards legal transgression. Christian religious authorities introduced, or at least strengthened, the belief that to break the law was to sin.\textsuperscript{59} Sin was cast as a crime and salvation and subjugation to divine law became fused with the imperatives of "civilization." They spread the idea that the

\textsuperscript{57} Comaroff, Of Revelation and Revolution, Vol. 2, 369.

\textsuperscript{58} For instance, the records of the Church Missionary Society (CMS) at the National Archives, Ibadan and the Phillips papers 1/1/7 19000 and 3/1-3/4 1885-1889

\textsuperscript{59} Much of my findings here agree with the observations of Martin Chanock in relation to the role of missionaries in the construction of law, custom and social order in colonial Malawi. See Chanock, Law, Custom and Social Order, 128. However while Chanock argues that Christian religious authorities introduced the belief that to break the law was to sin, I would argue that Christian religious authorities strengthened rather than "introduced" the notion that to break the law was sin. In many societies in Western Nigeria such as the Yoruba and Benin, there were strongly held beliefs that transgressions against customary rules and laws carried grave supernatural repercussions. To break the law was to offend God, the ancestors or the land. The idea of legal transgression as sin was therefore not entirely new.
point of judicial proceedings was to determine guilt and impose punishment. Transplanting British law went hand in hand with transfusing Christian guilt. Jean and John Comaroff have argued that taken together, these axioms composed the confident bases of a universalist epistemology that only allowed for "one possible construction of the civilized subject, one discourse of rights, one telos of modernity."\textsuperscript{60}

However, it may not be quite correct to characterize missionary epistemology as simply one discourse of rights. Missionaries also taught new ideas about the individual and humanist rights, and these were critically important in attracting slaves, women and other subaltern groups to the alternative legal and social programs of the missions. For these groups, the empowering language of Christian theology, and the discourse on rights that underlined it, found new and varied meanings. As other studies on slavery in Nigeria have shown, the Christian Church was seen as a source of security and refuge for communities that had endured the stress of conquest and the social disruption that accompanied early colonial rule.\textsuperscript{61}

The presence and activities of missionaries concretized the ideological assault on slavery not only because they provided a more universalist vision of personhood, but also because they represented an alternative idea of emancipation that slaves and other marginalized groups could themselves appropriate and deploy to varied ends. The baptismal and catechism classes at the mission stations, which became so attractive to slaves, provided them with both a place of refuge and an alternative worldview.

\textsuperscript{60} Comaroff, \textit{Of Revelation and Revolution, Vol. 2}, 369 and 373. My emphasis.

When Christian missionaries combined with the colonial government in the common desire to spread Western European "civilization" in Western Nigeria in the late nineteenth century, this effort led to significant changes in the institutions, cultural identities and social orientations of local African communities. Not only did local religious beliefs, practices and institutions undergo significant changes, the links between pre-colonial religion and administration were strained. Pre-colonial institutions and practices, such as secret cults, trial by ordeal, infanticide and human sacrifices, offended both Christian missionaries and British authorities. While the British authorities tried to actively suppress these practices through conquest and punitive expeditions, the missionaries were engaged in a less coercive but equally significant attempt to "conquer" these practices through the promotion of Christianity and Christian humanism.  

Early missionaries were inclined to feel that the African was in the grip of a cruel and irrational system from which he should be liberated. Many missionaries in Nigeria in the late nineteenth and early twentieth centuries were influenced by the early writings of leading European evangelicals like Sir Thomas Fowell Buxton. Arguing for the abolition of the slave trade in 1840, he wrote: "We must elevate the minds of the [African] people and call forth the resources of their soil...Let missionaries and school masters, the plough and the spade, go together and agriculture will flourish; the avenues of legitimate commerce will be opened, confidence between man and man will be inspired; whilst civilization will advance as the natural effect and Christianity operate as its approximate cause, of this happy change." T.F. Buxton, *The African Slave Trade and its Remedy*, (London: Dawsons of Pall Mall, 1968 [first printed in 1840]), 282, 511.

Don Ohadike has argued that missionary opposition to slavery can be considered part of a larger attack on established African religion and society, which they held in great contempt. Don Ohadike, "The Decline of Slavery among the Igbo People" in
therefore set about the task of “civilizing” the natives by remaking his person and changing his social orientations. Missionaries of all denominations were united in their opposition to the harsh treatment of slaves, particularly the killing and sacrifice of slaves, and actively preached against slavery and human sacrifices.

A few pioneering African missionaries like the first African Bishop of the CMS, Samuel Crowther, and James Johnson, in the spirit of cultural nationalism, argued for the preservation of African cultural identity, even as they condemned practices like slavery and human sacrifice. However, most missionaries took for granted the contradictions between African customs and European ideas of modernist personhood. They challenged customary practices like polygamy and levirate marriages. These ideas were often conveyed in the rhetoric of rational argument, individual liberties and free choice. The civilizing mission insinuated, not only new religious practices but also new forms of individualism, new regimes of value, new kinds of wealth, and new means and relations of production. More significantly, African customary practices, or least some of them, were seen as being inherently antithetical to full realization of the rights and liberties of native peoples.

For many Africans, particularly those on the fringes of society, this message had an instant appeal. In Asaba the missionary message of a new liberal order attracted many slaves to the mission stations where they gathered to enrol in catechism and baptism classes. Such was the appeal and impact of missionary activities on the slave population that the people of Asaba called the local CMS church “uka ugwule” (“assemblies of slaves”). In another part of Southern Nigeria, Rev James Johnson could write in the 1890s that owing to the activities of the

missionaries, “slaves now realize their freedom...and a new dispensation has
dawned.”

Missionary advocacy for slave integration into mainstream society often
brought them into opposition with local traditional authorities and freeborn Africans
who opposed their activities. In 1903, Father Zappa of the SMA admonished Obi
Egbuna, the head chief of Issele-Uku: “We do not approve of what you do... This is
evil. I must tell you that the lives of these slaves do not belong to you, and that the
slaves, like you, are the children of the Great God.” Bishop Samuel Crowther
refused to be involved in any transaction that could be termed slave dealing. Instead,
he confronted the traditionalists of the lower Niger for holding and trading slaves in
the belief that theirs was a conflict between “light and darkness.” Crowther’s moral
commitment to antislavery, sharpened by his own personal experiences as a former
slave, has been described as a demonstration of the fact that Africans were no
exception to “the rule of righteousness” – a rule opposed to any compromise with
slavery and its supporting structures.

Discussions about the rights and liberties of the “native” Christian convert
were anchored on two main premises. The first was the assumption that conversion to
Christianity and the acquisition of mission education by some Africans set them apart

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65 Cited in Ohadike, “The Decline of Slavery among the Igbo People.”

66 SMA, Society of African Missions Archives, Rome, Les Missions catholiques

67 R. P. Mackenzie, Inter-religious Encounters in West Africa: Samuel Ajayi
Crowther’s Attitude to African Traditional Religion and Islam, (Leicester: University
of Leicester, 1976), 15.

68 Lamin Sanneh, Abolitionists Abroad: Black Americans and the Making of Modern
from the “masses of their heathen and unlettered kin.” In a 1925 memorandum the Senior Resident of Oyo Province W.A Ross stated that “[t]he majority of native converts regard themselves as a separate community and hope that they may be so regarded by the Native Authority and be exempt from the obligations ordinarily borne by the native community.” Indeed, the acquisition of mission education and the conversion to Christianity (or at least the public demonstration of such), were perceived as indices of progress and civilization, which entitled such Africans to certain liberties that did not necessarily avail others. Although these entitlements were often couched in the language of rights and liberties, they were in fact, more or less privileges that derived from an assumption that through Christianity and Western education, the “native” attained a level of sophistication that made him more of a rights-bearing persona than others of his race.

Some African converts internalized these ideas and held themselves up to superior social and legal standards. They believed they should not be compelled to observe traditional “pagan customs” by local chiefs and elders because they enjoyed certain “Christian liberties” which were recognised by the colonial state. This sometimes became a prescription for arrogance and over zealousness on the part of some African Christians. It was also partly at the roots of the frequent conflicts between local Christians and other non-Christian members of their communities as the Resident at Epe, C. Hornby-Porter, found out in his inquiry into the disturbances at Ibowun in 1899. The Christians had alleged in a petition that their insistence on exercising their “Christian liberties of congregation and worship” had brought them

69 Church Missionary Intelligencer, 1887, 501

70 NAI Oyo Prof. 1/1207, Memorandum from the Senior Resident to the Secretary, Southern Provinces title “Conflict between Christian and Pagan Customs,” dated 16 April 1925.
into conflict with the “fetish worshippers at Ibowun.” The Resident’s investigations revealed a different story.

It appeared beyond all doubt that the Christians had without any right or excuse deliberately seized and taken possession of a considerable piece of ground belonging to one of the Sangoist chiefs; that they had erected a church thereon; that they had set fire to the Sangoist fetish grove; they had assaulted one of the Sangoist.... I ordered the Christians to at once put down their church and to restore the land to its rightful owner and also to return the sacred altar stones.71

A similar incident occurred in Okitipupa Division in 1930 where local Christians destroyed “pagan emblems” and announced that all “native laws” had been abolished.72 Incidents like these, which were not uncommon, were sometimes the unfortunate results of ideas about Christian liberties gone too far. Much that was said and done in the name of “Christian liberties” were sometimes more of privileges and excesses, which were in themselves violations of the rights and liberties of other members of the community. This underscores one of the central arguments of this thesis – that more than being simply emancipatory or transformative, the language of rights was also capable of being deployed in defence of privilege.

The second assumption anchoring notions of “native” Christian rights and liberties was the belief in universal Christian brotherhood. Many missionaries, particularly the African missionaries shared the idea that the “native” Christian, as a member of a global Christian community was entitled to certain basic rights. They emphasized the commonalities between Christians in Africa and those elsewhere in the world. For instance, in 1912, Rev. Mojola Agbebi, the leader of the CMS Niger Delta Mission, was invited to attend the Second World Christian Citizenship

71 PRO CO 149/5, Administrative Report by C. Hornby-Porter, Resident of Epe and Ileke

72 PRO CO 583/197/16, Annual General Report for 1930
Conference in the United States.  

One of the stated objectives of the conference was to discuss the experiences of the “Christian brotherhood on a world stage.” The conference was widely publicized in several local missionary journals and secular newspapers. The *Nigerian Chronicle* and the *Ijebu Weekly News* published the letter of invitation along with a commentary by Rev. Agbebi in which he stated that the invitation demonstrated that “the native brethren” shared the same hopes and aspirations as “brethren in far flung corners of the world.” He also emphasized: “there is more that keep us together in Christian humanity than there is that sets us apart.”

Generally, missionaries were inclined to go beyond such notions as natural justice and the freedom of trade, movement and religion, which were the essential humanistic considerations that underlined treaty agreements between Britain and African rulers. As Lamin Sanneh has argued, missionaries created “a new world order” in Africa, “not by military might but by belief in the power of redeemed and sanctified persons who as slaves, captives, and other downtrodden members of society the chiefly structures exploited and repressed, and yet, whose freedom, dignity and enterprise, evangelical religion championed as its own.”

Although their primary objective was the conversion of local “heathens” to Christianity, the missions realized that this objective could not be achieved until certain social and economic conditions prevailed within local communities. Among these were peace, order and stability, the abolition of the slave trade and domestic institutions of slavery, the evolution of a

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73 The conference was held in Portland, Oregon in 1913.

74 *Nigerian Chronicle* 5 April 1912; *Ijebu Weekly News* 13 May 1912.


76 Sanneh, *Abolitionists Abroad*, 181.
money economy and the creation of a "modern" and "civilized" society in Nigeria. Of these conditions, the abolition of the slavery was considered the most significant. It was within the context of the antislavery movement that missionary discourses about native rights and liberties became most prominent, as we shall see later in this chapter.

3.3.2 The Humanitarians

The humanitarians had much in common with the missionaries in their approach towards "native" rights and liberties. Generally, these were individuals and groups whose concerns for the welfare of Africans were anchored, not necessarily on religion, but on ethical and moral principles.77 While the articulation of "native rights" within antislavery discourse by the missionaries was founded on Christian values, the humanitarians adopted a more secular approach. Organisations such as the Anti-Slavery Society, later the Aborigines Protection Society (APS) and the Humanitarian League drew upon a more inclusive language of rights in their campaigns for the welfare of local peoples. In a speech in 1898, H.R. Fox Bourne, the secretary of the Aborigines Protection Society, argued publicly that subject to certain limitations, native races had an "incontrovertible right" to their own soil, that their territory should never be acquired by force or fraud, and that their right to personal liberty should be protected. He also argued that natives were entitled to freedom of opinion and that

77 Although some of prominent humanitarians like Bishop Johnson were also missionaries, it was understood, that their activities under the auspices of humanitarian organisations like the AS-APS were non-religious and that their mandate as humanitarians differed from those they had as missionaries. In a meeting of the Lagos Auxiliary of the Antislavery and Aborigines Protection Society on 13 September 1910, Bishop Johnson made this clear when he stated: "It is necessary for me to remind the gentlemen present here that as citizens, we meet together on a common platform: that we are supposed to have deposited all religious scruples outside the Hall when coming into this meeting. This is not a religious meeting." The Nigerian Chronicle, 23 September 1910.
Christianity and virtue could not be enforced by the Maxim gun. An official of the Humanitarian League, Mrs Bradlaugh-Bonner, expressed similar views:

> It is the duty of civilized nations and individuals in their dealings with the so called "inferior races" to recognise the native’s right to the use of land and its produce, to personal liberty and the freedom of opinion, to equal participation in social and political privileges, and to such enlightenment as may be imparted to them without compulsion.\(^{78}\)

When the British and Foreign Antislavery Society and the Aborigines Protection Society merged in 1910, its Secretary, Fowell Buxton declared that the main concern of the new society (AS-APS) was the "renaissance of slavery."\(^{79}\) In the years that followed, the society launched a concerted campaign against slavery and other forms of servitude in the colony. However, apart from the important role they played in the Antislavery movement, humanitarian organisations like the AS-APS took on other issues of native rights, particularly with regards to land and labour rights. Appalled by reports of forced labour and the flogging of African workers, the secretary of the Anti-Slavery and Aborigines Protection Society complained to the British government, pointing out that "the employment of forced labour, lending itself to grave abuse in the hands of injudicious administrators, is in the nature of slavery."\(^{80}\)

What is perhaps most significant about the activities of these organisations is that they sought to influence not only official policy in the colony, but also official and public opinion in the metropole. They worked to sensitize the English public against colonial policies that they deemed inimical to the welfare of Africans. In doing so, they employed an inclusive language of rights founded on a belief in

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\(^{78}\) *The Manchester Guardian*, 2 February 1898.

\(^{79}\) Letter by T. Fowell Buxton to the editor of *The Lagos Standard*, 17 August 1910, 5.

\(^{80}\) PRO, Memorandum on operations in Agbor District, 1906, cited in Ohadike, "The Decline of Slavery among the Igbo People," 449.
Britain’s social and legal obligations to “native peoples.” The notion and language of rights employed by the humanitarians drew from the more universal language of the natural rights of man and transcended the missionaries’ concern for the rights of Christian converts. The journal of the Antislavery and Aborigines Protection Society, *The Antislavery Reporter and Aborigine Friend*, often contained articles and commentaries that addressed the question of native rights and liberties on a wide variety of issues.\(^1\) The journal became a favourite of the editors of the Lagos newspapers who regularly culled articles from it and re-published them with approval in their newspapers. The African elites who ran the Lagos press saw these organisations as effective champions of “native” rights.\(^2\)

Humanitarian activists in Western Nigeria in the early colonial period included prominent Africans officials of the “Lagos Auxiliary” of the Antislavery Society and the Aborigines Protection Society like its president, Bishop Johnson, C.A Sapara Williams, Dr Mojola Agbebi and Chief Almamy Ibrahim. Although these officials belonged to a small class of educated elites, the Society strove to extend its appeal to the illiterate masses. Its meetings, which in 1910 commanded attendance of over 200 mainly illiterate members, were conducted in the Yoruba language.

Although the AS-APS was often at the forefront of the campaign for native rights and welfare, which often inevitably pitted it against the colonial government, its

\(^1\) For instance, the January, 1913 edition of *The Antislavery Reporter and Aborigine Friend* focused on the implications of British rule on the liberties of the people of the West Coast of Africa. It addressed issues such as “Native Rights and the Land Question” and “Floggings in Zaria.”

\(^2\) The *Lagos Standard* stated in 1898: “Societies of this character are the silver lining in the sombre cloud of European greed and injustice. If they succeed, they not only preserve and protect the rights of Native Races but they also save European communities from the coming moral wrecks and public stenches.” *The Lagos Standard*, 9 March 1898.
members did not see themselves as opponents of Britain, the colonial government or even the idea of empire. Their main concern was to promote the rights and welfare of local Africans under British colonial rule. At the Society’s inaugural meeting in Lagos, its president, Bishop Johnson reminded members that King George of Britain was the grand patron of the society. He described the Society as “a meeting of free and loyal subjects of the King seeking the welfare and advancement of His Majesty’s possessions in this part of the world.” The humanitarians also included prominent Europeans like E. D. Morel and Sir William Geary, who both became active in the debates over native land rights. These humanitarian groups, along with the missionaries were at the forefront of the early rights discourses in Nigeria, particularly in terms of bringing the concern about “native rights” more prominently into the antislavery debates of the early twentieth century.

3.3.3 Antislavery

The late nineteenth century commitment of missionaries which provided the colonial powers with a moral justification for the conquest of Africa in the notion of the “civilizing mission,” also rallied public support against slavery both in the colony and the metropole. Roberts and Miers identify three main factors crucial to the end of

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83 The Nigerian Chronicle, 13 September 1910, 4.


85 The clearest expression of this was the Brussels Conference of 1889-1890, which resulted in the first far-reaching international agreement against the African slave trade on land and sea – the Brussels Act of 1890. This bound the signatories, who
slavery in Africa. First, the structural changes in the political economy which affected slave capture and holding; second, the antislavery policies of colonial governments; and third, the changes in regional and international commodity markets, and in local economic and demographic conditions, which affected the demand for labour and determined the options opened to free slaves.\textsuperscript{86} Falola adduces similar reasons for the end of pawnship in Yorubaland.\textsuperscript{87} However, one important aspect of the antislavery movement that has been either ignored or subsumed under general discussions of the abolitionist movement is the impact of the discussions about rights. Discussions about rights and liberty in both missionary and colonial anti-slavery agendas inspired significant changes in social attitudes that were ultimately crucial to the end of slavery in many African societies.

Alongside the obvious political and economic considerations that drove the abolitionist movement were subtler humanist and ethical considerations founded on Christianity, liberal individualism and a more inclusive notion of human rights employed by activists within the abolitionist movement.\textsuperscript{88} This is true of both stages included all the colonial powers, to suppress slave raiding and trading, and to succour and repatriate fugitive and freed slaves. See Richard Roberts and Suzanne Miers, “The End of Slavery in Africa” in Suzanne Miers and Richard Roberts (eds.) \textit{The End of Slavery in Africa}, (Madison; the University of Wisconsin Press, 1988), 17.

\textsuperscript{86} Roberts and Miers, \textit{The End of Slavery in Africa}, 17.

\textsuperscript{87} Among the reasons Falola adduces for demise of pawnship in Yorubaland are the development of wage labour; the development of institutions for savings and loans resulting in the use of property, instead of labour as the principal source of collateral and the spread of Christianity and Islam, which undermined indigenous religion and pawning to cover religious expenses. See Toyin Falola, “The End of Slavery Among the Yoruba,” \textit{Slavery and Abolition}, 19, 2 (1998), 232-49 and Toyin Falola, “Pawnship in Colonial Southwestern Nigeria,” in Toyin Falola and Paul Lovejoy (eds.) \textit{Pawnship in Africa}, (Boulder, Westview Press, 1994), 245-266.

\textsuperscript{88} Historical debates about the abolition of the slave trade has long centred on the thesis first posed in 1944 by Eric Williams that: that the major impetus for the change in attitudes towards slavery came not from the ideology of humanitarians but rather
of the antislavery movement — the earlier abolitionist movement in Europe and the later antislavery push to actualize the abolitionist ideals in African colonies. The language of rights within both phases of the antislavery movement had its roots partly in Christian humanism and partly also in the radical philosophies of the eighteenth century age of reason and enlightenment, with its ideas of the noble savage, the natural rights of man, the inherent values of liberty in society.광 Other related themes converged in the antislavery movement, such as the belief in the power of law to change the character of man, slave agitation and self-understanding, the use of petitions, evangelical social activism, the undoing of customs and other established structures and the moral transformation of African society. All these themes, in one way or the other, were related to growing moral and ethical concerns about slavery.

Most missionaries and evangelicals in Western Nigeria, as elsewhere in British West Africa, saw in the anti-slavery campaign a challenge to the Christian to do his duty to his neighbour. Within this context of Christian humanism, antislavery became a universal movement of human rights and the structure of profit, domination and advantage that lived off it was challenged by this new social radicalism.광 Missionaries, both in Europe and across the Atlantic, employed the language of human rights to articulate their opposition to the slavery. Nowhere was this more evident than in early missionary literature. For instance, in a special issue of its journal, The Anti-Slavery Examiner, the American Antislavery Society in 1838 challenged slavery, not just in terms of Christian ethics but also as a human rights

the imperative of transformation from mercantilist to industrial capitalism in Britain. See Eric Eustace Williams, Capitalism and Slavery, (New York: Capricorn Books, 1966 [1944]).


광 Sanneh, Abolitionists Abroad, 246.
issue. This was at a time when the concept of human rights had not gained currency. The journal, aptly titled "The Bible Against Slavery: An Inquiry into the Patriarchal and Mosaic Systems on the Subjugation of Human Rights," has been described as one of the strongest contemporary intellectual statements that we possess on the human rights character of antislavery.

The fundamental point about the antislavery idea enunciated in missionary documents like these was that slaves too, were endowed by God with certain inalienable rights, including those of dignity, honour and justice. Such human rights and dignity could not be exchanged for slavery or yield to what was merely expedient and pragmatic. In fact, such rights needed to be reclaimed from the travesty of slavery and prejudice. Neither social custom nor racial argument would be allowed to jettison that central theocratic view of human freedom and personhood. Ideas like this, expressed in missionary journals from Europe and America, were often reproduced or reflected in the many local missionary and secular journals and magazines that were established in Western Nigeria from the 1880s.

91 *The Antislavery Examiner*, 6 (1838).

92 Sanneh, Abolitionists Abroad, 246.

93 In his groundbreaking work, Freedom in the Making of Western Culture, Orlando Patterson extends this point even further when he argues that the social construction of freedom and liberty were made possible by slavery. He argues that slavery had to exist before people could even conceive of the idea of freedom as value, that is to say, find it meaningful and useful, an ideal to be striven for. While this view may be subject to debate, it highlights the centrality of antislavery to the construction of the ideology of rights and liberty. See Orlando Patterson, Freedom, Vol. 1: *Freedom in the Making of Western Culture*, (New York: Basic Books, 1991) and Orlando Patterson, *Slavery and Social Death: A Comparative Study*, (Cambridge, Mass: Harvard University Press, 1982), passim.

94 Some of these journals include *In Leisure Times*, published by the Church Missionary Society, *The Nigerian Baptist* published by the Baptist mission, *The
Long before the formal establishment of colonial rule in Nigeria, missionary ideas and activities within the antislavery movement were already articulating a language of rights and liberties that fundamentally challenged local traditional orthodoxies. This ideology, which has been described as “anti-structure” was what the colonial state later built upon in furtherance of its antislavery agenda.\(^\text{95}\) The ideas propagated by Christian missionaries provided intellectual support for the antislavery movement in much of Southern Nigeria (including Western Nigeria) where the colonial administration abolished slavery by the Slave Dealing Proclamation of 1901.\(^\text{96}\)

This proclamation abolished the legal status of slavery in Western Nigeria, prohibiting all forms of slave dealing – trading in, selling, bartering, transferring persons to be treated as slaves. The Proclamation also invalidated all slave dealing contracts and prescribed severe penalties for persons contravening the proclamation. Native courts were expected to enforce the abolition of slavery and slave dealing.\(^\text{97}\) This law followed the pattern Miers and Roberts have called the British “Indian model,” which outlawed slave-dealing and withdrew legal recognition of slavery, but basically left it to slaves themselves to claim their freedom.\(^\text{98}\)

Colonial authorities presented these antislavery laws and Britain’s role in the abolition of the slave trade as evidence of the inherent goodness of her liberal

\(^{95}\) Sanneh, *Abolitionists Abroad*, 9-11.

\(^{96}\) PRO CO 588/1.

\(^{97}\) NAI CSO C.157/ 1905, Notes on Cases of Slave Dealing.

\(^{98}\) Roberts and Miers (eds.) *The End of Slavery in Africa*, 12-13.
traditions and her concern for the basic rights and freedoms of “native” peoples. They deliberately sought to legitimize colonial rule in terms of Britain’s later abolitionist role rather than her active slave trading for more than half a century. This was evident in an address by the Governor Hugh Clifford to the school children of Lagos to mark Empire Day in 1920.

Just as Britain had been the first of the European nations to realize and to recognise the rights of the native populations of the non-European world to equitable treatment and to claim due respect for their actions and susceptibilities... so now she resolved that no consideration of material gain or advantage, no dread of financial ruin, no fear of the powerful interests she was assailing, should induce her to consent to the perpetuation of systems of which her national conscience disapproved. Had she willed otherwise, there was no force in existence that could have compelled her to take the course she now voluntarily adopted. Her position as the greatest maritime power in the world was impregnable; without the aid of her navy, the [slave] trade would never have been effectively suppressed, and the general opinion in Europe was by no means strongly in favour of suppression. MIGHT was hers, and she was free to make of it what she would. She elected to employ it in the course of RIGHT – to use it, in fact, in the only manner wherein MIGHT can find its justification.99

This kind of rhetoric was not peculiar to colonial officials. The libertarian ideas that were believed to underlie British antislavery laws and policies were also discussed in the secular press in Lagos and other parts of Western Nigeria from the 1880s. British antislavery policies at the end of the nineteenth century represented, for many Africans, the clearest indications of Britain’s commitment to protecting the rights and liberties of its “native” subjects. The Lagos Times in an editorial in 1882 linked Britain’s antislavery position to its traditions of freedom and liberty.

Britain is a free country. In her, personal liberty is sacred; no person’s rights however humble, can be violated with impunity. She has proscribed slavery in all its forms and she protects the freedom not only of those who are already her subjects, but of those who fleeing

99 Original emphasis. Address of His Excellency the Governor of Nigeria, Sir Hugh Clifford to the School Children of Lagos in Empire Day, 24 May 1920, Government Printer, Lagos, 1920.
away from bondage in other land take refuge in her own; and what she has prescribed to herself in this respect, she prescribes to all her colonial possessions everywhere also. Her flag is everywhere a sign of, and guarantee of liberty.\(^{100}\)

In fact, the British control of much of Western Nigeria at the beginning of the twentieth century was no immediate guarantee of liberty for all. Although slavery had declined considerably by the mid 1920s (See Appendix V), debt-slavery or pawnship still existed in many parts of Western Nigeria where there remained considerable local opposition by traditional elites and slave owning classes to colonial attempts at ending the practice.\(^{101}\) The desire of some local elites to hold on to their slave “possessions” drew condemnation from others who saw it as hypocritical for some privileged Africans to deny to other Africans the rights and liberties which they enjoyed as British subjects. In one such critique the Lagos Times noted, “love and desire for slave holding have not died in us as a people, even though we pride ourselves in our own personal freedom and rejoice in the Christian name.”\(^{102}\) The paper further stated that among the “elites of Lagos,” there had been no popular feeling against slavery and pawnship but, rather, a disposition to “treat it lightly, speak of it as indispensable to native life and excuse the guilty.”\(^{103}\) What the paper found most objectionable and

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\(^{100}\) The Lagos Times, June 14, 1982.


\(^{102}\) The Lagos Times, 12 May 1900.

\(^{103}\) Attempts to rationalize slavery by speaking of it as an indigenous institution that can be remedies rather than discarded in toto was not peculiar to sections of the African elite. Some missionaries also sought to rationalize slavery. In 1858, the Committee of Missionaries in Yorubaland stated that, “The word of God has forbidden the oppression and injustice of various other evils which too often, though not necessarily, cleave to the character of the slave holder. Christianity will ameliorate the relationship between masters as slaves.” CMS. CA2/L2, Secretaries to Missionaries in Yorubaland, 17 February 1857.
"very humiliating" was the fact that some "liberated Africans" and their children who have been taught in Christian schools and have "found protection in the Christian name," had been found in active connections with slave-trading and slave holding.\textsuperscript{104} Such references to Christianity and Christian values in connection with early discourses about rights within the antislavery movement were quite typical of this period and are significant because they suggest that Christians were held up to a different set of ethical and moral standard that was thought antithetical to slave holding.

Much of the antislavery debates in Nigeria were also underlined by disagreements over the extent of rights and liberties which domestic slaves and pawns enjoyed in African society. Some Africans and Europeans did not subscribe to the view, presented by the abolitionists, that under indigenous systems, slaves and pawns had no rights or liberties.\textsuperscript{105} There was a long-standing position among the Yoruba elite, cultural nationalists that slavery and pawnship were benevolent social institutions for recruiting labour and assisting the needy. The Yoruba historian Samuel Johnson opposed slavery but defended the institution of pawnship from a cultural nationalist perspective as a respectable indigenous institution that should be

\textsuperscript{104} The Lagos Times, 12 May 1900. Echoing similar views, the Lagos Observer deplored the "tendency of many persons enjoying the rights and liberties of British subjects to possess slaves." See The Lagos Observer 18 June 1901.

\textsuperscript{105} E. J Alagoa and Ateri M. Okorobia, "Pawnship in Nembe, Niger Delta" in Falola and Lovejoy (eds.) Pawnship in Africa, 78.
preserved.¹⁰⁶ As Falola and Byfield have shown in different studies, colonial officials also disagreed over pawnship and slavery.¹⁰⁷

The attempts to distinguish between slavery and pawnship as grounds for toleration of the latter centred on the rights that pawns, as opposed to slaves, supposedly enjoyed. Johnson in particular stressed that freeborn pawns (as distinct from slave pawns) did not lose their rights and privileges as free members of the community.¹⁰⁸ Nineteenth century missionaries in Yorubaland made the same distinction. They argued that there were important distinctions between pawns and slaves with regards to the limits of the rights, which they enjoyed. Slaves were largely denied the right to participate in certain organisations and they could be alienated from the community at the discretion of their masters. Pawns, in contrast, were not aliens to their community. They retained their independence and political rights, while slaves lost both.¹⁰⁹ It has been suggested that missionaries made an uneasy peace with pawnship in Yorubaland because it was virtually impossible to obtain free labour. They utilized pawnship to obtain both labour and converts. Missionaries themselves rationalized their positions by arguing that they had few choices in a society that looked down on wage labour.¹¹⁰

¹⁰⁶ Johnson, History of the Yorubas, 126-30.

¹⁰⁷ See Falola, “Pawnship in Colonial Southwestern Nigeria” and Judith Byfield, “Pawns and Politics: The Pawnship Debate in Western Nigeria in Toyin Falola and Paul Lovejoy eds. Pawnship in Africa, (Boulder, Westview Press, 1994). This was also evident from my own archival research. See for instance, PRO CO 583/143/8, Practice ofPawnning of Children in Yoruba Provinces, 1926.

¹⁰⁸ Johnson, History of the Yorubas, 128

¹⁰⁹ CMS Y2/2/3, Manumission of Slaves in Abeokuta.

¹¹⁰ The willingness of church officials to accept pawnning was apparent at the conference on Domestic Slavery held in Lagos from March 16-23, 1880. They argued that “there are not hired servants. The Yoruba people in the interior who are far from
These views were largely shared by colonial officials who made similar distinctions between pawns and slaves based on differences in the scope of their rights.\textsuperscript{111} One official report stated: “An ‘Iwofa’ or ‘pawn’ is a free man; his social status remains the same; his civil and political rights are intact, and he is only subject to his master in the general sense that ‘a borrower is servant to the lender.’”\textsuperscript{112} Ross, the Resident of Oyo Province believed that there was no stigma attached to pawnship and that a pawn was a “perfectly free agent, at liberty to regulate his own life and to follow his own pursuits when the daily task set by his master is over.”\textsuperscript{113}

These idealized accounts clearly masked some of the more exploitative features of pawnship. In many societies, pawns were denied basic social and economic liberties.\textsuperscript{114} Yet, based on the flawed premise that pawns were distinct from slaves in terms of the rights they presumably enjoyed, colonial officials tolerated the widespread institution of pawnship, particularly in Yorubaland and made no serious

any civilizing influence hate the very idea of being paid. They would rather work for you without pay.” Manumission on Slaves in Abeokuta CMS Y2/2/3, cited in Judith Byfield, “Pawns and Politics,” 194.

\textsuperscript{111} See for instance, NAI War. Prof. 1047,Pawn of Persons as Security for Debt; NAI Ijebu Prof. 3/18/27, Pawn of Children.


\textsuperscript{113} NAI, CSO 26/06827 Vol. 1.

\textsuperscript{114} In Benin, for instance, once a freeborn became a pawn (iyoha) and moved to the creditor’s house, he or she lost the social rights that would have applied to in his or her own family and suffered a loss of privilege until freedom was retained. Because of the degradation associated with the loss of status, people regarded pawnship as worse than slavery. People strove not only to avoid it, but also to redeem members of their families who had been forced to become pawns. See Uyiilawa Usuanlele, “Pawnship in Edo Society: From Benin Kingdom to Benin Province under Colonial Rule” in Falola and Lovejoy (eds.) Pawnship in Africa, 107.
attempts to abolish it until 1938. In the debates over slavery and pawnship, we see how the interests of both the state and some Africans converged to shape the rights discourse and legitimize colonial policy. This debate prefigured the African rights/universal rights debate of the later twentieth century. While some claimed that an African conception of ethical behaviour could include pawnship and other "benign forms of servitude," others saw slavery and all forms of servitude in universal terms and argued that they were unacceptable. This trend characterized other discussions about rights and liberties in Nigeria as evident in the debate over the Native House Rule.

3.3.4 The “Native House Rule” Debate

Two pieces of colonial legislation introduced in 1901 – the Native House Rule Proclamation (later Ordinance) and the Master and Servants Proclamation – further illustrate the different ways in which the language of rights was deployed in the context of the antislavery movement. The Native House Rule Proclamation, which came onto operation in January 1902, simultaneously with the abolition of slave dealing in Southern Nigeria, was essentially a compromise between slavery and free labour. It was intended to regulate the House system of the Niger Delta communities - - an indigenous social system founded on a hierarchy of House heads, slaves and servants. The law rectified the reciprocal duties and obligations that the House

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115 One of the first attempts to abolish pawnship in Yorubaland was the issuance of a proclamation in Oyo province in 1938 declaring that it was a criminal offence to pawn any person or hold any person in pawn.

116 In Western Nigeria, the House system was most prominent among the Ijaw of the Western Niger Delta. G. I. Jones and R. Horton in some of the earliest studies of the House System talk of the “endogamous canoe houses of the Niger Delta trading states.” These Houses were descent groups in which slaves were so completely assimilated that functional kinship relation developed among them. The House system
head and members owed each other under native law and custom. The ostensible object of the law was to protect the basic rights of servants by their masters under the House system.\textsuperscript{117} In fact, by recognizing and regulating this form of unfree labour, the law was intended to give the Protectorate of Southern Nigeria a much needed transitional arrangement until the colonial government felt able to bear the complex consequences of free labour and a free market economy.

The Native House Rule Proclamation and the Master and Servants Proclamation were widely criticized by antislavery campaigners for legitimizing indigenous forms of slavery and servitude in contradiction of Britain’s declared antislavery position. The Proclamation was criticized as an official stamp of approval of customary practices of unpaid servitude in order to appease traditional rulers and elites who were partners with the colonial state under indirect rule. In a tone characteristic of such criticism, the \textit{Nigerian Times} labelled the Proclamation the “Southern Nigeria Slavery Law.”\textsuperscript{118} Although colonial officials publicly rebuffed these criticisms, in private minutes, they admitted their validity. Sir Percy Anderson of the Colonial Office minuted in 1911: “the effects of the House Rule Ordinance has been to render the abolition of slavery to a large extent nugatory. At the best he has been turned into the position of a villein or serf.”\textsuperscript{119} The government was thus in the

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\textsuperscript{117} Tamuno, \textit{The Evolution of the Nigerian State}, 26.

\textsuperscript{118} \textit{Nigerian Times}, 11 August 1910.

\textsuperscript{119} CO/520/121, “House Rule Ordinance,” minutes by Sir Percy Anderson dated 18
peculiar position of maintaining in “slavery” or “serfdom,” a class of people whom it claimed to have freed from bondage. A number of high profile cases brought the House Rule law under even further public scrutiny. One of these was the arrest and detention at Igbotu in 1906 of two servants who had deserted from Houses in Warri. The deserters were subsequently tried and imprisoned by the Native Council in Warri on the basis of the Native House Rule law. This case, widely reported in the Lagos press, drew condemnation from many commentators who saw it as an example of the abuses inherent in the law.

Much of the opposition against the Native House Rule law was articulated in the language of rights and liberty. African and European missionaries, and other opponents of the law both in the colony and in Britain saw it as a hindrance on the liberties of “native Christian converts” who were compelled to live under the House system. In 1906 the conference of Anglican Bishops and the clergy in West Africa, meeting in Lagos, forwarded a resolution against the Native House Rule law to Governor Egerton. In it they complained of injuries to “individual liberties and public morality” in the Niger Delta, because House Heads forbade their members to contract marriages with persons from other Houses and urged Edgerton’s administration to give relief in such matters. Later in April 1909, Bishop H. Tugwell repeated this

January 1911/


121 See map of study area.

122 When informed of the verdict of the Native Courts against the deserters, Governor Egerton ordered their release.
charge when he argued that the “House System” curtailed among other things “liberty to marry except under grievous conditions.”\textsuperscript{123}

Strong opposition to the Native House Rule Proclamation was also voiced in Britain, particularly with reference to its implications for the rights of Christian converts. Between 1892 and 1916 several questions were raised on the floor of the House of Commons not only about the Native House Rule Proclamation but also generally about the continued existence of slavery and pawnship in parts of Nigeria. J. King, a Member of Parliament, opposed the Native House law principally on the grounds that persons married under Christian rites had been separated against their will because of the law.\textsuperscript{124} To the Liberal government in Britain, such allegations regarding the liberties of native Christian converts were quite serious. At a time when “commerce, Christianity and civilization” were seen as the three cardinal objectives of the British imperial rule in Africa, official opinion was sensitive to any policy that was perceived as hindering the propagation of Christianity and civilized values in the colonies. In response to growing opposition, the colonial government first amended the Native House Rule law and abolished it in 1920.

An important reason for the failure of the Native House Rule was the emphasis placed on the liberties of native Christian converts by missionary campaigners both locally and abroad. Underlining missionary opposition to the Native House Rule law was the assumption that African Christian converts were entitled to some rights and liberties necessary to allow them to lead proper Christian lives. Missionary campaigners worked to ensure that African converts were not encumbered

\textsuperscript{123} Cd. 4907, 1909, p. 446

\textsuperscript{124} HC. Deb 5s. 21, February 1911, 671 cited in Tamuno, The Evolution of the Nigerian State, 329 and 331
by the restrictions and limitations of their “pagan” laws and customs even where such customs had received the approval of the colonial authorities. At a time when the concern for rights and liberties of native subjects within the colonial government was at best secondary to other imperial objectives, the appeal to the language of “native rights” based on their conversion to Christianity resonated powerfully, not only among missionaries but also within colonial officialdom. More so, this language appealed to ordinary Africans who had begun to see Christianity as a means of escaping from the restrictions imposed by existing traditions and the colonial order.

Increasing pressures from missionaries, humanitarians and parliamentarians in London prompted colonial authorities to be less tolerant of indigenous forms of servitude. By the 1930s, official toleration of the institution of pawnship shifted. Colonial officials, at least at the central level, became less inclined to present it as a benign “traditional” institution and began to extend the language of rights and liberty, once restricted to slavery, also to the institution of pawnship.\textsuperscript{125} In 1938, the government in Lagos issued a proclamation prohibiting pawnship describing it as a violation of “personal liberty.”\textsuperscript{126}

Although such laws did not immediately or totally eradicate the practice of slavery and pawnship in Western Nigeria – and some have argued that they were never really intended to\textsuperscript{127} -- they provided new opportunities within the colonial legal system for people in positions of forced servitude, to seek redress using the law and

\textsuperscript{125} NAI Ijebu Prof. 3/ 18/27, Pawnning of Children.

\textsuperscript{126} NAI CSO 26/2/11604 Secretary, Ibadan to Lagos, May 14 1941, cited in Falola, “Pawnship in Colonial Southwestern Nigeria,” 254.

\textsuperscript{127} Falola has argued that the 1938 proclamation against pawnship in Lagos did not specify any punishment and “there was in fact no intention to institute proceedings against all offenders.” Falola, “Pawnship in Colonial Southwestern Nigeria,” 254.
the language of rights that underlined it. For instance, empowered by the Slave
Abolition Ordinances, ordinary people caught in customary master-servant relations
began to articulate their demand for freedom increasingly in the language of rights
and liberty. One example of this is the case of Igbinovia, a lowly commoner, who
wrote a petition to the local official against the Oba of Benin whom he alleged had
taken him, his wife and five children as slaves contrary to the law against slavery
"which gave freedom and liberty to all His Majesty's subjects."

In sum, it could be said that early discussions about "native rights" by
missionaries and humanitarians in Western Nigeria progressed along two distinct yet
related lines. On one hand, both missionary and humanitarian campaigns, as part of
the broad process of social restructuring under colonial rule, facilitated the breakdown
of traditional customary institutions and forged in their stead, new notions and
regimes of individual rights and liberties. This was particularly true of missionary and
humanitarian activities in the antislavery movement. However, while missionaries
employed a notion and language of rights that tended to be restrictive and centred on
conversion to Christianity, the humanitarians employed a more secular and inclusive
notion of "native rights." At individual levels, missionary discourses about the rights
of African Christian converts provided an alternative framework for overcoming the
limitations on individual freedoms imposed by both traditional practices and the
emergent colonial order. This alternative framework of rights founded on Christian

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128 Igbinovia of Ugbekun village sent a petition against the Oba (King) of Benin to the
Residence of Benin Province on 2 August 1920 stating that he and his wife and five
children had been taken to the Oba against their will and subsequently presented by
the Oba to one of her daughters as her slaves. See NAI. BD 5/3, 6. Miscellaneous
complaints, Benin Province, 1920. Also see Phillip Igbafe, Benin Under British
Administration, 245.
humanism offered rights to Africans primarily on the basis of their conversion to Christianity.

Such rights as the freedom to marry outside the restrictions of custom, and the freedom of movement and worship, were thought necessary to allow the native convert to lead full Christian lives free from the constraints of "pagan" traditions. It would be wrong to assume that in advocating certain rights for African converts, Christian missionaries were demanding, or even intended that these converts should enjoy the full complement of rights and freedoms of Englishmen.\(^\text{129}\) Rather, it would be appear that the notion and language of rights they employed in relation to "native converts" was more in line with the ideas of the nineteenth century ethnologist Mary Kingsley – that Africans were entitled to certain fundamental rights and liberties which they could exercise within their "racial" limits.\(^\text{130}\) But although missionary rights discourse was restricted in scope and to certain categories of persons, it nonetheless represented a vision of the range of rights and liberties that could ultimately be extended to the rest of the African population.

\(^{129}\) References to the rights of "Englishmen" in this context did not necessarily mean all British citizens. In this period, British women had considerably fewer rights and liberties than men. They had no voting rights and only limited rights to property.

\(^{130}\) Mary Kingsley, traveller and amateur ethnographer in West Africa in the 1890s, was an early advocate in the potential of the Africans as "a distinct race, unsuited to European civilization." She argued that the development of the African required that British experts dispense with the "fancy African, and fiend-child planted in the imagination of the British public by unscientific people," and study the African carefully and sympathetically. Kingsley argued that though unsuited to European ways, the Africans had qualities worth preserving and the innate ability to improve their own condition with minimal interference from missionaries, merchants and colonial overlords: "No race, can as a race, advance except in its own line of development." Similar sentiments found a growing audience at the turn of the century and the British African Society was founded in 1901 in furtherance of the ideas of "Kingsleyism." Zachernuk, \textit{Colonial Subjects}, 63; John Flint, "Mary Kingsley: A Reassessment," \textit{Journal of African History}, 4 (1963), 99-104.
In challenging the power of local chiefs and elites who opposed complete abolition, and advocating a more liberal society that included slaves and social outcasts, missionary and colonial activities represented a disruption of the existing social order and sense of rights. Lamin Sanneh describes the role of the antislavery movement within this context as “antistructural.” He argues that with the antislavery campaign, something new and permanent was attempted in African societies, and this represented a significant break with the old political morality.\textsuperscript{131} Antislavery did not guarantee freedom for everyone, and sometimes, even created new orthodoxies that took on elements of older oppressive structures. However, the success of antislavery as “antistructure” that it provided new opportunities to former slaves and captives or those most at risk, to escape from old structural constraints. It was the ethics of a second chance for such former slaves and the stress put on individual responsibility and equality before the law that gave antislavery its antistructural force and transformative power. One might stretch Sanneh’s analysis to add that the language of rights and liberty in which antislavery was articulated and with which it was legitimized was central to its transformative power. This is because it provided a language which subaltern groups could subsequently use to oppose and challenge prevailing social and political dogmas within and beyond antislavery.

3.3.5 Conclusion

The foregoing discussion presents an overview of the general situation of Western Nigeria at the dawn of the twentieth century. This was a period of transition defined by the loss of African autonomy and by colonial incursion and restructuring. In presenting this overview, the chapter has focussed particularly on the early

\textsuperscript{131} Sanneh, \textit{Abolitionists Abroad}, 10
discussions about rights in the process of British incursion and local reaction. It examined the discussions over African treaty rights and the debates over British "rights of intervention" under existing arrangements with local peoples. It also examined missionary and humanitarian activities at the beginning of the twentieth century and explores the place of discussions about "native rights" within them. The evidence suggests that both groups extensively employed the language of rights and liberties in the pursuit of their various agendas.

However, the use of the rhetoric of rights and liberties was not limited to missionaries and humanitarians. For the colonial state, the language of rights also proved effective for promoting its agendas. For one thing, it reinforced the oft-declared social obligation of the British to the "native races of the colony" -- the obligation to bring civilization and enlightened government to them, to protect them in "the free enjoyment of their possessions" and to "restrain all injustice which may be practised or attempted against them."\footnote{Emphasis added. NAI CSO 5/8/4. Instructions dated 13 January 1888, Clause 31. Also see NAI CSO 5/8/4 - Instructions dated 28 February 1886, Clause 36.} Nowhere was such paternalistic language more evident and contested than within the colonial legal system, as we shall see in the next chapter.
CHAPTER FOUR

STRONGER THAN THE MAXIM GUN: LAW, RIGHTS AND THE
ADMINISTRATION OF JUSTICE

In sharp contrast to the African traditional legal philosophy which puts
much premium on the maintenance of social equilibrium rather than
the rights of the individual, the European system of law and justice
extols these very rights.

Omoniyi Adewoye, “Legal Practice in Ibadan.”

4.1 Introduction

Law was an important issue over which discourses of rights were deployed in
Western Nigeria. As elsewhere in Africa, the colonial legal system was an effective
instrument for fostering colonial hegemony and guaranteeing the maintenance of
social order on a scale conducive to imperial interests. The discourse of rights was
particularly influential in this regard. Rights talk, within the context of the colonial
legal system, was one of the many discourses employed by the colonial state to
rationalize and legitimize empire. But it also provided Africans with a means of
articulating and promoting their interests within colonial society. Law, and the
discourse of rights associated with it, was a two-edged sword. On one hand it was a
devastating weapon of conquest like no other in its capacity to annihilate and
dispossess without been seen as doing anything at all. And yet, it provided the
dispossessed with a means, which could be used for self-protection even if not always
successfully.

1 Omoniyi Adewoye, “Legal Practice in Ibadan,” Journal of the Historical Society of

2 Jean and John Comaroff, Of Revelation and Revolution: The Dialectics of Modernity
404.
This chapter examines the tensions and contradictions in the use of law as an instrument of coercion to consolidate British control in western Nigeria and the legitimizing rhetoric of rights, liberty and social justice that underlined this process. It explores how the colonial legal system fostered British hegemony and the imperial objective of forging a modern regime of legal rights in the colony. It probes the circumstances that made the rhetoric of legal rights imperative for both the colonial state that employed it to legitimize empire and African elites who subsequently appropriated it to strengthen nationalist demands. The object here is not so much to underscore how the colonial state fell short of its own liberal agenda – a task that others have adequately addressed— but to examine the appeal of the language of rights employed within this agenda and the conditions that made it so central to the colonial project. Although references to law and the legal system run through the entire thesis, this chapter focuses specifically on certain salient themes around which many of the discussions about rights within the context of the colonial legal system were conducted. These include the process of legal codification: the use of the “repugnancy doctrine”; the use of coercive ordinances, and the public debates about individual rights under the colonial justice system.

4.2 Rights and the Colonial Legal System

Although no explicit legal instruments specifically bound British authorities to the protection of individual rights and liberties in Nigeria, British officials generally assumed that imperial rule was to be guided by a consideration for the basic worth and human dignity of the colonial subject. From as early as 1886, the social obligation of the British colonial government was made clear in several official documents emanating from both the Colonial Office in London and the various colonial administrative regimes in Nigeria. These documents included Letters Patents and Royal Instructions issued in 1886 and the Royal Instructions to the Governor of Southern Nigeria issued in February 1906.4

In these instructions, the British government spelt out the ostensible function of the government towards the people in the territory. This was, among others, to:

Promote religion and education among the native inhabitants of the colony . . . To take care to protect them and their persons and in the free enjoyment of their possessions, and by all lawful means to prevent and restrain all violence and injustice which may in any manner be practised or attempted against them.5

There were also similar commitments to promote equality and fairness in dealings with “native subjects.” The Royal Proclamation issued in 1843 to the “African subjects of Her Majesty Queen Victoria” promised “equality of opportunity for selection to, and employment in, positions of profit and honour within the British Empire, according to their loyalty, integrity and ability without any reference whatsoever to ethnological origin or religious creed or persuasion.”6 Although these

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4 These instructions were subsequently replaced by the Colony of Nigeria Letters Patent and the Nigerian Protectorate Order in Council of 1913.

5 My emphasis. NAI CSO 5/8/4, Instructions dated 13 January 1888, Clause 31. Also see NAI CSO 5/8/4 - Instructions dated 28 February 1886, Clause 36.

6 Daily Service, 2 February 1943, 2. (Quoted in a lecture titled “Co-Equal Citizenship
proclamations and instructions effectively gave colonial officials wide powers to intervene in various aspects of the social life of the people, it also bound them morally, if not legally, to the local protection and promotion of certain basic rights and liberties. These aspirations, even if only in theory, were expected to guide colonial laws and general social policy towards the people. In practice however, law was used more effectively as an instrument for consolidating colonial rule rather than protection.

While coercion played a crucial role in Britain’s conquest of Western Nigeria as in other parts of the country, law clearly proved a more effective means of colonial administrative control. Force could weaken the will of the conquered peoples but it could not make colonial rule endure. By the 1920s, the system of military conquest and repression had largely succeeded and the British authorities moved from military to civilian forms of rule. This process of consolidating and stabilizing colonial rule was founded on law and specifically, the English legal system. Law, in the form of ordinances and proclamations administered through British-style colonial courts, became the basis for promoting British hegemony in the colony. As Omoniyi Adewoye aptly puts it, “in the hands of the British colonial administration, law was a veritable tool, stronger in many ways than the maxim gun.”

Throughout Empire” delivered by Herbert Macaulay under the auspices of the Lagos Weekend Club on 30 January 1943).

7 The Consular Instructions of 1891 and its subsequent modifications made the colonial Consul General the sole lawmaker, the chief executive and the supreme judicial officer of the territory. He was empowered to legislate by proclamations.

8 Adewoye, The Judicial System in Southern Nigeria, 6. The Maxim gun symbolized European military advantage which made colonial conquest possible in many parts of Africa and other parts of the colonized world. Many nineteenth century European imperialists recognized and acknowledged the importance of the maxim gun to their campaign in Africa. As the nineteenth century anti-imperialist writer and poet, Hilaire Belloc put it, in his poem the “The Modern Traveller” (1898), “When all is done/ we
As indicated in the preceding chapter, British colonial rule in various parts of Nigeria was determined by the mode of conquest. Territories acquired by cession like Lagos were considered extensions of the British Isles thereby making the laws of England operational. Those who came under this arrangement were considered, at least in principle, British subjects, entitled to the legal rights and liberties of Englishmen. In contrast, occupants of territories acquired by treaty were considered "British-protected persons" with only limited rights. In spite of these official distinctions, the Crown exercised unlimited jurisdiction in the protectorate in the same manner as in the conquered territories and no distinction in the practice of legal rights availed "subjects" as opposed to "protected persons." Thus, unlike Mamdani's distinction between citizens and subjects, there was no dichotomy in how Africans in the colony and protectorates of Nigeria actually engaged with the colonial legal system. Official rhetoric stressed the difference between subjects and protected persons mainly because the British government wanted to be seen as living up to its treaty obligations.

Law in the management of change in colonial Nigeria, as elsewhere in the continent, took the form of local statutes. Statutes were enacted to serve a variety of purposes: to complete the process of "pacification" of the country, to secure

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9 For instance, in the colony of Lagos, an ordinance declared, as early as 1863, that "the laws of England shall have the same force and be administered in the settlement." Ordinance No 3 of 1863. The Supreme Court Ordinance of 1876 also spelt out that English common law and the doctrines of general application in force in England as at 1874 would be in force in the colony.

administrative control of the country’s economic resources;\textsuperscript{11} to ensure orderly exploitation of its mineral resources; to acquire land for public use; to fight fraudulent commercial practices capable of undermining the economic interests of the colonial government;\textsuperscript{12} to stamp out indigenous customary practices considered repugnant to European civilization;\textsuperscript{13} or even to deliberately implant new patterns of social behaviour.\textsuperscript{14}

However, law was more than just a tool of colonial administrative control. It also became, as several studies have shown, an arena in which Africans and Europeans engaged one another – a “battleground” on which they contested access to resources and labour, relationships of power and authority, and interpretations of morality and culture.\textsuperscript{15} In the process, local people encountered the realities of colonialism and both they and the Europeans shaped the laws and institutions, relationships and processes, meanings and understandings of the colonial period itself. Though engineered by colonial officials, the impact of law within the colonial state was all embracing. Europeans used law to promote colonial hegemony; Africans used it as a resource in struggles against Europeans and since Africans met one another in

\textsuperscript{11} Compare Forest Bill for the Colony and Protectorate of Southern Nigeria, 1901.

\textsuperscript{12} Compare the Adulteration of Produce Proclamation in Southern Nigeria 1901, 1902, and 1905.

\textsuperscript{13} Compare Slave Abolition Ordinance in 1908.

\textsuperscript{14} As in “Marriage Ordinances in Commonwealth Africa” which placed monogamous marriage on the highest pedestal than other forms of marriage. See Adewoye, “Law as a process of Empowerment,” 5.

the legal battlefield far more often than they did Europeans, law also became central to the struggles among Africans.\textsuperscript{16}

The British colonial legal agenda in Nigeria, as elsewhere in Africa, was well articulated. From as early as 1843, the \textit{Foreign Jurisdiction Act} empowered British officials in Africa to establish legal institutions and make laws for the peace, order and good government of the British and "those in commercial relations with them." The emphasis on commercial relations indicates the primary rationale of the Act. Law and British legal institutions were conceived as a means of realizing imperial political control and economic ambitions above anything else. The first British consuls and other colonial officers who administered Lagos and the Niger Delta carried out administration and judicial functions on the basis of this and similar laws. The first sets of ordinances and proclamations were primarily directed at regulating trade and facilitating administrative control.

By the 1900s however, the colonial legal agenda had moved beyond trade and politics to embrace other social concerns. In 1900, further proclamations introduced a regime of English laws and set up an English-style legal system in the newly created Southern Nigerian Protectorate.\textsuperscript{17} These laws formed the basis of the colonial legal system when the British government proclaimed the protectorates of Northern and Southern Nigeria. Consequently, the sovereignty of many indigenous states and societies became legally vested in the British crown although earlier military

\textsuperscript{16} Mann and Roberts, "Law in Colonial Africa" in Mann and Roberts (eds.) \textit{Law in Colonial Africa}, (Portsmouth, & London: Heinemann, 1991), 3.

\textsuperscript{17} These included the \textit{Supreme Court Proclamation} which established an English-style supreme court for the protectorate, the \textit{Criminal Procedure Proclamation} which encapsulated the principles of English criminal law and procedure, and the \textit{Commissioner's Proclamation} which dealt with the judicial powers conferred on colonial administrative officers.
conquests had already made this a *fait accompli.* The primary objective of the colonial legal system at this stage was to serve the dual purpose of forging formal relations between the British and local peoples on one hand and extending British political and economic influence on the other.

4.3 The Repugnancy Doctrine

Until the introduction of rights into the independence constitution in 1960, the main legal instrument with which the Nigerian colonial state sought to promote individual rights and liberties was the repugnancy doctrine. Although initially intended to ensure that indigenous customary rules applied in the colonial courts conformed to a certain standard of "natural morality and humanity," its application generated extensive debates about the implications of indigenous customary practices for the promotion of individual rights and liberties. The application of the repugnancy doctrine also raised questions about the merits and demerits of colonial attempts to mediate customary law with an overriding concern for European standards of morality and justice.

The legal system introduced by Britain was clearly patterned along English lines. The *Supreme Court Ordinance* declared that English common law, the doctrines of equity and the "statutes of general application," applicable in England, shall be in force in the colony. Local customs and traditions were however allowed to exist side by side with the imported English legal system only if they met the "repugnancy test." This meant that such customs must not be "repugnant to natural justice, equity and

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18 There were a few exceptions of African states that retained their independence until well after this period. The Egba United Government in southwestern Nigeria for instance, was independent of colonial political control until 1914.

The repugnancy doctrine as first introduced by the \textit{Supreme Court Ordinance No. 4 of 1876} was intended to regulate local customary laws and practices, which under the prevailing legal system, operated along side the imported English legal system.\footnote{Historically, statutory recognition of indigenous African customary laws and practices under European administrative rule was first given by the provisions of Article 8 of the Royal Niger Company charter of 1886. The charter gave the RNC power to administer justice in the territories were it was operating. The company was also enjoined to have careful regard for the “custom and law of the class or tribe or nation” to which the parties belonged in the process of dispensing justice.}

Section 19 of the ordinance proclaimed that:

\begin{quote}
Nothing in this Ordinance shall deprive ... any person of the benefit of any law or custom existing in the colony ... such law or custom not being \textit{repugnant to natural justice, equity and good conscience}, nor incompatible either directly or necessary implication with any enactment of the colonial legislature.\footnote{Supreme Court Ordinance No. 4 of 1876.} \end{quote}

Other instruments, which introduced English law and established colonial customary in Nigeria such as The Supreme Court Proclamation of 1900 and the Native Court Ordinance of 1914, had similar provisions. The latter provided that customary laws applied in Native Courts must not be “opposed to natural morality and humanity.”\footnote{Native Court Ordinance, 1914, cited in Adewoye, \textit{The Judicial System in Southern Nigeria}, 208.} By the 1940s, the repugnancy had become enshrined in the legal system. The Nigerian \textit{Evidence Act} introduced in 1945 provided that a custom relied upon in any judicial proceedings, “shall not be enforced as law if it is contrary to public policy and not in accordance with natural justice, equity and good conscience.”\footnote{\textit{The Evidence Act}, Cap 62, \textit{Laws of Nigeria}, 1958, section 14(3).} The Supreme Court
Act of 1960 also has a provision enjoining the court to observe and enforce customary law subject to the repugnancy doctrine.\textsuperscript{45}

The idea behind the repugnancy doctrine, at least in principle, was to extend to the colony the same standards of law, rights and justice as prevailed in England. The doctrine was justified on the grounds that it would eradicate "barbarous", unfair or unjust customs. On the basis of the repugnancy doctrine, the colonial courts were able to whittle off rules of customary law that have been judged "uncivilized" or "inhuman," according to more "acceptable" British standards and values. One of the earliest and most prominent cases which applied the doctrine of repugnancy was the case of \textit{Eshugbayi Eleko V. The Officer Administering the Government of Nigeria}, in which one of the questions which arose for determination was whether the court could allow a milder version of an alleged custom that required the killing of a deposed chief.\textsuperscript{23} In rejecting this application, the Privy Council sitting in London, held that:

\begin{quote}
The court cannot itself transform a barbarous custom into a milder one ... If it still stands in its barbarous character, it must be rejected as repugnant to natural justice, equity and good conscience.\textsuperscript{24}
\end{quote}

\textsuperscript{45} \textit{The Supreme Court Act} No. 12 of 1960, section 16(3).

\textsuperscript{23} PRO CO/ 583/173/10, "Petition of H. Macaulay against expulsion of Eshugbaye Eleko" and CO 583/ 150/8, "Appeal to Privy Council by Eshugbaye Eleko."

\textsuperscript{24} Although the court made it clear that it was not its duty to transform "barbarous laws," it stated further that it was obliged to recognize and enforce changes in customary law brought about by social and political development. In the words of Lord Atkin, "Their Lordships entertained no doubt that the more barbarous customs of earlier days may under the influence of civilization become milder without lessening their essential character of custom. It would however, appear to be necessary to show that in their milder form, they are still recognised in the native community as custom, so as in that form to regulate the relations of the native community." See (1931), AC. 622 in O. Chukwura, \textit{Privy Council Judgements in Appeals from West Africa 1841 - 1073} (Lagos, 1979) 673 and 235.
This ruling is in many ways typical of colonial attitudes towards indigenous customary practices that did not conform to the applicable English legal standards. Once such customary traditions were labelled barbaric, they were rejected in their entirety. No allowance was made for their reform or modification within the colonial legal system. As Chanock has argued, many African practices failed the repugnancy test and British officials decided such cases on the basis of their own notions of “rights.” Even when local practices were not deemed repugnant, magistrates and judges often misunderstood indigenous law, upholding in the name of custom, practices that were not customary at all. The repugnancy doctrine coupled with the unfamiliarity of British officials with local property, labour, gender, and power relations created opportunities for litigants to present local customs as they wanted them to be.25

Contemporary scholars are divided in their appraisal of the repugnancy doctrine. While some have interpreted it as a ploy by the colonial regime to subjugate indigenous culture and customary rules to English law, others see it as a reformatory legal doctrine. The subjugation theorists argue that the repugnancy doctrine, for all practical purposes, meant the subordination of African law and traditions to the English model. They assert the inherent subjectivity in determining what is “repugnant to natural justice, equity and good conscience” by officials who were unfamiliar with local customs, in diverse multi-ethnic settings with varying perceptions of justice and morality.26 However, other scholars argue that the

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26 F. A Ajayi has described the repugnancy doctrine as an idealistic approach to judicial administration. He points out that colonial officials and judges were Englishmen born and bred in a different cultural milieu. In being called to upon to pronounce on the equity or otherwise of indigenous customary law, they inevitably brought their English background into play. Although he argues that the repugnancy
repugnancy doctrine is "a handmaiden for civilizing some of the obnoxious and barbarous customary rules." 27

Indeed, while it is true that the repugnancy doctrine tended to undermine indigenous customary law and perhaps even distort its development, it also reformed certain aspects of indigenous customary practices. For instance, it became a useful principle with which the colonial authorities, through the courts, abrogated customary rules relating to slavery, human sacrifice, trials by ordeal and even inheritance rights and child custody. 28 In this context, the repugnancy doctrine became an important part of the discussions about rights within the colonial legal system.

Colonial records and the Nigeria Law Reports are replete with cases where the repugnancy doctrine was applied. Perhaps the most controversial of these was the celebrated case of Ekpenyong Edet v. Nyson Essien heard in 1932. In this case, the court held that it was repugnant to natural justice and equity for a man to lay claim to the biological child of another man simply because his bride wealth on the woman


28 Discourses over such issues as inheritance rights, marriage, divorce and child custody within the context of the colonial legal system are discussed in greater detail in chapter six which deals with social rights.
bearing the child had not been repaid. Although heard in Calabar, this case generated extensive debates over paternity rights and the social order throughout the country, particularly in the Lagos newspaper press.

The facts of this case are instructive. At issue was whether the Defendant-Appellant could sustain his assertion of rights over the children of a woman to whom he had been married. The Appellant’s argued that he had a customary right over the children in question because he had not been reimbursed for his bride wealth as required by customary law. The grounds for this claim were based solely on custom. Marriages in the Ibibo-Efik tradition of the litigants, as with many other ethnic groups in Southern Nigeria, are solemnized through the payment of bride wealth. Generally, this payment creates significant proprietary interests, one of which gives the payer a superior claim over any child of the payee-bride. The custom assumes that it is irrelevant whether the bride wealth payer is the biological father. To circumvent this dilemma, the marriage had to be severed prior to the birth of a child through the repayment of the bride wealth. Because this had not been done, the Appellant claimed that legal right over the children in question. The court disagreed with this claim on the grounds that a custom which vests the paternity rights of a biological father on someone else is “repugnant.” By this verdict the colonial courts abrogated, on the

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29 NLR, 11, 1932, 43-50.

30 This customary practice was common to many African societies. In the patriarchal societies of the Zambian Copperbelt, father’s rights over children were secured by payment of lobola (bridewealth) to the wife’s family. See Jane Parpart, “Where is your Mother?: Gender, Urban Marriage, and Colonial Discourse on the Zambian Copperbelt, 1924-1945,” International Journal of African Historical Studies, 27, 2 (1994), 243.
basis of the repugnancy doctrine, a prevalent customary rule which privileged bride wealth payment as the crucial determinant of paternity.\textsuperscript{31}

What is significant about this case for the purpose of our discussion is the way in which the Defendant-Appellant, though his legal representatives, articulated his customary entitlements in the language of rights. The “Statement of Claims” filed by the Appellant contained several references to his “customary and traditional rights” over the child in question, which he prayed the court to uphold.\textsuperscript{32} While references to “rights” in such a document may be typical of the legal language of court affidavits, it also underscored an increasing tendency for Africans to use the language of rights when asserting their customary entitlements within the colonial legal system. Adewoye has explained this in terms of people becoming “more legal minded” in their inter-personal relations.\textsuperscript{33}

This case supports Chanock’s argument that the unfamiliarity of British officials with local property, gender, and power relations sometimes created opportunities for litigants in colonial courts to present local customs as they wanted them to be.\textsuperscript{34} One way of doing so was by articulating supposedly customary claims in the language of legal rights, to which the courts were more likely to pay attention. The general assumption was that the courts were more favourably disposed to upholding claims based on English-style legal rights than those based on customary tradition. It is arguable that under pre-colonial adjudicative systems, customary


\textsuperscript{32} NLR, 11, 1932 43-50.

\textsuperscript{33} Adewoye, \textit{The Judicial System in Southern Nigeria}, 205.

\textsuperscript{34} Chanock, “Laws and contexts,” \textit{Law in context}, 7, 2 (1989), 72
entitlements such as those over children in the case of *Edet v. Essien* were not conceived strictly in terms of enforceable legal rights as they later came to be argued in the colonial courts. In pre-colonial contexts, such claims may have been mediated by other social and moral considerations. This however is only conjectural. Although some suggestions have been made in this direction, the true position is one which only detailed research into pre-colonial social systems and notions of rights will reveal.\(^{35}\)

The case of *Edet v. Essien* generated a lot of debate over the effects of the colonial legal system on indigenous African regimes of rights and justice. Some sections of the Lagos press strongly criticized the verdict seeing it as yet another example of the "insensitivity of the [colonial] courts towards African social values and moral safeguards."\(^{36}\) Newspapers ran lengthy editorials criticizing the verdict and analysing its "disruptive" implications for African social traditions. Some colonial officials also quietly expressed reservations about court decisions that tended to abrogate, in one stroke, widely accepted and long-standing "native" customs.

In contrast other Africans, like the appellant in the case of *Edet v. Essien*, clearly welcomed the repugnancy doctrine and successfully used it to challenge

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\(^{35}\) Sociologists and ethnologists who have studied the social systems of communities in Western Nigeria have done some work in this direction. Recent research indicates that in the traditional social systems of the Ibibio, Efik and Ijaw of the Niger Delta, different kinds of marriages were recognised depending on the type of bride wealth that was paid. The payment of certain types of bride wealth conferred specific "social and legal rights" on the parties involved. This conferred membership of the husband's patrilineage on the wives. It also conferred the rights of "genetricem" (childbearing) and the rights of "uxorem" (sexual and house keeping). Some other forms of marriages did not confer these rights. The pioneering works of G. I. Jones, a government anthropologist who worked in the Eastern Provinces in the 1930s, have provided a foundation for more recent studies. See Oshomah Imoagene, *Peoples of the Cross River Valley and Eastern Delta* (Ibadan: New Era Publishers, 1993), 65-66 and G. I. Jones, *The Trading States of the Oil Rivers* (London: Oxford University Press, 1963), 52.

\(^{36}\) *Lagos Standard*, 15 March 1933.
upper-class African men and unfavourable customary practices. Most colonial officials also welcomed the verdict. To them, this was precisely the justification for the repugnancy doctrine – to whittle off "uncivilized" customary practices that violated individual rights and personal liberties. The case even formed the subject matter of a circular letter to all senior administrative officers in Southern Nigeria, advising that the court’s view should "guide them when dealing with cases of this kind." Ultimately, the repugnancy doctrine provided the colonial authorities with one of the most effective legal instruments for their agenda of the social reengineering of African societies under the rubric of promoting "native" rights and liberties.

4.4 Legal Codification and Debates over Rights

Legal codification and the use of laws as instruments of social control were particularly extensive in the early colonial period. Between 1900 and 1920, the government promulgated a wide range of ordinances and proclamations in Southern Nigeria to regulate almost every aspect of social and economic life. Indeed, one newspaper complained in 1911 that Southern Nigeria had become an "ordinance ridden colony." Colonial officials seem to have been driven by a belief that law was the most effective means of administrative control and maintaining social order. The quest to assert imperial political and economic control circumscribed some of the

37 NAI Ijebu Prof. 1, Circular letter from Secretary, Southern Provinces, 17 February 1938.

38 The Lagos Standard stated in 1910: "We wonder if there is any other British possession in any part of the world, where the inhabitants are surfeited with such a plethora of legislation as Southern Nigeria. If multiplying law has the effect of making people better, then the inhabitants of Southern Nigeria ought to be the most exemplary on the face of the globe; for scarcely a month passes without one, two, or three bills being introduced into the legislative council for passage into law." The Lagos Standard, 27 July 1910.
liberties Africans traditionally enjoyed even as it introduced new regimes of codified rights patterned along the British model. The doctrine of indirect rule; the arbitrary circumscription of the powers of traditional rulers; the creation of special courts to administer unwritten customary laws and administrative orders; the exercise of the powers of political detention and deportation; and the use of laws of sedition and censorship (framed more widely than in England), furthered British colonial hegemony but also had profound implications for the conditions of rights and liberties in the colony.

Legal codification redefined existing regimes of rights in two distinct ways. As we have seen in chapter three, some colonial laws such as those outlawing slavery, pawnship and ordeals, tended to empower previously marginalized groups thereby providing a new and more inclusive regime of individual rights. On the other hand, legislation introduced to promote social order and meet specific imperial objectives had the opposite effect. These laws tended to restrict existing regimes of individual and collective rights. For instance, the Vagrancy Ordinance of 1911 provided for the summary arrest of any “idle person” who, upon conviction, could be imprisoned for up to three months. The discussion in this chapter focuses on these latter types of

39 The British campaigned against ordeals as part of their effort to constrain parts of indigenous law they considered “repugnant.” The colonial attack on ordeals fundamentally influenced British thinking about the nature of African law. Ordeals, which had been common in Europe up to the thirteenth century, were believed to reflect an early and primitive phase in the evolution of law. To continue to permit ordeal even within the general orbit of customary law, argued British administrators and jurists, would be sanction a regressive and primitive kind of law. See Mann and Roberts, “Law in Colonial Africa,” 32.

40 The full title of this law was “An Ordinance to Provide for the Punishment of Idle and Disorderly Persons and Rogues and Vagabonds.” Under this law “idle persons” were liable to a maximum of three months imprisonment with hard labour. One of the definitions of an “idle person” in the ordinance was, “Every person wondering abroad or lodging in any barn or out house or in any deserted or unoccupied building or in the
legislation -- laws originally introduced to meet specific administrative exigencies but which subsequently generated concerns and debates about rights and liberties.

Typical of the laws introduced to further British administrative control were the special ordinances passed in 1912 by the administration of Governor Walter Egerton in Southern Nigeria. This series of coercive legislation included the Collective Punishment Ordinance, the Unsettled District Ordinance, the Peace Preservation Ordinance and the Deposed Chief Removal Ordinance. Designed primarily for British imperial administrative convenience, these ordinances significantly affected the rights and liberties of local peoples. Measured against the acclaimed English legal principles of "natural justice, equity and good conscience," the derogations from basic individual and communal rights, which these ordinances implied, become even more obvious. As we shall see in the following section, the consequences for peace and social order were also quite significant.

Interestingly, in their opposition to these coercive laws, African elites employed the same rhetoric of rights and liberties that the colonial authorities found so appealing in other contexts. However, the language of rights as employed by African elites who dominated public debates was not merely a form of oppositional discourse. As it was to the colonial authorities in rationalizing empire, the language of rights along with those of "self-determination" and "development" became powerful tools for the nationalist cause. Rights talk resonated not only in the tensions between colonizer and colonized but also in struggles among African elites. Rights language was deployed by the elites in internal class struggles for political dominance and to empower themselves over other elites. The following sections of this chapter examine some of the coercive colonial laws, the

open air, or under a tent or in any chart wagon, not having any visible means of subsistence, and not giving a good account of him or herself." Section 4 of the Vagrancy Ordinance, 1911.
circumstances that produced them and how the discussions about rights surrounding them were deployed by both colonizer and colonized for varied ends.

4.5 The Coercive Ordinances

In the period between 1912 and 1920, the Collective Punishment Ordinance had widespread impact on individual rights in the colony. Since most ordinances and proclamations were introduced mainly to aid British administrative control, the colonial regime, especially in the earlier years of colonial rule, found it unnecessary to distinguish between individual and collective responsibility for crimes and misdemeanours. By the provisions of the Collective Punishment Ordinance, the government legalized the practice — already widespread in the colony — where such offences as murder and arson were treated as the collective crimes of the entire community when individual offenders could not be identified or apprehended.⁴¹ Under this law colonial officials could impose fines on towns, villages and other communities for homicide and other crimes necessitating the use of soldiers or police. Although the Governor was obliged to conduct an inquiry before imposing collective punishments and to report them to the Secretary of State for Colonies, local officials sometimes administered collective punishments arbitrarily and such cases were rarely reported. The law also disallowed legal appeals against orders made under this ordinance, thereby ousting the jurisdiction of both the colonial District and Native Courts from entertaining any litigation arising from its provisions.⁴²

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⁴¹ NAI CSO 1/19/47, Governor Egerton to Colonial Office, 24 February 1912.

⁴² Collective Punishment Ordinance (No. 67, 1912), 8 February 1912.
Colonial officials justified the collective punishment law on the grounds that it was founded on existing local African traditions of collective rights and communal responsibilities.\textsuperscript{43} "The idea of the whole family suffering for the crime of one of its members," noted a British colonial official, "was probably the strongest deterrent in native communities."\textsuperscript{44} However, in spite of attempts to rationalize the practice, its implications for individual rights and social justice were neither lost on colonial officials nor the local people. The practice of punishing whole villages for the isolated offences of individuals acting alone, and the outright denial of any form of legal redress against such punishments, clearly contradicted the English common law principle of individual responsibility for criminal liability – a principle that was assumed to be applicable to colonial subjects by virtue of the extension of the English legal system to the colony. Here, as in other aspects of the colonial legal system, African "subjects" in the colony were subjected to the same lower standard of English law as "protected persons" in the protectorates even though in theory, "subjects" were entitled to the same rights as Englishmen.

Colonial records, particularly the Native Court records and the annual reports of the police department, are replete with cases of collective punishment administered under the \textit{Collective Punishment Ordinance}. For colonial officials, the ordinance

\textsuperscript{43} Colonial officials were often eager to stress that collective responsibility was central to traditional social systems. One official memorandum stated that in civil disputes, members of a family had to ensure the attendance of one of their member who had a case to answer at the village court. If he absconded from the community, members of the family, including the extended family, could be called upon to pay any fines or damages that might be incurred. A creditor who failed to recover money from a debtor could go to the compound of any of his debtor's relatives and capture goats or any other valuable property equivalent to or exceeding the value of the debt. NAI CSO 1/19. XXX Egerton to Crewe, 6 June 1910, enclosure entitled "The Laws and Customs of the Yoruba Country," cited in Adewoye, \textit{The Judicial System in Southern Nigeria}, 7. Also see Ijebu Prof. 4/ 1.69, Ijebu Native Laws and Custom.

\textsuperscript{44} NAI CSO 26/3 28360, "Intelligence Report on Ogidi and Abacha Villages
provided an effective way for checking rising incidents of crime and social banditry as well as for dealing with conflicts between communities. In the most troubled villages, judicial proceedings were held under the Collective Punishment Ordinance. Fines in cash, produce and labour were levied and communities were forced to construct roads as punishment.\textsuperscript{45} Local chiefs and village heads were required to facilitate the collection of group fines or coordinate the undertaking of collective labour imposed on communities as punishment under the ordinance. In one case the entire inhabitants of Evureni in Warri Province were punished through compulsory fines and labour for social disturbances there in 1925.\textsuperscript{46} Affrays between the people “dwelling in the borders of Ilorin Ondo Province” in the late 1920s were also punished under the Collective Punishment Ordinance.\textsuperscript{47}

This ordinance appealed to the colonial government because of its administrative convenience. Reporting on the application of the Collective Punishment Ordinance to the disturbed areas of Owerri and Okigwe districts in 1912, Provincial Commissioner H. Bedwell noted that the “truculent” Oguta people who had consistently refused to carry government luggage and clean roads with compulsory labour had been “a thorn in the side of the local administration.” As fines were not effective, Bedwell instructed the District Commissioner at Oguta to “sit down in the town with escorts at the expense of the town until such a time as the


\textsuperscript{46} War. Prof. 3/10 18/28: Collective Punishment on Evureni.

\textsuperscript{47} PRO CO 657/ 14.
people came to their senses.\textsuperscript{48} Mandatory collective fines and labour were subsequently imposed on Oguta. For affected communities, such punishments sometimes generated social tension leading to further conflicts and police interventions. In the case of Ochima for instance, a group of youths refused to pay their part of the collective fines because they claimed that the local chief was protecting the known culprits and had refused to bring them forward for individual punishment.\textsuperscript{49} These cases contradict the argument by some scholars that the British-established courts and legal system were concerned only with the individual in so far as his or her acts or omissions were called in question in particular cases.\textsuperscript{50} If anything, the application of the \textit{Collective Punishment Ordinance} shows that British officials did not hesitate to jettison the principle of individual responsibility central to English law for the sake of administrative exigencies.

\textit{The Unsettled District Ordinance} of 1912 had similar implications. Under the provisions of this ordinance, the colonial government reserved for itself the powers to arrest and punish persons charged with being of "undesirable character and reputation" although no specific criteria for being undesirable were spelt out.\textsuperscript{51} That decision lay entirely at the discretion of each administrative officer. Such wide and unquestioned discretionary power in the hands of local colonial administrators was a prescription for abuse. Given the type of cases that were subsequently dealt with under this ordinance, it became obvious that the \textit{Unsettled District Ordinance} was

\textsuperscript{48} Colonial Secretary's Office (CSO) 1/19/50, Cameron to Colonial Office. 23 July 1912 quoted in Tamuno, \textit{The Evolution of the Nigerian State}, 46.

\textsuperscript{49} PRO CO 657/ 12, Annual Administrative Report of the Police Department, 1924.

\textsuperscript{50} Adewoye, \textit{The Judicial System in Southern Nigeria}, 207.

\textsuperscript{51} The Unsettled District Ordinance (No. 15) of 1912, 4 June 1912.
aimed against the activities of the educated African elites, especially the new class of African lawyers who were wont to engage the colonial administration in disputes and litigations over land and commerce. In the words of one colonial report, the ordinance was aimed at getting rid of “objectionable persons trading in the unsettled districts of the interior.” Governor Walter Egerton specifically made it clear that the ordinance was particularly desired to prohibit from all unsettled districts, such “aliens” as the “black lawyer” and the “Lagos agitator.”

*The Unsettled District Ordinance* made it possible for parts of Southern Nigeria to be declared Unsettled Districts in 1913. Thereafter, the government had the power to prohibit any “non natives” or “aliens” from entering or re-entering the districts. The penalties for breach included a fine, imprisonment or deportation. The *Unsettled District Ordinance* effectively constrained local African enterprise and political activism through restrictions on free movement and expression. This particularly affected the growing class of educated Africans in Lagos, Calabar and other urban centres in Southern Nigeria where the colonial authorities encountered the stiffest opposition.

Like the *Unsettled District Ordinance*, the *Peace Preservation Ordinance* gave the Governor powers to declare any part of the Eastern and Central Provinces of Nigeria a “disturbed district.” Following such a declaration, people in the affected areas could be arbitrarily searched and arrested with or without a warrant, for possessing arms and ammunitions. Within a “disturbed or unsettled district,” the district commissioner exercised almost unlimited powers. He could detain any person

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52 An elaboration of the official thinking that informed the enactment of this ordinance is provided in PRO CO 583/3, “Acts of Southern Nigeria 1908-1920.”

53 NAI CSO 1/19/47, Governor Egerton to Colonial Office, 24 February 1912.
involved in a civil disturbance for one year and impose fines of up to £1000 on anyone involved in a civil disturbance.  

These coercive ordinances targeted not only educated African elites but also some of the more influential traditional African rulers from whom the colonial authorities could expect serious opposition. The laws that dealt with such sensitive political matters were absolute and authoritarian in their construction and clearly contradicted the rhetoric of “native” rights and liberties that dominated colonial legal discourse. The Deposed Chiefs Removal Ordinance of 1917 (amended in 1925) and the Deportation Ordinance of 1939, for example, authorized the Governor to order that any deposed chief should “leave the area over which he exercised jurisdiction or influence and other specified parts of Nigeria.” In fact, these ordinances merely gave a stamp of legality to what had become a common practice of the colonial government in its dealings with uncooperative and recalcitrant Africans.

The Deposed Chiefs Removal Ordinance punished chiefs and village headmen who disobeyed administrative orders with imprisonment and subsequent deposition to wherever the governor wished. Because these orders could not be appealed, they became instruments for the colonial authority to foster indirect rule and consolidate administrative control over many parts of Nigeria. These ordinances provided the basis for the deposition of Mohammed Yaji, the serki of Madagali District of

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54 See Section 3 and 4 of the Peace Preservation Ordinance (No. 14 of 1912). This was later amended by the Peace Preservation (Amendment) Ordinance (No. 31 of 1912).

55 PRO CO 657/14. The Deposed Chiefs Removal Ordinance (No. 4) of 1925. The full title of the ordinance read: “An Ordinance to make provision for the removal of deposed chiefs and native officials from the area of their former jurisdiction or influence and to validate the removal of certain chiefs and headmen and to provide for their detention at the places to which they have been removed.”
Adamawa Province in 1929 and the celebrated case of Prince Eshugbayi Eleko, the head of the House of Docemo in Lagos in the 1917.\textsuperscript{56} These coercive laws soon became the focus of attack by African critics of the colonial regime. They were seen as patent infringements of the rights and liberties of Africans. Driven by intense dislike of the indirect rule system and the Native Authorities established by the colonial administration, these ordinances became the focal points of elite demands for government reform. One newspaper called for a repeal of the Deportation Ordinance because “its provisions are capable of being used to jeopardise the liberty of any person who is a marked man in any section of Nigeria.”\textsuperscript{57}

The \textit{Deposition of Chief Ordinance} was particularly attacked by educated elites because of the limitations and distortions, which, in their view, it imposed on the political rights of traditional African rulers and institutions of governance. Local opposition against the ordinance stemmed specifically from the all-embracing manner in which it was written, which conveyed the impression that the governor had the powers of an absolute dictator \textit{vis-a-vis} the chiefs.\textsuperscript{58} The educated Africans cited the ordinance as proof that the whole Native Authority system, and indeed, indirect rule

\textsuperscript{56} The story of the turbulent power tussle between the colonial government and Eshugbayi Eleko, traditional ruler of Lagos has been described as one of the most hard fought battles in Nigerian legal history. The case dragged on to the Privy Council in the 1930s. For a full treatment of this case see Adewoye, \textit{The Judicial System in Southern Nigeria}, 261-263; Margery Perham, \textit{Native Administration in Nigeria} (London & New York: Oxford University Press, 1962), 264-70; NLR 6, 73; NLR 8, 1; A.C (1931), 662. Also see PRO CO 583/150/8, Appeal to Privy Council by Eshugbayi Eleko.

\textsuperscript{57} \textit{West African Pilot}, 16 February 1939.

was a sham in which the chiefs did not truly represent the people, but merely acted as
servants of the government.

Concerns about the implications of the *Chiefs Deposition Ordinance* on the
rights of local people were also voiced at the House of Commons in London. At a
Question and Answer session of the House on November 5, 1930, Member of
Parliament Holford Knight asked the Under Secretary of State for Colonies, Mr. Lunn
if the Deposition of Chiefs Ordinance enacted by the government in Nigeria provided
for “a right of appeal against the orders.” Lunn evaded the question asking his
“honourable friend to put that question down.”

What made the Deposition of Chiefs particularly controversial was an earlier
case in 1917 in which the colonial government summarily deposed Prince Eleko of
Lagos. The colonial government had accused Prince Eleko of complicity in the public
agitation against the proposed water rate tax in Lagos. He was specifically accused of
refusing to carry out a government directive to call off their protest. The Lagos press
rallied in support of Prince Eleko opposing what they considered an unfair and
unjustified treatment of the traditional ruler. The *Lagos Weekly Record* declared its
“sworn intention to take up the cudgels on behalf of Prince Eleko and his Chiefs and
to prove their actions rights and defensible.” The paper argued that by refusing to
obey a colonial order that was clearly detrimental to the interest of his people, Prince
Eleko was discharging his proper traditional duties of protecting the welfare of his
people. The government’s decision to depose him for doing this was therefore not
only contravened the Princes’ traditional political rights but also those of his people.

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59 *West Africa*, 8 November 1930, 1590.

60 *Lagos Weekly Record*, 18 and 23 August 1917.
The concern was that the Deposition of Chiefs Ordinance would legalize such arbitrary deposition of local chiefs.

Paradoxically however, while African elites were quick to denounce laws like the *Deposition of Chief Ordinance* as infringements on the political rights of traditional rulers, they were, themselves, unwilling to be subjected to the authority of the traditional rulers whose political rights they sought to protect. For instance, in 1906 the colonial government passed the *Native Court Proclamation* in the East and Central Provinces which extended the powers of Native Courts headed by local chiefs to include jurisdiction over cases involving “native foreigners.” These “native foreigners,” who included returnee slaves. Liberian and Sierra Leonean émigrés, constituted the bulk of the new class of educated Africans elites. These elites forcefully opposed being under the jurisdiction of the Native Courts. About 200 of them petitioned the Secretary of State in London praying that they be excluded from the provisions of the Native Court Proclamation.61

Elites criticism was based on two principal grounds. First, they contended that the African laws and customs that would apply to them under native law were uncertain and unwritten; that the members of the Native Courts were illiterate; and that there were serious differences in language and beliefs between them and the “aboriginal natives.” Secondly, they held that in the Native Courts, litigants generally had no right of choosing the court members who decided their cases. They argued that the court members took no legal oaths and as such, they feared the development of irregular proceedings.62 In short, they argued that the authority of the Native Courts


would violate their rights. This was part of the intra-African struggle by local elites to consolidate the powers of their spheres using the language of rights.

Similarly, although most of the educated Africans in Lagos supported the system of Native Administration in the provinces, they strongly objected to colonial attempts to extend the system to their domain in Lagos on the grounds that this would interfere with their rights as “British subjects.” But ironically, at the same time, Lagos barristers were protesting their exclusion as counsels from the Native Court system as a restriction on their rights to practice their professions. It would seem the elites wanted the best of both worlds. They did not want to be subjected to the “Native” authority of traditional chiefs (whose political rights they often championed) on the grounds that it would interfere with their rights as British subjects. Yet, they demanded their “right” as Africans to participate in running this “Native” administration. We see at play here three levels of rights discourses deployed by the elites – first, the talk concerning the political rights of chiefly authorities; second, the talk about their rights as British subjects and third, the talk about their right to participation as Africans. Thus, the language of rights which the educated elites employed in opposing the colonial state and advocating for the political rights of traditional rulers was also easily deployed to promote their own class interests where they conflicted with those of other elites.

This paradox was not restricted to the rights discourse. As Philip Zachernuk points out, the educated community in Nigeria stood between the two worlds of European and African culture, seeking to define itself within an emergent Nigerian

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63 Lagos Weekly Record, 20 October 1916. See the subsection on “Indirect Rule and Native Administration” in chapter three.

society. Nigerian elites were not intent on reproducing Victorian society but on using its discourses to meet their own ends. They were operating in a very competitive society where variable identities could be useful. For instance, when politicking in Lagos or London, an elite Lagosian might invoke his rights as a "subject of her Britannic majesty" and be very English. Yet, when settling family disputes or politicking in the village, the same person might appeal to "customary rights" and be more Yoruba. The early intelligentsia thus attempted to adapt European discourses in and about Africa to their needs, to render from imposed categories something more suited to their medial position between imperial discourse and African realities. Their use of the rights discourse was one example of this.

Colonial responses to African rights-based demands were more conciliatory than defiant. The attacks by African elites on the coercive ordinances put pressure on colonial officials to defend these laws. Their defence centred on the familiar argument that measures such as the coercive ordinances were not the goal of British control over southern Nigeria, but only a means to an end. Many official explanations echoed earlier arguments advanced by Lord Chamberlain, a former British Secretary of State for colonies, to justify the spate of British military expeditions in West Africa. "You can not have omelette without breaking eggs," he had argued. "You cannot destroy the practices of barbarism, of slavery, of superstition which for centuries have desolated Africa without the use of force." The coercive ordinances were conceived

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and implemented as extensions of the force necessary for colonial pacification and social reordering. However, members of the new class of educated African elites and critics of the colonial regime in the metropole queried the rationale of "breaking African eggs to make British omelette."\textsuperscript{68} The educated Africans relentlessly criticized these coercive laws and their implications for the basic rights and liberties of Africans. One of the most controversial fronts of this engagement was about the legislation restricting press freedom.

4.6 Press Restrictions: The Seditious Offences Ordinance

From as early as 1900, a vigorous and articulate class of educated Africans had established control of the local newspaper press. These Africans, mainly immigrants from along the West African coast, wielded considerable influence in the country particularly in the growing urban and commercial centres of Lagos, Calabar and Abeokuta. By the 1930s, this group of educated Africans, mostly lawyers and doctors, had their ranks swelled by traders, skilled artisans and other products of the missionary schools that proliferated in Southern Nigeria. For these Africans with some western education, the local newspaper press provided a means of voicing their opposition to the excesses of the colonial government and advancing the nationalist cause.\textsuperscript{69}

\textsuperscript{68} Tamuno, \textit{The Evolution of the Nigerian State}, 48.

The most outstanding of these nationalist-oriented newspapers, published between 1900 and 1930, included the Lagos Times, The Lagos Weekly Record, The Nigerian Pioneer, African Challenger, The Lagos Observer and The Lagos Echo. Of these, perhaps the most influential was the Lagos Weekly Echo, which was published by Liberian immigrant, John Payne Jackson. The Lagos Weekly Record was also a determined agent in the propagation of nationalist consciousness. The major issues that attracted the paper’s comments however, were those that directly affected the elite – issues such as the discrimination against Africans in the civil service, demands for more African representation in the administration of the country and the campaign for the civil and political rights of Africans.

In the early period of colonial rule, the press often supported the British administration. Many people working in the Lagos newspaper business believed that British intervention would bring significant advantage for local peoples, particularly in arbitrating the inter-group conflicts that had ravaged Yorubaland. They wanted British influence in Yorubaland to increase, believing that it would be a factor for permanent peace, as well as creating the conditions for the promotion of Christianity and Western civilization in Yorubaland. Being products of missionary education themselves, these views reflected the outlook of the educated elites who controlled the press and their aspirations for enlightened government in Nigeria. These aspirations often dovetailed with those of colonial officials. Although they occasionally challenged colonial policies, the early newspapers were almost unanimous in the opinion that British rule was a harbinger of civilization and modernization for the colony. Early newspapers like the Observer, Lagos Times and the Lagos Weekly Record, actively advocated the expansion of British influence in Nigeria. In 1884, the
Observer assured the British government that the “brethren on the mainland” would readily welcome their intervention.⁷⁰

There was also the prevalent belief that, on the whole, the British fared significantly better in protecting “native” rights and liberties than other colonial regimes in Africa. Contrasting British colonial administration in Nigeria with the “tyranny” of the French in Porto Novo and the Germans in East Africa, the Lagos Weekly Record editorialised:

The English are acknowledged to be the best colonizers and the secret of their success lies in the great consideration invariably shown by them to the people, whom they undertake to govern, affording them at the onset the full liberties and privileges of British subjects.⁷¹

By the 1900s however, the placid mood of the late nineteenth century suddenly gave way to an eruption of scathing attacks. A number of factors may explain this shift. In the first place, the cultural and anti-imperialist emphasis of the 1890s had resolved itself into more practical political agitation by the end of the century. Secondly, the new critical temper was an expression of the sense of frustration experienced by the educated elites in their relationship with the colonial government. The awakening anti-British mood was aggravated by the other social and economic results of British rule.⁷²

Between 1910 and the outbreak of the First World War, the Nigerian press, particularly in Lagos colony, displayed an unprecedented hostility towards the colonial government. Although these newspapers enjoyed a limited readership, largely

⁷⁰ Observer, 28 February, 24 April, 25 September 1884, cited in Omu, Press and Politics in Nigeria, 120.

⁷¹ Lagos Weekly Record, 12 September 1891. Other newspapers shared these views. The Standard remarked in 1899: “As British subjects we have ever found British rule the least irksome compared to other colonies.” The Standard 5 January 1899

⁷² Omu, Press and Politics in Nigeria, 132-133.
in urban centres like Lagos, Abeokuta and Calabar, they exerted considerable influence on the policies of the colonial government and the attitudes of the growing class of literate Nigerians.\(^{73}\) As Omu points out, by the 1920s, the Lagos press seemed prepared to fit into a new role as the “guardians of the rights and liberties of the people, as well as the interpreter of their ideals and aspirations.”\(^{74}\) The tension and hostility between the Lagos press and the colonial administration went beyond the general demands for representation in government and self rule. It was also founded on the revulsion of the educated elites (who controlled the press), at their exclusion from government and the colonial policy of dealing with traditional rulers, rather than them, as agents in the Native Authority and indirect rule systems.\(^{75}\)

As it turned out, the contempt for the colonial administration that the newspapers demonstrated was matched by the administration’s derision and hostility towards the press in particular, and the elites in general. Although the attacks by the press never really posed a serious threat to the government, the colonial government

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\(^{73}\) In a letter to *The Lagos Standard* in 1910, the influential intellectual and Pan-Africanist, Edward Blyden acknowledged the “positive influence” which the Lagos press had on raising the political awareness of the “natives” He praised of the “intelligence, enterprise and energy of the Lagos Newspapers.” *The Lagos Standard*, 13 July 1910. The influence of the press on the political debates in the colonial period is discussed in grater detail in chapter 6.

\(^{74}\) Omu, *Press and Politics in Nigeria*, 166.

\(^{75}\) In an editorial which captured this stance of the educated elites, the *West African Pilot* commented in 1939: “By way of making improvements [to the Native Administration], we humbly suggest that the Obas and Chiefs who head the Native Administration be chosen from the literate population wherever and whenever possible; younger men should be added to the Councils so that improvements may be made on modern lines; men trained in legal technicalities should be engaged in the Native Courts as clerks, interpreters, etc… With such improvements, the system will be more successful in future. *West African Pilot*, 3 May 1939, 4.
realized early enough that such open attacks had the potential of stirring popular resentment and agitation that could threaten British control.

Government's concern and the exasperation of colonial officials about press attacks was aptly reflected in Governor Arthur Richards' speech to the Legislative Council in 1945 where he stated: "Our press is free -- free to abuse, to sabotage effect, to kill enthusiasm, to impute bad motives and dishonesty, to poison the springs of goodwill and foul the well of trust, to impregnate the body politic with envy, hatred and malice - in short, free to do the Devil's work."76 The newspaper's hostility towards the colonial administration was also evident to an English journalist who, after a visit to Nigeria in 1945 wrote of a "revolutionary native press, which quite seriously threatens the stability of this part of the empire."77

Under these circumstances, colonial officials found themselves in a dilemma - whether to suppress the press and incur the odium of attacking the British ideal of press freedom and the right to free speech, or allow unrestrained criticism and ruthlessly deal with the resultant agitation. The dangers of working against the declared ideals of free speech and press freedom were real. The notion of free speech had, by the dawn of the colonial era, been firmly entrenched in British political and legal traditions that were presumably extended to its subjects in the colony. The idea was prevalent within colonial officialdom that liberty was the source of England's greatness and that a free press was the most valuable of British privileges. These ideas, which were reinforced by the averments of eighteenth century British liberal

76 Legislative Council Debates, 18th March 1946.

intellectuals, were cited by both Africans and liberal politicians in Britain, in support of press freedom in Nigeria.\textsuperscript{78}

An important consideration that guided colonial officials on the spot in their cautious handling of the press was the ever-present concern about protecting the "good name of His Majesty's government in the colony."\textsuperscript{79} In several memoranda to local administrative officers Governor Donald Cameron, like his predecessors, reminded them that in their dealings with the press, they should ensure that they do nothing to "damage and bring into disrepute, the good name of British administration in Africa."\textsuperscript{80} Apart from the belief that a free press was necessary to achieve a "civilized" society in the colony, there was the more pragmatic viewpoint, even within official colonial circles, which saw the activities of the press not merely as a threat to the government, but as one official put it, "a permissible outlet for the inevitable fumes of discontent."\textsuperscript{81} Press freedom, it was argued, would "afford vent for the escape of the effervescence of the feelings [of the educated Africans], which if kept continually smothered, might develop into violent outbursts."\textsuperscript{82} But although the colonial administration was cautious in its handling of the press and keen to protect its

\textsuperscript{78} The famous declaration of The Times of London in 1858 became an article of faith for advocates of press freedom both in the metropole and the colony: "Liberty of thought and speech is the air which an Englishman breathes from his birth; he could not understand living in another atmosphere. Nor when you once allow this liberty can you restrict the range of its subjects. Cited in Omu, Press and Politics in Nigeria, 171-172.

\textsuperscript{79} PRO CO 583/183/3. Proposals for the Review of the Native Authority Ordinance, 1932

\textsuperscript{80} See for instance, PRO CO 583/183/3, Memorandum from Governor Donald Cameron to District Administrative Officers

\textsuperscript{81} Quoted in the Lagos Weekly Record, 25 April, 1903

\textsuperscript{82} Lagos Weekly Record, 25 April, 1903.
“good name,” it was increasingly confronted with the challenge of maintaining a balance between upholding the ideal of free speech and accommodating the relentless attacks from the Nigerian press.

One official response to the challenge of press antagonism was the enactment in 1909 of two laws, which outlined the government’s strategies for curtailing the activities of the press. These were the *Newspaper Ordinance of 1903* and the *Seditious Offences Ordinance of 1909*. Although both laws were conceived as early as 1880s, their promulgation was delayed because of the initial reluctance of the Colonial Office to approve them. While these Ordinances did not seek outright censorship of the local press, they were intended to impose restrictions and strict regulations that would ultimately curtail its activities.

In seeking the Colonial Office’s approval to restrict press freedom in the colony, Frederick Lugard as High Commissioner argued that the “unrestrained licence” which the press enjoyed, undermined the government’s authority and had increasingly negative impacts on public order.\(^{83}\) The local newspaper press, he argued, had become too militant to be tolerated and that “every week, scurrilous articles full of abuse for the King’s local representative were published.”\(^{84}\) The *Seditious Offences Ordinance* was expected to check this trend. While the colonial administration sought to justify the enactment of the ordinance as an attempt to check libellous publications, local opponents of the censorship law argued that it was unnecessary because actual cases of libel in the colony had been rare. They argued that the real object of the ordinance was to restrict press freedom and limit the right to free speech. In a petition to the Governor William MacGregor against the

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\(^{83}\) PRO CO 586/17/301/39. Lugard to Harcourt, 12 August 1914.

\(^{84}\) PRO CO 586/17/301/39.
promulgation of the ordinance, the proprietors of the Lagos newspaper press led by
J.P.L Davis and Dr. J. Randle argued:

In a country like this which is a British colony and where there is no
representation of the people in the administration, the press is the
principal institution by means of which they are enabled to publicly
express their opinions and grievances...This provision, your petitioners
consider a restraint without any reason on public liberty.85

Similarly, the Lagos Weekly Record, objecting to the ordinance, described it as
"a measure calculated to militate in no small degree against the people's interests and
rights."86 The Lagos Standard editorialized that the law was intended to gag the press
and so to deprive the people of their right of crying out against any grievance through
the medium of the press.87 Opposition to the proposed Newspaper Ordinance was also
expressed in the British Press. In an editorial in 1902, the London Morning Leader
denounced the law as a "restriction and coercion of the press." It noted that a similar
British law, the Act of George III, which required British newspapers to provide
sureties of good behaviour, had been considered obsolete and repealed in 1869. It
argued that if such restrictive laws had been found unacceptable in Britain itself, there
was no justification for introducing it in a British colony.88

85 Lagos Standard, 21 May 1902.
86 Lagos Weekly Record, 14 February 1903. My emphasis.
87 Interestingly, the Lagos Standard also saw the law in terms of class inequality.
"Not the least objectionable to the Newspaper Ordinance is that it involves the vicious
principle of class legislation, in that it makes an unjust discrimination against a small
and in number weak class of citizens, in favour of a large and powerful majority." See
Lagos Standard, 11 February 1903 and Lagos Standard, 10 June 1903.
88 Quoting the poet Hosea Biglow, the newspaper cautioned that the introduction of
such restrictive laws in Nigeria also indirectly posed a threat to press freedom in
Britain: "Chaps that make black slaves o' niggers/ Want to make white slaves o' you." London Morning Leader, 6 June 1902, 8.
Opposition against the Seditious Offences Ordinance was not limited to the press. The elites who controlled the Lagos press made concerted efforts to mobilize public opinion, even among the illiterate masses, in what was mainly an elite cause. On the November 6, 1909 a mass meeting was held in Lagos at the instance of the newspaper proprietor Dr. John Randle. The meeting brought together thousands of Lagosians including market women, railway workers, self-employed artisans and youths. A Yoruba translation of the ordinance was read to the gathering and the deliberations at the meeting were fully translated into Yoruba. Addressing the meeting, Dr. Randle urged “the illiterate members of the community” to freely express their opinions on the subject so that those who were literate could incorporate both views and make a common representation to the government.\textsuperscript{89} Several speakers at the meeting, including market women and labour union leaders, expressed their opposition.

What is significant here is the attempt by the elites in the Lagos press to mobilize the support of ordinary people, who had no direct stake in the matter, against a sedition bill. It was important for the elites to cultivate mass support in order to legitimize their opposition to the bill. They presented the Seditious Offences bill not just as an attack on the press but on the freedoms and liberties of all Nigerians. The \textit{Lagos Standard} appealed that “no stone must be left unturned in the effort to avert the most dreadful catastrophe that has ever befallen a people.”\textsuperscript{90} In his speech at the mass meeting, Dr. Randle used the imagery of slavery to stir popular opposition to the law:

[The Sedition Ordinance] is a cruel libel on the integrity of the people of this colony to the British crown ... It will open the floodgate of intrigue by evil disposed persons [sic] to degrade and demoralize our

\textsuperscript{89} \textit{The Lagos Standard}, 17 November 1909, 5.

\textsuperscript{90} \textit{The Lagos Standard}, 29 September 1909, 5.
country...The only effect will be to gag the press and muzzle individuals against a fair and just criticism and *bind* the whole of the Native populations of Southern Nigeria *hand and foot*, destroying their liberties of free speech and *placing chains on their mind* and so hand them over to the despotic tyranny of the British proconsuls.  

One significance of the elite effort to mobilize mass support against the Seditious Offences law to Nigerian colonial history is that it challenges the argument by some scholars that until the nationalist movements on the 1940s, Nigerian elites where largely detached from the masses or at best tenuously engaged with them. It also challenges the assumption that the early educated elites constituted an exclusive community that stood apart from the illiterate masses around them. If anything, the evidence here suggests that the educated elite did, at certain points, find the illiterate masses indispensable allies in their confrontations with the colonial state. In this case, as in other situations, the defence of local interest led to the creative alliance of the educated and other groups and the creative synthesis of their ideal and methods.

However, in spite of these and similar voices of opposition from the Nigerian representatives at the colonial Legislative Council and the proprietors of the Lagos newspapers, Governor MacGregor passed the Newspaper Ordinance as law in October 1903, placing a number of restrictions and administrative regulations on the publication of newspapers. This included a £250 “libel bond” which was prescribed as condition for publishing a newspaper in the colony. Since many of the early newspapers were small, privately run businesses with a limited capital base, the law

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92 See for instance, the argument of E. A. Ayandele that the educated Nigerian elite in the colonial period were “deluded hybrids” who were “mentally enslaved” to foreign ideas and detached from their past and the realities of their circumstances. E. A. Ayandele, *The Educated Elite in Nigerian Society* (Ibadan: IUP, 1974). This view has however been disputed. For a forceful rebuttal see Zachernuk, *Colonial Subjects*, 5-7.

made the newspaper business that had thrived in Lagos more expensive and effectively checked the tendency towards the proliferation of newspapers. The Acting Chief Justice of the colony, E.A. Speed, subsequently justified the new ordinance during the Legislative Council debates, on the grounds that "it is rare to find an absolutely free press anywhere in the world."\textsuperscript{94}

Like the \textit{Newspaper Ordinance}, the \textit{Seditious Offences Ordinance} was aimed at protecting government officers generally from public criticism. Its promulgation was informed mainly by the growing concerns for public order and social stability by the colonial administration. In making his case to the Colonial Office for a new law relating to "seditious publications, unlawful assemblies and resistance to civil power," Governor Egerton argued the need to punish publications designed to "inflame an excitable and ignorant populace, the bulk of whom are under the control of Headmen and Chiefs who themselves have only recently emerged from barbarism and the old traditions of their race."\textsuperscript{95} The \textit{Seditious Offences Ordinance} which was subsequently promulgated, was based on the Indian Penal Code and, like the \textit{Newspaper Ordinance}, was strongly opposed by African elites who questioned the appropriateness of applying an Indian colonial law to Southern Nigeria. Criticism against the ordinance also erupted in the British parliament where some Members of Parliament described the law as unsuitable and inappropriate.\textsuperscript{96} Concerted opposition

\textsuperscript{94} NAI CSO 7/ 1/14. Legislative Council Debates, 8 June 1903.

\textsuperscript{95} PRO CO 520/50, Egerton to Elgin, 2 December 1907.

\textsuperscript{96} The issue of press censorship in the colony of Lagos often arose in the questions raised in the floor of the House of Commons between 1903 and 1919. PRO CO 583/183/18.
against the *Seditious Offences Ordinance* reached a climax in 1909 with a series of public demonstrations in Lagos.

Opposition against the *Seditious Offences Ordinance* was however still being voiced well into the 1920s and 1930s. Similar concerns about press freedom were raised during the Second World War and the years leading up to it when the colonial government introduced wider press censorship ostensibly for security reasons. The nationalist and pro-independence fervour of the late 1940s and 1950s brought the press into further conflict with the government. In July 1945, two Lagos newspapers, *The West African Pilot*, owned and edited by the nationalist politician Nnamdi Azikiwe and the *Daily Comet* were banned by the government for “misrepresenting” facts relating to the general strike of June 1945. The government also subsequently refused to renew Azikiwe’s wireless license.97 Apart from these and other isolated incidents, the *Seditious Offences Ordinance* did not achieve much in practical terms. Exposed to the fire of public criticism and protestations both in the colony and in London, Governor Egerton (like MacGregor, in the case of the *Newspaper Ordinance*) was cautious in enforcing it. In fact, the period between the introduction of the Ordinance in 1909 up to 1945 passed without any serious allegation of or punishment for sedition. However, armed with press censorship and sedition laws, colonial officials successfully arrogated to themselves extensive legal powers to deal with perceived threats to law and order. On the other hand, these restrictive laws provided grounds for nationalist attacks on the government and provoked debates, not only about press freedom, but also generally about the limitations on rights and liberties in the colonial state.

97 J. S Coleman, *Background to Nationalism*, 286
4.7 Individual Rights and the Colonial Judicial System

As with the introduction of colonial laws, the aspiration towards protecting individual rights dominated official rhetoric about the administration of justice in Nigeria. Colonial courts were expected to serve no lesser function than the courts in England. Two primary tenets of English common law were expected to guide the operation of the courts in the colony - *Nemo judex in causa sua* (the equal treatment of all persons before the law) and *audi alteram partem* (the guarantee that all parties will be heard fairly). Status differences were not to affect the outcome of legal decisions and the purpose of the colonial courts was to deal with cases of conflicts with clear-cut rights and duties established by objective investigation of only those events deemed relevant to the pending case. Strict rules of evidence were to restrict the content of testimony that the courts could hear. Cases were to be treated as involving a right and a wrong with judges making final decisions, sometime after consultation with local "experts." These principles were all elements of the modern judicial system introduced in the colony.

Several studies on law in colonial societies stress that the European notion of justice where isolated cases of clear-cut rights and duties were violated and judgements of right and wrong were strictly enforced, simplified the complexities in local relations. 98 Adewoye argues that in contrast to the African traditional legal philosophy, which emphasized the maintenance of social equilibrium rather than the

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rights of the individual, the European system of law and justice extolled these very rights. The concept of justice based on technical rules of law was not in itself quite compatible with the traditional notion of justice, which heavily hinged on moral considerations. Unlike the English-style courts, what was sought in disputes under traditional African jurisprudence was not the strict legal rights of the parties but the amicable resolution of the dispute. The duty of those who administered the law in settling disputes was to “assuage injured feelings, to restore peace, to reach a compromise acceptable to both disputants.” A litigant came before the judge not only as a right-and-duty-bearing persona, but also as an individual involved in a complex of relationships with other persons.

Although there is an on-going debate as to how well this portrayal reflects pre-colonial Africans’ notion of rights and justice, it was a dominant view among many Africans and European colonial officials. Colonial officials recognized that Africans did not always understand or appreciate European systems of justice. As one judge pointed out in 1906, “it is not Law that is required to be applied [by the courts] in

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99 Omoniyi Adewoye, “Legal Practice in Ibadan,” 52. Some scholars have challenged this argument that traditional African systems of justice emphasized social equilibrium and communal solidarity rather than individual rights. E. A El-Obaid and K. Appiagyei-Atua argue that the much vaunted communal concept of human rights never existed in traditional African communities in the ways that it have been presented. They posit that traditional African rights models emphasized individual rights and there was always a balance between individual and the community rights. See El-Olaïd Ahmed El-Obaid and Kwadwo Appiagyei-Atua, “Human Rights in Africa: A New Perspective on Linking the Past to the Present,” McGill Law Journal, 41, 819 (1996). The debates over traditional African notions of rights have been examined in Chapter 2. See section on “Rights Discourse in the African Context.”

100 Adewoye, “Legal Practice in Ibadan,” 52.

Africa but *Equity*: the complex laws of England are unsuited to the primitive conditions under which people live in West Africa.\(^{102}\) In recent times, the argument that traditional African systems of justice focussed on compromise and reconciliation rather than retribution has been used by African leaders and intellectuals to justify the call for African countries to emphasise principles of reconciliation and restorative justice in resolving national conflicts.\(^{103}\)

In spite of the concerns about the suitability of the colonial legal system to African societies, British authorities promoted it as the best guarantee of justice and the "modern" social order for the country. The early Courts of Equity established by European merchants in the Niger Delta in the 1850s to hear cases involving commercial transactions between Europeans and Africans were based on English common law principles. Although the courts took local trading customs into account, overall, their approach to law represented a shift towards Western understandings of property, contract, crime and punishment.\(^{104}\) With the imposition of colonial rule in

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\(^{102}\) Quoted in *The Lagos Weekly Record*, 21 April 1906.

\(^{103}\) Such arguments partly informed the establishment of the South African post-apartheid Truth and Reconciliation Commission (TRC) whose declared objective was national reconciliation and social stability rather than retributive justice. However, some writers have challenged the empirical basis of these notions of traditional African systems of justice. They argue that in traditional African societies retributive notions of justice were at least as salient. They also assert that by promoting forgiveness and repentance, at the expense of accountability and retributive justice, contemporary African institutions like the TRC detach human rights from their legal foundation. This has resulted in human rights and justice being equated with reconciliation and amnesty, which in turn has been detrimental to establishing rule of law in African countries. For an incisive exposé on this interesting and developing debate in African studies, see Richard Ashby Wilson, "Legitimacy Crisis of Human Rights in South Africa," *Human Rights Dialogue*, Winter/Spring, 2002 and Bonny Ibhawoh, "Human Rights and Peace Work: Between Retributive and Restorative Justice," *Human Rights Dialogue*, Winter/Spring, 2002.

\(^{104}\) For more details on the operations of the Courts of Equity see A. E. Afigbo, *The Warrant Chiefs: Indirect Rule in South Eastern Nigeria, 1891-1929* (New York:
the 1900s, a more formal judicial system was put in place. This comprised a Supreme Court, Provincial Courts, Divisional Courts and District Courts which were fashioned after the British model. The Supreme Court presided over by British judges administered a blend of English common law and equity, local ordinances as well as native law and custom that were judged not repugnant to natural justice and morality. Colonial administrative officials also presided over the District Commissioner’s Courts and Provincial Courts. Below the Supreme Court and the Provincial Courts were the Native Courts which were patterned along the African model. Links were provided through procedures for appeal that went from the Native Courts to the Supreme Court and sometimes to the Judicial Committee of the Privy Council sitting in London. These courts and other colonial apparatus for the administration of justice, despite their overwhelming British influence, were intended to represent a blend of both European and indigenous African standards of rights and justice.

Forming part of the Native Administration, the Native courts were given administrative and executive powers covering a wide range of subjects. They could make rules for the “good order, peace and welfare of the inhabitants within their areas of jurisdiction.”\footnote{105} As the name suggests, in creating the Native Courts, the British believed they were recreating the indigenous system of judicial organisation and that the new courts would enforce native laws and customs in “the native way.” However, as several studies have shown, the Native Courts did not meet this objective. Even the term “Native Courts” was a misnomer, not only because they were creations of British proclamations but also because they were markedly different from “native” tribunals

\footnote{105} NAI Com. Col. 1 21381/1, Native Authority Rules, enclosures in file on “Complaints against Native Authority Police.”
in the strict application of the term. What the Native Courts enforced was not "native law," but a mixture of European common law and customary rules.  

106 Where conflicts arose between these, European ideas usually prevailed. Owing to factors such as the presidency of European officials over the courts, the prohibitive distances some people had to walk to reach the courts, and the indiscriminate grouping of diverse clans under single court jurisdiction, the Native courts generally inspired no confidence in the people they were meant to serve.  

107 Historians and anthropologists have also recently come to understand that what these colonial courts treated and enforced as immutable customary law was itself the product of historical struggles unfolding during the colonial period.  

108 The point

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106 J. Jackson, an assistant judge in Nigeria defined "native law and custom" as "the collective acquiescence of a community to a habit of thought...derived from long established precedent." What the native Court enforced hardly fitted this definition. There was often no "collective acquiescence" of the community to these laws or even an established tradition of precedence. NAI, CSO 26/ 36592, cited in Philip Igbafé, Benin under British Administration, 1897-1938: The Impact of Colonial Rule on an African Kingdom (Atlantic Highlands, N. J.: Humanities Press, 1978), 215.

107 One way in which this lack of confidence in the Native Courts by local people was demonstrated was through the resort to illegal courts, a practice that showed that the traditional judicial system had not completely fallen into disuse. These courts were held by village heads, chief or elders who had exercised judicial powers before the advent of the British Native Courts. To check this trend, which threatened to undermine the colonial Native Court system and break the people's habit of clinging to their traditional judicial system, provision was made in the Native Court Ordinance of 1914, for the punishment of persons holding unauthorized courts. See Tamuno, The Evolution of the Nigerian State, 162 and Igbafé, Benin under British Administration, 182.

108 Chanock has shown in his study of law and the colonial experience in Malawi and Zambia that customary law was shaped by the complex interplay of European beliefs about local and African representation of themselves. The creation of statute law throughout the colonial period and the codification of customary law during the 1930s and the 1940s created opportunities to represent and debate tradition. In each of these arenas, African representations were themselves moulded by indigenous ideology and local struggle over power and resources. Martin Chanock, Law, Custom and Social Order. The Colonial Experience in Malawi and Zambia (Cambridge: Cambridge University Press, 1985), 145-216.
has also been made that in spite of the concern with equity and natural justice, the kind of justice which these colonial courts enforced was "legal justice," imbued with elements of morality, but not necessarily coterminus "moral justice." For the most part, the operation of the colonial judicial system reflected inequalities in power both between colonial officials and Africans and among Africans. Inequalities in power affected the outcome of local conflicts over rules and procedures in the courts. For instance, the fact that traditional rulers served as judges in Native Courts gave them extraordinary opportunities and, in some cases, statutory authority to define and enforce rights obligations and relationships. The reliance of officials on particular individuals or groups to define tradition, gave them new advantages in the competition for resources and labour, and it augmented their power.

What became evident with the operation of the Native Court system soon after its inauguration were the new powers it gave the warrant chiefs and traditional rulers who headed these courts. In the view of these chiefs and rulers who became heads of Native Courts, their new positions represented the state-sanctioned extension of their traditional powers as absolute monarchs. Under the British indirect rule system, many of these rulers suddenly found themselves presiding over Native Courts that covered areas beyond their traditional jurisdictions and areas of influence. They came to see their new positions more as opportunities for strengthening political advantage than as impartial arbiters in the administration of justice.

This became the basis of wide scale abuse of the court system, particularly at the local level and the concern about "native" rights and liberties that were

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110 Mann and Roberts, "Law in Colonial Africa," 22.
subsequently raised. For instance, in Benin, most of the warrant chiefs who headed the Native Courts were ordinary people who had little or no traditional political authority. However, many of them came to believe that the possession of a court warrant implied a position and power akin to and even superior to those of village heads in the traditional context. Such was the influence of warrant chiefs under the Native Court system that the practice developed where appointment to court membership could be used to secure a chieftaincy title in the village. It was, as one writer put it, tradition turned upside down.\textsuperscript{111}

Colonial records are replete with cases of abuse of the Native Courts and expressions of concern by colonial officials that these abuses tended to violate individual liberties and bring into disrepute the "good name of British administration in the colony."\textsuperscript{112} One of the early issues that attracted the attention of the colonial authorities in the administration of justice and its effects on individual rights was the practice of flogging as forms of punishment.\textsuperscript{113} Much of the abuse of the judicial system with regard to orders of public flogging were the direct result of the excesses for which the Native Authorities became quite notorious in the Lugardian years, and the policy of using conscript labour. But although both summary flogging and flogging as judicial punishment had been extensively used by officials in the early

\textsuperscript{111} One of such cases was that of Akinsola of Usen in 1923 whose appointment as a warrant chief was refused by the District Officer for Benin Division, H. N. Nevins, on the ground that the Oba (King) was thrusting Akinsola forward in order to confer the title of Elewa of Usen on him. Igbafe, \textit{Benin under British Administration}, 206-207.

\textsuperscript{112} NAI Com. Col. 1 21381/1, Complaints against Native Authority Police.

\textsuperscript{113} Concern about the use of corporal punishment is evident in the colonial records. See for instance, CO 583/ 183/18, Use of Corporal Punishment in Southern Provinces during 1931 and CO 583/ 178/2, Punishment Inflicted Upon Natives in Nigeria 1932.
colonial period, the government later sought to control it, following strong criticisms from Africans and pressures from the Colonial Office as well as MPs in London.

The Lagos press was particularly forthright in its condemnation of incidents of flogging and constantly held them up as examples of British maladministration in the colony and insensitivity towards "native" rights and liberties. Between 1907 and 1930, the newspapers published numerous cases of Africans being publicly flogged for offences as trivial as failing to show respect in the presence of an officer and evading work. In one particularly controversial case, which caught the attention of the press, Captain Huges, an administrative officer in Warri who had gained a reputation for his highhandedness, ordered that eleven Itsekiri men be flogged for alleged unwillingness to work.114 In other reported cases, 20 young men from Agbor sub-district were publicly flogged on the orders of the acting District Commissioner, F.O.S. Crewe-Read for "not turning up for work" while the local chief was flogged for "not sending his people to work on the roads."115 A Nigerian lawyer, Silas Dove was reported to have been publicly whipped in Onitsha in 1914 at the instance of the administrative officer for refusing to remove his hat in the presence of the Assistant District Commissioner.116 Although Governor Egerton consistently condemned these actions as "unauthorized and illegal," such incidents provoked heated debates in the Lagos press about rights and dignity of Africans under colonial rule. By the 1920s, the incidents of public flogging in the colony had become so widespread that it created concern in official quarters both locally and at the colonial office in London. Some of

114 Lagos Weekly Record, 2 February 1907.
115 NAI CSO 5/8/2
116 Adewoye, The Judicial System in Southern Nigeria, 150
the reported cases of flogging were raised in the questions session in the House of Commons in London.\textsuperscript{117}

In order to assert more control over the use of flogging to carry out judicial sentences, the Colonial Office issued a regulation in 1931 requesting that the “Annual Flogging Returns” which were being sent from Nigeria should henceforth include all sentences of flogging passed by order of the court in addition to flogging for prison offences.\textsuperscript{118} The Colonial office also cautioned that supervision must be directed to seeing that the whipping inflicted by the native courts were not unnecessarily severe.\textsuperscript{119} Earlier in 1915, the attention of the Colonial Office had been drawn to the provisions for “flogging sentences” in the Corporal Punishment Ordinance in Southern Nigeria. The Secretary of State called attention to the fact that in England, the Criminal Justice Act of 1914 forbids such a practice and stressed the need to harmonize the English laws applicable in the colonies.\textsuperscript{120}

In 1928, the Colonial Office expressed concern over the reported incidents of summary public floggings reported in the colony and specifically, the continued use of the “cat o’ nine tails” for the sentence of flogging passed by order of the courts.\textsuperscript{121} In one memorandum on the subject, the Colonial Office referred to a case where one

\textsuperscript{117} PRO CO 583/183/18, Annual Flogging Returns from Nigeria

\textsuperscript{118} PRO CO 583/183/18, Regulation No. N175/AH6, "Use of Corporal Punishment in Northern and Southern Nigeria" issued by J.F Flood, official in charge of the Nigerian Desk, Colonial Office, London.

\textsuperscript{119} PRO CO 583/ 183/18, Memorandum from the Colonial Office to the Officer Administering the Government of Nigeria. Also see CO 583/ 183/18, Use of Corporal Punishment in Southern Provinces during 1931.

\textsuperscript{120} The Lagos Standard, 17 November 1915.

\textsuperscript{121} The “cat o’ nine tails” was a whip used locally in carrying out sentences of flogging.
man got twelve strokes with the "cat" for the offence of wandering, describing its use as "clearly unreasonable."122 The local press also called for the abolition of the use of the "cat." In an editorial titled the "Cat O' Nine Must Go," the West African Pilot called on the colonial government to do "the right thing and abolish the 'cat' from the Statute Book."123 Following increased concerns, the colonial government completely abolished flogging as a punishment in 1933.124

Similar concerns over "native" rights and dignity were raised over the use of stocks for punishment and judicial sentences. The confinement in stocks as punishment for convicted offenders had been widespread in Nigeria, as in other British administered colonies since the beginning of the nineteenth century. By 1929, the practice had become particularly common in the Native Authority prisons in the Southern Provinces caused public concern both within and outside the colony. In November 1930, questions were raised in the House of Commons in London on the need to abolish stocks in Nigeria because it was inhumane and contravened the right to dignity guaranteed to all British subjects. One Member of Parliament argued that, "the infliction of this kind of medieval punishment is hardly likely to add to the prestige of the British government in Nigeria."125 Related questions were also raised

122 PRO CO 657/ 36.

123 West African Pilot, 10 May 1938, 4.


125 Mr Horrabin MP asked the under secretary of State for Colonies, Lord Passfield whether the government proposed to take action to abolish punishment in the use of stocks in Nigeria. PRO CO 583/178/2. Arguments by Mr Horraton MP at the parliamentary questions and answers session with the Honourable Undersecretary of State for Colonies, Lord Passfield.
about the use of chains and shackles in the colonial prison system.\textsuperscript{126} These questions arose against the background of growing concerns in England over the cruel and inhuman nature of the punishment. Arguments were made by the humanitarian organisations led by the London based League Against Imperialism, and the Aborigines Protection Society (APS) that the use of stocks for punishment in the colony was an inhuman practice which violated human dignity and should be abolished in Nigeria and "everywhere within the British commonwealth."\textsuperscript{127}

Following these concerns, the colonial office wrote in 1931, to the authorities in Nigeria requesting clarification on the issue. The government in its reply sought to justify the punishment in stocks on the grounds that it provided one of the most effective methods of punishment and guarantee of public order available to the government. Besides, the government argued, the practice was in accordance with "native customs." One memorandum stated that "the penalty is one which is specially suited to the temperament and mentality of the people and enables a court to punish first offenders efficaciously without exposing the accused person to the contaminating influence of prison."\textsuperscript{128} In spite of these attempts by local officials to justify the use of

\textsuperscript{126} PRO CO 583/ 192/13, Use of Chains and Shackles in Native Authority Prisons 1933

\textsuperscript{127} West Africa, November 15, 1930, 1590.

\textsuperscript{128} PRO CO 583/178/2. "Punishment Inflicted upon Natives in Nigeria," from the Officer Administering the Government of Nigeria to the Colonial Office. The argument of colonial officials that stock punishment in stocks were approved and accepted by local customs was actually not the case in many parts of Western Nigeria. Punishment by confinement in stocks, which had its origins in European feudal society, was unknown to most indigenous communities where it was considered quite degrading. Indeed within the general context of traditional African society, corporal punishment or imprisonment was considered inappropriate for certain categories of offences. For an incisive discourse on the general character of pre-colonial African legal order and its peculiar communal character, see Makau Wa Mutua, "The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of
confinement in stock for judicial sentences, growing pressure from the local press and concerns raised in Britain ultimately forced it to abolish the practice in 1932.\textsuperscript{129} The judicial process, particularly the Native Courts, also raised concerns about “native” rights and social justice. Colonial officials were particularly concerned about the tendency of the Native Courts to impose harsh prison terms even in trivial cases like civil disputes over debts. In a tour of the prisons in 1927, the Lieutenant Governor of the Southern Provinces discovered that judgement debtors accounted from between 15 and 50 per cent of the inmates in many prisons.\textsuperscript{130} This was regarded as an indication of the real dangers that abuses in the Native Courts posed to the liberties of local people.\textsuperscript{131}

In one case that illustrates the excesses that became characteristic of the local judicial system, one young man was convicted by a Native Court in Ijebu-Ode for possessing tools for making counterfeit currency coins. He was sentenced to twenty years imprisonment despite being a first offender. This case came to public knowledge when the District Officer, in the course of his routine inspection of the Lagos prison in 1931 discovered it. Alarmed by the severity of the punishment, the District Commissioner brought the case to the notice of the Governor, stating in his memorandum that he considered it “simply a question of a wicked sentence.”\textsuperscript{132} In April 1932, the Governor responded. His response read in part:

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\textsuperscript{129} Punishment by confinement in stocks was abolished by virtue of the Criminal Code Amendment Ordinance (No. 2 of 1932).

\textsuperscript{130} PRO CO 657/20, Annual Administrative Report 1927.

\textsuperscript{131} PRO CO 657/28, Annual Administrative Report for the Prisons Department, 1928.

\textsuperscript{132} PRO CO 657/28.
You will recollect the case of the young man convicted by the Ijebu Ode Native Court lying in the Lagos prison under the sentence of 20 years imprisonment... Although I have been pressing for the record of this case since February, the case file came before me today only. Now hear me. At the time the sentence was passed, the maximum sentence that the court could inflict was two years. He is being released at once and I am of course pursuing the case...This is one case discovered in one prison in one day. Can anyone doubt that there are other cases of a similar nature? ¹³³

Indeed, cases like this were not uncommon and although the colonial authorities at the central level frowned at such blatant violations of individual liberties by the Native Courts, its limited control over these courts, coupled with the fact that many local traditional and warrant chiefs had no training on the workings of the new judicial system, combined to result in the wide-spread occurrence of such violation of rights and miscarriage of justice.

These excesses were not limited to the operation of the Native Courts. Although the Provincial court system was less prone to abuses and miscarriages of justice, its record in upholding individual rights and liberties also had significant limitations. Many of the members who sat in these Provincial courts were British administrative officers who had no legal training and little understanding of the principles of English law that they were expected to administer. Writing in the Lagos Standard in 1914, the prominent lawyer and humanitarian Sir William Geary¹³⁴ noted:

The Europeans retain the right to be heard before the Supreme Court and be legally represented; but the natives are relegated to the Provincial Courts staffed by “judges” who know no law. The natives are deprived of the right to counsel. They object and have petitioned to no avail.¹³⁵

¹³³ PRO CO 258/183/14, Native Court Matters Vol. 2 (1932).

¹³⁴ The humanitarian activities of Sir William Geary have been discussed in the chapter three.

Even the Chief Justice conceded in his evaluation of the Provincial Court system in 1923, "mistakes were sometimes made and some convictions had to be set aside or altered."\textsuperscript{136} However, in comparison with the operations of the Native Courts, the Provincial Courts, like the Supreme Court and Divisional Courts before it, fared significantly better in upholding individual rights and liberties.\textsuperscript{137}

One reason for this, particularly in the Southern provinces was that unlike in the Northern provinces, trained judicial officers rather than regular colonial administrators were in charge of the criminal work of the Provincial Courts.\textsuperscript{138}

Another reason for the relative success of the Provincial Court system in Southern Nigeria was the legal provision that guaranteed the right of persons charged with criminal offences to appeal to the Chief Justice to transfer their cases to the Supreme Court. There, they could have the opportunity of being defended by a counsel. Before 1933, these "rights" were considered privileges and did not apply to proceedings in the Native Courts.

Given these and other limitations in the legal system, Governor Cameron introduced a law in 1933 intended to fundamentally reform the entire colonial judicial system.


\textsuperscript{137} The British lawyer and activist Sir William Geary who acquired a reputation in Western Nigeria as an advocate for "native" rights in the 1910s conceded that although he was frequently in opposition to the colonial government, he found the Supreme and Provincial courts "fair, patient, just and courteous." One could argue however that European lawyers in Nigeria were generally treated with more courtesy, patience and fairness than their African counterparts. See William N. M Geary, Nigeria Under British Rule (London: Frank Cass, 1965 [1927]), 9-13.

\textsuperscript{138} In the Northern provinces, the criminal work of the provincial courts came under the direct supervision of the head of the colonial administration in the region - the Lieutenant Governor.
system and the Native Court system in particular.\textsuperscript{139} The law provided, among other things, for the dismissal and suspension of members of Native Courts who abused their powers or were found to be incapable of exercising their powers justly.\textsuperscript{140} More importantly, it provided for the right of legal appeal against the decisions of the Native Court. In addition, the \textit{West African Court of Appeal Ordinance} of 1933 was promulgated. It conferred the right to appeal in both criminal and civil cases heard by the Supreme Court and the High Court, on the newly established West African Court of Appeal (WACA). These reforms significantly curtailed the wide powers hitherto vested in the Native Courts and colonial administrative officers.\textsuperscript{141}

The basis of the 1933 judicial reforms was partly ideological. It represented a shift in colonial policy away from a paternalistic, almost static view of government to one embodying a development concept.\textsuperscript{142} The introduction of the right of legal appeal was considered particularly significant in the move towards modernizing the local judicial system. As the Attorney General put it: "nothing could be more effective in checking irregularities on the part of the native court than the knowledge that the persons who came before it are aware that they have a right of appeal to a competent and honest court of appeal."\textsuperscript{143}

\textsuperscript{139} The law was titled: "An Ordinance to make Better Provision for the Administration of Justice in the Protectorate." PRO CO 583/183/14.

\textsuperscript{140} Section 25(1) of the proposed bill provided that any person aggrieved by the order or decision of a Native Court of first instance may within 30 days of the date of such an order or decision, appeal to the Native Court of Appeal or to the court of a magistrate.

\textsuperscript{141} PRO CO 583/185/8, Proposed Legal Reforms 1932 and CO 583/188/9: Protectorate Judicial System Amendment Bill.

\textsuperscript{142} This shift towards the notion of development in British colonial policy was marked by the introduction of the Colonial Development and Welfare Act in 1929.

\textsuperscript{143} Comments by A. C. V. Prior, Attorney General, Legislative Council Debates, 11\textsuperscript{th}
Although constitutionally guaranteed human rights were not introduced until independence in 1960, the 1933 judicial reforms, particularly the extension of the principle of legal appeal, marked a significant turning point in the development of institutional safeguards for the protection of individual rights and liberties in Nigeria. Given the criticism that had trailed the operations of the entire legal system, the 1933 reforms were well received by the public, particularly among the educated African elites who had relentlessly criticized the old traditional legal and judicial systems as being instruments for the legitimization of colonial abuses. Commenting on the significance of the reforms, the *Daily Times* in an editorial compared them to the Montagu Reforms in India¹⁴⁴ and remarked that they may be regarded as “the great charter of liberty for the native peoples of this country.”¹⁴⁵ However, many among the elites refused to see the reforms simply as a magnanimous gesture of either the colonial administration or Governor Cameroon. They suggested instead that the reform was inevitable at the time it was undertaken and that it was consequence of the break down of the colonial judicial system.¹⁴⁶

Whatever its real cause, the 1933 reforms clearly represent a landmark in Nigeria’s legal history. The reform, prompted both by the attacks against the colonial administration and its own aspiration towards enlightened governance, reflects the

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¹⁴⁴ The Montagu Reforms refer to the reforms recommended in the Montagu-Chelmsford Report in India in 1917. The British Secretary for India Edwin Montagu and the Viceroy of India Lord Chelmsford drew up the report which suggested the rapid introduction of Western methods of representative government into India and the development of institutions with that end in view. The press in Western Nigeria followed closely, developments like these in colonial India. The *Lagos Standard* and the *Lagos Weekly Record* had regular sections on “News from India.”

¹⁴⁵ *Daily Times*, 8 March 1933.

paradox of the Nigerian colonial legal system. On one hand, the colonial authorities sought to maintain a semblance of social justice and a regime of rights comparable to those in England, while simultaneously employing law arbitrarily as an instrument of coercion to meet overriding imperial objectives.

4.8 Conclusion

This chapter has examined discourses about rights and liberties within the context of law and the administration of justice in Western Nigeria. It identifies salient themes around which such discourses were built. These include the repugnancy doctrine, legal codification and debates over rights in the introduction and application of the coercive ordinances. The chapter also examined the discussions about rights within the context of press freedom and the concern for individual rights and liberties within the colonial judicial system until the 1933 reforms. After 1933 other legal/political issues such as the constitutional debates of the late colonial period, raised important questions of rights and liberties. These will be examined in chapter six.

The foregoing discussion demonstrates that British colonial administration in Nigeria was generally guided by a consideration for the rule of law, based on its *laissez-faire* conception of society and its concern about protecting the "good name" of the government. The libertarian traditions of English common law and the system of justice extended to the colony professed a broad concern for private rights and individual freedom of action. But the introduction of the English legal system -- ostensibly extending to the colony the same standards of rights, liberty and justice as prevailed in England -- did not in fact guarantee human rights conditions comparable to those in England. In the long run, British administration like other colonial regimes
denied Africans the very rights they themselves articulated as the *sine qua non* of modernization – enforcing, instead, "customs" for the purposes of political control.\(^{147}\) This fact is hardly a matter of contention and is not the point of this chapter. The point here is that the purported extension of English standards of law, legal rights and justice to the colony and the official rhetoric that kept it on the agenda was more designed to legitimize and rationalize empire than an objective to which the British were seriously committed.

Because of this, the colonial legal regime was underlined by paradoxes and even contradictions between its professed commitment to the rule of law as a guarantee of individual rights and its coercive use of law. This created tensions between "the moral claims of the colonial state and its politics."\(^{148}\) For Africans too, the language of rights contained similar paradoxes. African elites, chiefly authorities and ordinary people appropriated and deployed discussions about rights to various, and sometimes contradictory, ends. Educated African elites opposed colonial laws on the basis that they circumscribed the political rights of traditional rulers while at the same time protesting other colonial laws that sought to extend the authority of these traditional rulers over them.

Ultimately, the rhetoric of extending English standards of rights and justice to the colony was made necessary more by the need to legitimize British colonial rule and rationalize the violence of colonialism than anything else. The articulation of a humane regime of law and rights, or at least an aspiration towards it, was seen as a powerfully legitimizing tool setting British colonial rule apart from the arbitrariness

\(^{147}\) Comaroff, *Of Revelation and Revolution* *Vol. 2*, 367.

and excesses of imperial regimes elsewhere on the continent. Law was stronger than
the *maxim gun*, not only because it provided a more effective means of colonial
control but also because within the context of the rights discourse, it provided a
rationale for empire, and for the colonized, a framework for oppositional discourse.

For all its association with legalities however, the rights discourse was not
only a matter of law or the administration of justice. Debates about rights also
extended to other economic, social and political arenas. As the language of law and
rights became more influential in public discussions, it began to feature more
frequently and prominently in the debates over resources and social life. The next two
chapters examine the ways in which the discourses of rights were deployed to
promote and contest various economic and social agendas.
CHAPTER FIVE

CONFRONTING STATE TRUSTEESHIP: ECONOMIC RIGHTS DISCOURSES

[One] fact which is important to bear in mind in order to understand native land law is that the notion of individual ownership of land is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual.

Lord Haldene in *Amudu Tijani vs. Secretary of Southern Nigeria* (1921).1

5.1 Introduction

Economic issues dominated many of the debates about rights in Western Nigeria. Central to these debates was the issue of land and property. The ownership of land and property involved a complex system of recognized and contested rights and duties, which formed an integral part of the economic and social organisation of colonial society.2 Discussions about land and property rights in the colonial and immediate post-colonial period were conducted largely in relation to the liberal economic ideas and systems introduced by missionaries and the colonial state. Economic rights discourses were also influenced by local thought and the ideas that Africans drew directly from European and Atlantic discourses. This chapter examines the discourse of rights that underlined debates over economic issues within the period of this study. It focuses on how the language of rights was used by the colonial state and various interest groups within the society in the debates over the ownership and access to economic resources.

Missionary activities provoked much of the early debates about economic rights in Western Nigeria. As indicated in chapter three, missionaries saw the inculcation of European liberal and egalitarian values as an integral part of the

1 *Amodu Tijani v. Secretary of Southern Nigeria, Appeal Cases (AC)*, 399 (1921), 404.

"civilizing mission." This mission involved changing African orientations towards property as part of the remaking of the native’s conceptions of selfhood. Missionaries believed that once the principles of private property and property titles were properly inculcated in local peoples, all other bases of rights-bearing citizenship – the right to life, liberty, wife, children, and property – might take root.³

These ideas of propertied personhood were inherited and promoted by colonial states. In the pursuit of imperial objectives, colonial governments experimented with different regimes of social and economic rights. While the colonial period opened with widespread acceptance of the evolutionary superiority of Western concepts of individual property rights, it closed with a general atmosphere of suspicion towards individual land rights and a dogged emphasis on "customary communal rights."⁴ Although these shifts were largely shaped by the exigencies of colonial administration, Africans were not passive onlookers in this process. Using the language of rights, they too challenged, negotiated, subverted and acquiesced in the processes of colonial economic and social restructuring. In so doing, they reached beyond the terms set by the colonial state and colonial missionaries to introduce a counter discourse about property rights and economic control.

5.2 Discursive Contexts

Broadly speaking, economic rights discourses were patterned along two lines – legitimizing and oppositional rights discourses. The former were deployed to justify


and legitimize colonial economic and social policies. As with the colonial legal system, the language of rights helped legitimize colonial economic control. This rhetoric of rights, freedom and liberty became synonymous with colonial attempts to individualize trade and land ownership. Rights talk was deployed to justify and legitimize state trusteeship over land and other resources. The ownership of land had to be vested in the colonial state because it was a much better guarantor of equal access and right to land than ownership by a few authoritarian local chiefs. These legitimizing discourses about freedom, liberty and rights, mainly used by the colonial state and its African allies, provide one context for examining economic and social rights discourses in this chapter.

A second context for examining economic rights discourse stands in opposition to the first. As the colonial regime sought to consolidate its control over local resources and social life, sustained challenges emerged both from Africans and sympathetic Europeans, particularly non-state actors like missionaries and humanitarians in the colony and the metropole. This opposition was also frequently articulated in the language of rights and liberties. Colonial land policies, which restricted individual access to land and vested it in the state, were attacked as a denial of “the native’s traditional rights to his own God-given resources.” These, unlike the legitimizing discourses deployed by the colonial state, were oppositional and anti-establishment.

However although the paradigms of “legitimizing” and “oppositional” rights discourses provides a broad framework for our discussion, it would be a mistake to

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5 Petition by the Lagos Auxiliary of the Antislavery and Aborigines Protection Society to the Colonial Secretary on the proposed plan to secure the trusteeship of all lands in Southern Nigeria for the British Crown, published in The Lagos Standard, 14 August 1912.
assume these two discursive contexts represent rigid, racially defined polar categories -- one, colonial and European, and the other, indigenous and African -- each ideologically walled off from the other. The evidence does not suggest this was the case. The understandings and use of the language of rights and liberties around economic and social issues were, for the most part, fluid and multiple. They were based on individual and group interests at different times and under different circumstances. For instance, although most Africans were opposed to colonial land policies, some advocated colonial state trusteeship and agreed with the government that its acquisition of land was ultimately the best guarantee of equitable access to land.

Moreover, between the poles of legitimizing and oppositional rights discourses, rights discourses emerged oriented to several other points of the compass. We can talk of “oppositional modernizing discourse” (educated elites advocating modernist land use reforms but opposing colonial ideas on how to go about this); “oppositional traditionalist discourse” (educated and chiefly elites advocating customary land tenure systems in opposition to colonial reforms); “pro-colonial nativist discourse” (chiefs who wanted to use indirect rule policies to buttress their powers and control over land) and “anti-colonial nativist discourse” (Pan-Africanists like Edward Blyden who wanted to restore the “African personality” as a modernizing construct).

Thus, the categories of legitimizing and oppositional rights discourses provide a guide rather than a rule in our analyses of economic and social rights in this chapter. It is however important to highlight them for two main reasons. First, for all their fuzziness, these categories reflect the ways in which many of the historical actors
themselves framed and understood the debates in which they were engaged. Second, we need to map out the broad contours of economic rights discourses in the colonial state -- sometimes lost in the attention to nuances and fine details. The colonial state deployed rights discourses aimed primarily at legitimizing imperial agendas; most Africans deployed alternate discourses to oppose, engage and negotiate with the colonial state.  

5.3 The Land Question

Contestations over ownership and access to land reveal many paradoxes. The land question was crucial to the political economy of colonial rule in Western Nigeria as elsewhere in Africa; control of land and other resources was a key imperial economic objective. Yet, the land question also provided a vital arena for African challenges to the colonial state and laid the foundations for the anti-colonial movement. Because of the centrality of the land question and its role in defining African reaction to and engagement with colonial rule, it has absorbed much scholarly attention.

In one of the earliest studies on the land question in colonial Africa, the colonial anthropologist Charles Kingsley Meek wrote in 1946 that “rights over land are more jealously treasured than any other form of rights.” Meek argued that the land question provided a terrain like no other in the colonial period, where issues of rights entailments and obligations were realized and thoroughly contested. However,

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6 This, as we shall see, was particularly evident in the discussions about land rights where there was a clear divergence between colonial discourses and the dominant African discourse.


8 Meek, *Land Law and Custom in the Colonies*, 5.
Martin Chanock has noted more recently that although there is a huge literature on the politics of land in colonial Africa, it is a literature that has often forgotten Meek’s emphasis on the *question of rights*.  

Indeed, the history and politics of the land question in colonial Nigeria has been extensively examined. Many of these studies focus on local “customary” land tenure systems and the distortions wrought on these systems by colonial land policies. Few, however, go beyond these themes to interrogate the meanings and rationale of the underlying discourses deployed by various interest groups in the politics of land and resource control. It is important to go beyond the more obvious politics of the land question to examine how different groups within the colonial state articulated and sought to legitimize or oppose contending claims to land and other resources. Understanding this process of legitimization and opposition illuminates our understanding of the politics of resource control not only in the colonial period but also in the contemporary Nigerian state.

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11 The question of control over land and natural resources such as oil is one of the major challenges that presently confront the Nigerian state. The contentious issue of “rights of resource control” have dominated national debates over how best to equitably share the nation’s natural resources among the constituent ethnic and geopolitical groups. While minority ethnic nationalities in the Niger Delta (where most of the nation’s natural resources are located) argue for the decentralization of resource control, other groups insist that the present arrangement where the central government maintains control over these resources provides a better guarantee of the equal access of all Nigerians to these resources. My point here is that by examining
Land was often at the centre of early conflicts between the British authorities and traditional rulers in Western Nigeria, particularly among the Yoruba. Soon after the British incursion into Lagos in 1900, local British consuls claimed that the British crown had acquired ownership of all lands in the colony by virtue of the Treaty of Cession between the British Government and King Docemo in 1861.\textsuperscript{12} Article 1 of the treaty in question stated:

\begin{quote}
I, Docemo, do with the consent and advise of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors for ever, the Port and Island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging...freely, fully, entirely and absolutely.\textsuperscript{13}
\end{quote}

The wording of the treaty unambiguously attests to the transfer of “legal rights” over Lagos lands from King Docemo to the British Crown. However, as several writers have pointed out, the interpretation of this treaty provision was bound to be problematic from the beginning because King Docemo, like many other local kings and chiefs in Western Nigeria, did not have absolute customary or legal rights over “all the lands in Lagos” which he had supposedly ceded to the British.\textsuperscript{14} Even in his capacity as King of Lagos, Docemo had “neither feudal authority nor seigniorial rights” over his chiefs, nor absolute rights over the land held in trust by them. Thus, in earlier colonial debates over the allocation of use of land resources, we can better appreciate the traditions and concerns which shape these present debates.

\textsuperscript{12} The process of British acquisition of Lagos as a colony and how political rivalry between two opposing claimant to the Kingship of Lagos facilitated this process are discussed in chapter three.

\textsuperscript{13} “Treaty of Cession between the British Government and King Docemo in 1861,” cited 2 NLR at 8-9.

spite of the language of the treaty, it has been argued that King Docemo had "nothing to transfer." The point here is that in staking their land claims on the basis of treaty agreements with African Chiefs *ab initio*, the colonial state failed to take into consideration the nature of pre-colonial land tenure systems and the scope of the rights which local kings and chiefs enjoyed under it. This point deserves further elaboration.

In the 1950s, the Nigerian legal scholar and jurist Taslim Olawale Elias conducted some of the most detailed studies of traditional land tenure systems in Nigeria to date. Elias argued that in spite of local differences in the indigenous systems of land tenure in Nigeria, there were some basic principles common to all of them. First, land was not normally owned by individuals absolutely but by a community, village or family. Land grants to individual members of the group or to strangers left the ultimate title in the family. Second, the chief or head of a village or family exercised a right of control over land as a "trustee" for his group. Land allocated to a member of a family or community could not be disposed of, without the consent of the chief or family head. 

Elias argued that African kings and chiefs had the sole authority to allocate land to the various families in the village or towns through their respective heads. It was also the chief's "right" to re-allocate such land to new holders where a family became extinct through the failure of their heirs or upon abandonment by former

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16 Elias, *Nigerian Land Law and Custom*, passim; Elias, *The Nigerian Legal System*, 333. The colonial courts upheld this position in a number of cases, *Amodu Tijani v. Secretary, Southern Provinces* (1921), 2 *Appeal Court Cases* 399; *Chief Omaghbemi v. Chief Dore Numa* (1923), 5 *NLR*, 19; *Chief Etim and others v. Chief Eke and others* (1941), 16 *NLR* 43.
occupiers of the land. However, these “rights” had limitations. The chief was no more than a trustee of his powers over the land of his community. He had no rights to alienate land, which, once allotted to the families, remained outside his control and subject to family ownership. Although individuals did not have absolute rights over land, they did possess some specific rights over the use of land depending on the way they acquired such lands.

Although the debate continues over how well these principles reflect indigenous land tenure systems, they have been widely accepted by other scholars and have also influenced colonial policies at different times. The predominant idea for much of the colonial period was that “customary” African land tenure systems were based on communal rather than individual ownership of land. There was also the view that communal African notions of land rights contrasted with later European individualistic and egalitarian notions of land and property rights.

It is important to emphasize the gendered character of both the land tenure systems and discourses about land rights for much of the period of this study. Men, whether they were colonial officials, educated Africans or traditional elites, dominated the debate about land use and ownership in the colonial and immediate post-colonial period. Women were, to a large extent, excluded until the 1940s and 50s

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17 This customary practice was upheld by the courts in the case of Chief Oshodi vs. Dakolo (1930), Appeal Cases, 667.


19 See for example, Rudolph W. James, “The Changing Role of Land in Southern Nigeria,” 3-16.

20 Elias makes the point that this cannon of colonial land policy is not quite accurate. Under indigenous African land tenure systems, he argues, neither the village community nor the tribe is a land-holding unit. Land ownership revolved round the family or lineage group. Elias, Nigerian Legal System, 325.
when a few mission-educated women began to assert their political and economic rights and independence. This patriarchal bias in the discussions over land was typical of most colonial African societies. Debates about land use and ownership in England were also dominated by male intellectuals and ruling elites. Thus, much of the evidence and discussion here reflects male viewpoints on the land question. However, I have sought to balance this by paying particular attention to the few petitions written by women over land matters that are available in the colonial archives. We will now proceed to examine how the colonial state dealt with the issue of land rights.

5.4 Fostering “Healthy Individualism”
In the early colonial period, official attitudes towards land were largely informed by the belief in the superiority of European concepts of individual property rights over what were considered traditional African notions of communal land ownership. As Chanock has argued, European colonizers took possessive individualism to be the foundation of civilized society; the corollary was that private property was unknown in “savage” Africa. These colonizers encouraged the idea of individual rights in the name of modernity and to effect the “evolution of human societies from status to contract.”21 Thus, early colonial attitudes towards the ownership and use of land in Western Nigeria, as elsewhere in British Africa, were tied to European notions of individual rights in property.

The notion of a right to property as necessary to human nature, a just reward for labour, and the very basis of proper political society was deeply embedded in nineteenth century British political theory. Across the spectrum of political and legal thought, property increasingly came to be seen as meaning private property and both

21 Chanock, “Paradigms, Policies and Property,” 63.
liberals and conservatives were agreed that property was the basis of civilised society. Based on these notions, the colonial state endorsed certain rights over land and property while refusing to recognize others. These notions also influenced its decision over what regimes of land and property rights should be accorded legal protection.

The effort to shift the locus of African economic and social life from community-orientation to the individual was not peculiar to colonial land policy. It was also at the heart of the idea of the "civilizing mission" as conceived by the state and other agents of empire. In Lagos and other major towns, early contacts with European merchants strengthened local ideas of individual ownership of land and weakened the strict rules against alienation in traditional land tenure systems. The growing demand for land titles freed from the restrictions of local customs and traditions, by both affluent Africans and European traders, was satisfied by English-style grants of land by the Crown.

Although the 1898 Report on Land Tenure in West Africa had canvassed communal land rights and declared individual ownership of land foreign to "native" ideas, colonial policy during this period tried to promote individual land claims. Colonial officials sought to reorient a supposedly communal land tenure system towards a more European and egalitarian model. As early as 1863, the British significantly changed the land tenure system in Nigeria by extending the British legal system into the colony. All laws in force in England on 1 January 1863 were deemed to also be in force in the colony and applicable in the administration of justice "as far

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as local circumstances would permit.”\textsuperscript{24} In effect, English common law principles on land ownership and conveyance also applied to the colony. Some writers argue that these laws “introduced the notion of \textit{ownership} of land and of particular importance that of \textit{individual ownership}.”\textsuperscript{25}

But apart from this law, other developments on the ground also moved indigenous land tenure systems towards greater alienation and commercialization. The demand for land intensified with the influx of freed slaves from Sierra Leone in the mid nineteenth century making land more valuable and easily alienable. As the notion of absolute ownership of land and individual ownership spread in many parts of Western Nigeria, it transformed local attitudes to land.\textsuperscript{26} Commenting on these changes in Ibadan in 1903, \textit{The Lagos Standard} stated that “the opening of the railway and the growing commercial importance of the town have caused a decided appreciation of landed property.” The paper also raised a question that was quite pertinent at the time: “whether it has been in the native custom to sell, lease or sublet

\textsuperscript{24} Elias, \textit{Nigerian Legal System}, 17-19

\textsuperscript{25} Using a very legalistic definition of “ownership” Rudolph James argues that ownership exists where there are present, the privilege of use, the privilege of outright disposability and the privilege of destruction. He argues that before European incursion in the nineteenth century, these principles of ownership in relation to land only applied to the family as a group and not to the individual. But as evident from the discussion in the later sections of this chapter, these arguments have been widely challenged. James, “The Changing Role of Land in Southern Nigeria,” 16.

\textsuperscript{26} Some legal scholars argue that an individual can claim ownership of land where he or she has the right of use, the right of disposability and the right of destruction. In this respect there is no substance to the argument that there was no ownership of land under customary law. The family owned the land as a corporate group. See James, “The Changing Role of Land in Southern Nigeria,” 16.
land” as was becoming the practice, and what effect this would ultimately have on the
town.²⁷

In Abeokuta growing individualization and commercialization of land became
a source of local conflict. When European firms first began to lease property in
Abeokuta in the 1900s, the autonomous Egba United Government introduced a law
making it illegal for anyone to sell land or mortgage houses or land to foreigners.
Such transactions were only legal between “natives of Egbaland.” Private individuals
could only lease houses and land to non-Egba with the consent of the Alake and
Council.²⁸ But far from being an attempt to restrict private land ownership, this law
was actually intended to confine Europeans to the outskirts of Abeokuta and prevent
them from settling in the town. It was feared that selling or mortgaging land to
foreigners would result in large-scale alienation of Egbaland to Europeans.

Although the colonial government favoured individual land ownership as part
of its economic liberalization policy, it consented to this ordinance because it placed a
check on the acquisition of land by Europeans merchants, many of whom were not
British.²⁹ However, many locals opposed the law. In 1922, a group of middlemen and
traders petitioned the Alake and Council to rescind the part of the land ordinance that
forbade the sale or mortgage of land to foreigners. They anchored their argument on
their rights as “citizens” of Egba to sell land to whomsoever they chose. They argued
that Europeans would extend more credit if they knew they could claim property if

²⁷ The Lagos Standard, 25 February 1903.

²⁸ The bill also stipulated the number of years that land could be leased by non-Egba
for 30 years in the case of agricultural land and 21 years in the case of building land.
The Lagos Standard, 16 February 1927.

²⁹ Egbaland Echo, 18 June 1934. Also see Judith Byfield, “Pawns and Politics: The
Pawnship Debate in Western Nigeria in Toyin Falola and Paul Lovejoy (eds.)
difficulties arose. The desire of the Egba traders to use land as collateral fermented a major debate over land – a contentious issue for decades to come.\textsuperscript{30} In advancing these arguments, the Egba traders were invoking ideas of European and Atlantic world capitalism – their ideas of "progress" and modernization centering mainly on the control over properties and accumulation of profit.

The colonial government also tried to control land through such laws as the \textit{Public Land Ordinance} of 1876\textsuperscript{31} (later, \textit{Native Land Ordinance}) and the \textit{Public Lands Acquisition Proclamation} of 1903.\textsuperscript{32} For the most part, these laws were geared towards facilitating the acquisition of lands needed by the government for its stations and other public use. They were not intended to restrict private land ownership but, in fact, to encourage the sale of land. For instance, the \textit{Public Lands Acquisition Proclamation} provided:

\begin{quote}
Where land required for public purposes are the property of a native community, the Head Chief of such community may sell and convey the same for an estate in fee simple, notwithstanding any native law or custom to the contrary.\textsuperscript{33}
\end{quote}

This reflects the dominant colonial attitude during this period, which tended towards greater individualization and alienation of land in spite of customary restrictions. Inherent in this attitude was the policy of the colonial state to promote individual proprietary rights.

Colonial officials deliberately compensated individual landowners, rather than entire communities for lands acquired by the government. Where conflicts arose

\textsuperscript{30} Byfield, "Pawns and Politics," 204.

\textsuperscript{31} No. 8 of 1876, dated 19 April 1876.

\textsuperscript{32} No. 5 of 1903 dated 10 January 1903.

\textsuperscript{33} PRO CO 588/1 Public Lands Acquisition Proclamation No. 5 of 1903.
between individual and community claims to compensation, the colonial officials tended to support individual claims, as was the case of Oke Agbo in 1903. But quite apart from a desire to promote individual land holding, this policy may also have been informed by the need to establish an effective mechanism for limited acquisition of administrative property. Individual claims to land were likely to be cheaper and easier to settle than those of entire communities.

Private ownership and sale of land was also actively encouraged by the colonial state because it was eager to promote urbanisation, the development of a money economy and private cultivation of commercial crops – key elements of its vision for a viable colonial project. Governor Walter Egerton considered that in the absence of direct taxation, the people’s land should constitute the main basis of individual agricultural production and revenue for the government. Moreover, colonial officials argued that because the basis of agriculture was peasant farming, which produced the necessary surplus for export, the government was inclined to discourage large-scale land alienation and any attempts at plantation-type production, lest the masses be deprived of their land.

Generally, the colonial government pursued a policy that kept land ownership away from large European firms. This differed from contemporary developments elsewhere in colonial Africa -- like French Equatorial Africa and German East Africa -- where the colonial regimes granted large-scale land concessions to European firms for plantation agriculture. Such large-scale plantation agriculture was considered a

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34 NAI Ijebu Prof. 4/ J.1018: Petition from the people of Oke Agbo over farmlands. Also see CSO 34869 (Vol. 1): Rights over Land Occupied by Power Lines.

more effective way of exploiting the agricultural potentials of the colonies to meet imperial economic objectives.

The question that arises is why did the British colonial government in Nigeria oppose large-scale land alienation for plantation agriculture given its obvious economic advantages? Why was the colonial government in Nigeria not as enthusiastic about plantation-type agricultural production in Nigeria as colonial regimes were in, say, Kenya or Tanzania? It could not simply be because the government was concerned about depriving the masses of their land as colonial officials argued. For one thing, in the later period of colonial rule, particularly in the 1920s and 30s, the government took people’s land through compulsory acquisition when it served its interests.

There are two possible explanations for the government’s position. One may have been because the prevailing system of small-scale peasant agriculture was meeting imperial economic objectives quite well and there was no need for the type of large-scale plantation agriculture characteristic of colonial rule elsewhere in Africa. The second possibility is that in opposing large-scale alienation, the colonial government was being tactful and cautious in its handling of the land question. In a society like Nigeria, characterized by a high level of political awareness, a vibrant and articulate African press and a long-standing tradition of principled opposition to colonial policies, the large-scale alienation of land would certainly have been strongly resisted. Moreover, Western Nigeria already had a burgeoning discourse about native land rights in newspaper articles and petitions to Whitehall. It is therefore possible that, at least before the 1920s, colonial officials thought it best not to stir the hornet’s nest by introducing a policy bound to meet stiff local opposition. The point here is
that it is necessary to go beyond the rather simplistic argument that large-scale land
alienation was avoided in Western Nigeria because the paternalistic colonial state was
concerned about depriving the masses of their land. Local awareness and debates
about land rights may also have influenced the direction of colonial land policy in
Western Nigeria.

5.5 “Customary” Communal Rights

By 1910, the colonial state was confronted with new circumstances which changed its
attitude towards land tenure. Its main concern became how to react to the widespread
sale and alienation of land in the colony, and the threat of land scarcity for agriculture.
This became a crucial source of conflict over land. Whereas in the past colonial
officials had been eager to promote “healthy individualism” among “native” peoples,
the new realities necessitated a change in policy towards greater state control. The
idea became increasingly prevalent that individual and commercial dealing in land
were contrary to African land tenure systems. Commercial dealings in land by
supposedly community-oriented African peoples also ran against the view of African
institutions sanctioned by both conservative colonial administrators and liberal
anthropologists.36 This was not an entirely new idea. The 1898 Report on Land

36 For instance, early writings on Benin portray the Oba as having absolute rights over
land. Ward-Price, one of the early European anthropologists to write on the Benin,
wrote that, “control of land in Benin City is entirely in the hands of the Oba.” He had
arrived at this conclusion based on the statement of one of the chiefs that “all land
belongs to the Oba.” But as Igbafe has argued, this conclusion is erroneous. It is due
not only to a misconception about the Oba’s power but also to a misunderstanding of
the statements made by the people of Benin while discussing their system of land
holding with a foreigner who did not understand the underlying connotations. It is
interesting to note that Ward-Price’s account, despite the picture that it gives of the
Oba’s power over land, still acknowledges that the Oba could not deprive his subjects
of their land holdings arbitrarily. Igbafe concludes that the belief that land belongs to
the Oba is a mistaken conception of the theory of Benin land tenure. In reality, the
Oba in pre-colonial Benin only administered the land through the chiefs and head
Tenure in West Africa made similar arguments. However, new realities made them more acceptable to colonial authorities.

The government began to emphasize communalism and customary law, not individualism and a law of contract, as being more "naturally" African and argued that these "traditional" institutions ought to be recognised and fostered. The colonial state also began to position itself, rather than the family or lineage, as the source and guarantor of whatever rights it deemed customary. It was the beginning of the process through which the nation-state came to be seen as the ultimate guarantor of individual rights, the "guardian of propertied personhood."\(^{37}\)

For the colonial government the concept of land rights became part of a delicate political balance. It reflected the gap, and sometimes contradiction, between imperial idealism and the exigencies of colonial administration. If the earlier discourse of radical individualism bore the promise, the later discourse on "customary" communal land rights bore the reality of colonial land reforms. As colonial land policy shifted, administrators and analysts began to support a model of land tenure characterized by the oft-quoted African saying that "land belongs to a vast family of which many are dead, few are living and countless numbers are still unborn."\(^{38}\) Chiefs were seen, or at least presented, as the holders of land with rights of administration and allocation. Rights in land were seen as flowing downwards, deriving from political authority, rather than residing in the peasantry. These ideas


\(^{38}\) Meek, *Land Law and Custom in the Colonies*, 5.
became canons of academic and popular knowledge about indigenous land tenure systems in Africa and advanced to justify a new colonial policy.\textsuperscript{39}

In line with the state policy of trusteeship, the government committed itself to protecting the indigenous inhabitants from the activities of "European and African land-sharks."\textsuperscript{40} Governor Egerton amended the \textit{Mining Ordinance} of 1912 to give the government more control over land. Under the new arrangements, the government abolished the fees, rents and profits to which local people were previously entitled under the old system. All such fees and rents became the exclusive entitlements of the state.\textsuperscript{41} The ordinance also denied local people the "right of objecting to prospecting licenses or mining licenses being granted for their land."\textsuperscript{42} Similar amendments of the \textit{Public Lands Expropriation Ordinance} gave the government more powers to acquire lands for public use. As would be expected, Africans criticized these changes. One Lagos newspaper described the Mining ordinance as "a law which [works] so palpably to abrogate native rights of property in land."\textsuperscript{43}

The shift in government policy from encouraging individual ownership of land towards promoting state control based on supposedly "customary" communal land tenure systems had significant political undertones. For one, the right of Africans to use land came to be understood as being dependent on allegiance to traditional

\textsuperscript{39} As late as 1966, a conference on African customary law specifically rejected the notion that the individual rights exercised by Africans were much like the rights exercised in Europe. See Max Gluckman, \textit{Ideas and Procedures in African Customary Law} (London: Oxford University Press. 1969), 56-57.

\textsuperscript{40} Tamuno, \textit{The Evolution of the Nigerian State}, 313.

\textsuperscript{41} PRO CSO. 1/22/9, CO to Lugard dated 12 November 1912.

\textsuperscript{42} Tamuno, \textit{The Evolution of the Nigerian State}, 312

\textsuperscript{43} \textit{The Lagos Weekly Record}, 23 March 1912
political authorities. The authority of chiefs, sub-chiefs and heads of clan and family was understood and represented as being bound up with the land. Land allocation was seen as a means by which local chiefs "customarily" maintained the loyalty of their people and asserted control over them. Here, we find another probable rationale for the shift in emphasis from the individual to the community in colonial discourses on land rights. It was in the interest of the colonial state to maintain the authority of chiefs and their role as allocators of land to ensure the continued allegiance of their subjects, and the success of the indirect rule system.

These general principles were given legal endorsement through both direct administrative action and the operation of the colonial courts. Under the judicial arrangement in Southern Nigeria before 1914 land cases were accorded special treatment because of their importance for the colonial state. Land cases, like murder, manslaughter and serious felony cases were beyond the jurisdiction of the Native Courts presided over by African chiefs. Such cases were reserved for the Appeal Courts and the Supreme Court, presided over by European officials. 44 One of the most celebrated cases in which land rights generated extensive debates, both within and outside the courts was Amodu Tijani v. the Secretary of Southern Nigeria, first heard in 1914. 45

The Tijani case deserves closer examination. At issue was the ownership of some pieces of land in Lagos that had been compulsorily acquired for public use by the government. Amoudu Tijani (also known as Chief Oluwa), one of the land-

44 Igbafe, Benin under British Administration, 191-192.

owning local chiefs of Lagos, claimed that the acquired land belonged to him and his family and demanded full compensation from the government, first as absolute owner, and later (on appeal) in a representative capacity. Once again, the Treaty of Cession signed between King Docemo and the British in 1861 lay at the heart of the matter. The government argued that the acquired lands were part of the territory supposedly ceded in 1861 to the British Crown by King Docemo. Opposing Chief Oluwa’s claims of individual ownership, Chief Justice Sir Edwin Speed advanced the standard position of the colonial state that “customary” rights in land belonged to the community rather than the individual. He argued that Chief Oluwa’s interest in the Apapa land was “merely a seigneurial right rather than individual rights of ownership.” Thus, in what seemed like a reversal of roles, the colonial state rather than African chiefs was invoking “native law and custom” to challenge the rights of an African chief to land. This contrasts significantly with our observations in chapter two – where the British justified political intervention in the name of “freedom and liberties” and British protected persons while African chiefs invoked “native customs” in their demands for autonomy and “traditional political rights.”

In 1915, the Tijani case went on appeal to the Supreme Court which held that Chief Oluwa was entitled to some compensation although not on the basis of absolute ownership rights which he claimed over the land. Although the Privy Council subsequently reversed the decision of the Nigerian courts on technical grounds, it nevertheless upheld the principle that “customary” land rights resided in the community rather than the individual. In spite of this decision, some

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46 For the facts of this case, I have relied extensively on Adewoye, The Judicial System In Southern Nigeria, 259-261.

47 3 NLR 59-65. In his judgement, Lord Haldane who had earlier canvassed Indian and Canadian Indian community land titles, declared that “individual ownership of
commentators insisted that the notion of communal ownership of land under “customary” tenure systems was more a British invention than a carry-over from pre-colonial times. Challenging the government’s arguments that the ownership of rubber plantations in Benin was “customarily” communal, (which was advanced to justify state trusteeship over land), the Nigerian Chronicle wrote in an editorial in 1912:

Communal land and planting as it is in Benin today is not the custom of the people but the creation and invention of the British Government through its Forestry Department. We have ample proof of when the people were being induced and allured into accepting the practice [sic].

While it is probable that the Nigerian Chronicle may have been writing to promote its own anti-trusteeship agenda, other sources point to similar conclusions. Several writers have made the point that communal and chiefly control over land may not have been as strong, or individual ownership of land as restricted, in pre-colonial societies as the colonial government often suggested. Philip Igbafé argues that although the village was the main land holding unit in Benin, “the elders and the people did not bother themselves to define the rights of individuals to land as there was plenty of cultivable land for the requirement of everybody.” He also points out that although the Oba had the power to revoke a land grant, he could only do so under circumstances of “gross misconduct such as insurrection and attempted alienation.” Apart from these limitations, Igbafé maintains, the ordinary occupier enjoyed a large degree of security of tenure.

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land is quite foreign to native ideas. Land belongs to the community, the village and the family, never the individual.” 3 NLR 62.

48 The Nigerian Chronicle, 1 November 1912.

49 Igbafé, Benin under British Administration, 29.
In the same vein, Rudolph James argues that although it may seem that the head of the family had greater rights under the customary land tenure system, this was not the case. A chief or family head occupied a position equivalent to a trustee-beneficiary under English law. He held and managed the land in trust for the members of the community. This role did not directly interfere with individual rights of access, use and ownership of land.\(^{50}\) Even traditional authorities, who had much to gain from a system based on communal rights to land, acknowledged the inalienability of individual ownership rights under pre-colonial land tenure systems. Writing on Yoruba land tenure in 1952, Samuel Ojo, the *Bada* of Shaki stated:

> Usually, the king is the head of the town and also the head of the land, but everybody has liberty to use the land as he thinks fit in his opinion. The King can allot a piece of land to anybody but once allotted, the land belongs to the person forever or as long as he or she lives. In case of death his or her children may inherit it.\(^{51}\)

Conflicts over the rights of individual members of a family to joint family lands also frequently came before the courts. This was another important arena in which the later colonial state, through the courts, sought to promote the idea of communal ownership of land and property. For instance, the colonial courts held that while ownership of land rested with the family, its members had *equal rights* and duties in relation to such family lands.\(^{52}\) The rights over family lands were legally

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\(^{52}\) The courts held that although the members of the family had equal rights in family property, they do not have equal shares on the partition of the property, nor do they share equally in the proceeds of the sale see *Danmole v. Dowodu* (1958) 3 FSC 46 and *Taiwo v. Lawani* (1961) ANLR. 703.
spelt out by the court in the case of *Lewis v. Bankole*. These include a right of each member of the family to reside in the family property; to have a voice in the management of the property and share in any income derived from it; to be consulted before any dealings on the property and to be allocated a portion of the family land according to his needs.\(^{53}\) This and other court rulings demonstrate the attempts by the colonial state to promote collective land ownership rights of families and communities while at the same time recognizing the rights of individual members to use land.

Ultimately, what seems to have underlined colonial land policy was the basic idea of the communal nature of “customary” rights in land. But this assumption alone does not adequately explain the complex ways in which both the colonial state and African subjects deployed the rights discourses in staking competing claims to land. The next section explores some analytic models and paradigms that may be more useful in explaining debates over land rights.

### 5.6 Conflicts of Interest and Land Rights Discourses

To understand the nature of the discourse around land rights, it is important to frame the discussion in ways that reach beyond the contradictions between European and African values or the tensions between customary and non-customary behaviour. As I pointed out at the beginning of the chapter, although the paradigm of “legitimising and oppositional discourses” provides a useful analytic framework for understanding economic rights discourse, it does not explain the many exceptions that do not easily fall within these two categories.

\(^{53}\) 1909 1 NLR 87.
One way of getting around this problem and explaining the positions of various groups within these discourses, is to pose the question in terms of conflict of interests and to remain open to the possibility that these conflicts sometimes crisscrossed assumed categories. Instead of merely asking why the colonizers promoted communal land rights or why the colonized opposed it, more pertinent questions are: Who, within and across the categories of colonizer and colonized, was pressing for greater individualization of rights and why? Who, within and across these categories, was pushing for communalization of rights in land and why? Who was resisting these pressures and why? And finally, how did individuals and groups within and across these categories use the language of rights to either strengthen their positions or challenge those of others?

Addressing these questions brings new perspectives to our understanding of colonial discourses about land rights. The concern of the colonial state over growing commercialization of agricultural land shortage does not fully explain the volte-face from fostering "healthy individualism" in the early colonial period, to the emphasis on "customary" communal land rights later on. Francis Snyder offers one explanation. He argues that colonial preference for communal rather than individual land rights facilitated the pursuit of other imperial agendas. If individual "natives" had no conceptions of rights, only pre-modern customs, it was easier to dispossess them of their land; easier to extract their labour power and easier to legitimize their subordination to a "superior" European law. Similarly, Martin Chanock and Sally Falk Moore, in separate studies, have argued that the embrace of communalism and

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54 Chanock, “Paradigms, Policies and Property,” 71.

custom, and the concomitant erasure of individual rights, was “hugely convenient” for the colonial state since these ideas served to advance imperial economic and political agendas.\textsuperscript{56}

Jean and John Comaroff have challenged these explanations, arguing that they reflect a continuing propensity to treat the colonial encounter as a linear, coherent, cohesive process involving two clearly defined protagonists, an expansive metropolitan society and a subordinate local population. It locates the colonial encounter in the technologies by which the former imposed its ideologies on the latter through a series of calculated actions. They argue further that although these generalities have been questioned, amended and modified, they continue to “evince remarkable tenacity in the face of increasing counterevidence.”\textsuperscript{57} In an intellectual style that has become characteristic of their scholarship, the Comaroffs offer alternative analyses of colonial land rights discourses that underscore their inherent “paradoxes,” “fluidities” and “contradictions.” They point out, for instance, that while colonial functionaries perpetuated the “premodern” by eschewing individual rights for Africans, their righteous compatriots, the missionaries, sought the exact opposite in the name of civilization. This, they conclude, should “put paid to any last traces of the illusion that ‘colonialism’ was a monolith, a machine for pure domination; or that ‘the colonizer’ may plausibly be portrayed as a coherent, unitary historical agent.”\textsuperscript{58}


\textsuperscript{57} Comaroff, Of Revelation and Revolution, Vol. 2, 367.

\textsuperscript{58} Comaroff, Of Revelation and Revolution, Vol. 2, 367
This is not the place to go into the merits and limitations of the Comaroffs' "deconstructionist" approach to the study of colonial African history. We have done so elsewhere.\textsuperscript{59} It suffices here to state that in the case of Western Nigeria, the evidence suggests that a more tenable position lies somewhere in the middle between the structured and state-centred analysis of Snyder, Chanock and Moore on one hand and the postmodernist deconstructionist analysis of the Comaroffs. The Comaroffs have a valid point when they argue that presenting colonial discourses of land rights as monolithic tends to treat the colonial encounter as a coherent process involving two undifferentiated categories of ruler and ruled. This approach has obvious limitations, which have been highlighted in other studies, perhaps the most prominent of which is Cooper and Stoler's \textit{Tensions of Empire}.\textsuperscript{60}

However, it is equally difficult to accept the Comaroffs' argument that because the colonial encounter was underlined by some paradoxes and contradictions, we cannot discern a broad pattern in discourses of land rights, which indicates the distinct interests and agendas of the colonial state as opposed to those of the majority of Africans. To say this is to miss the forest for the trees, to lose sight of the "big picture" in a preoccupation with fine details. This dilemma raises the old question of tension between \textit{structure} and \textit{agency} in historical analysis. Should the quest to ascribe agency to historical actors deny the possibility of broad structural frameworks for historical understanding? I do not think it should. The fact that some missionaries


\textsuperscript{60} Frederick Cooper and Ann Stoler (eds.) \textit{Tensions of Empire: Colonial Cultures in a Bourgeois World} (Berkeley: University of California Press, 1997).
continued to promote the individual rights of natives to land at a time when the colonial state had made its volte face towards emphasizing communal rights may indeed reflect a contradiction in the colonial project. It does not, however, rule out the real possibility that the colonial state (as distinct from other agents of empire) was primarily driven by its quest for hegemonic control in its land policy and the rhetoric of “customary” communal rights with which it pursued this policy.

The important point here is to recognise the difference between the largely coherent agendas that informed some colonial state policies (such as those relating to land) on the one hand, and the multiple agendas, contradictions and paradoxes that characterized the colonial experience as a whole, including the missionary activities which the Comaroffs tend to emphasize. To recognise the latter is not to dismiss the former. In fact, both of these levels of the colonial narrative, far from being at odds, can be mutually reinforcing. The usefulness of this approach becomes apparent in the following discussion which examines the complex ways in which Africans responded to colonial land policies and sought to protect their interests within them.

5.7 Asserting Land Rights: The Public Debates

Africans responded in different ways, to colonial land policies and the politics that underlined them. While some Africans opposed state acquisition and control of land as a violation of the “customary” land rights of the “native,” others agreed with the government’s position that state trusteeship over land was, ultimately the best guarantee of these same “customary” rights. In either case, Africans appropriated and deployed the language of rights, favoured by the colonial state, to articulate their positions and stake competing claims to land. Many people testified about land before colonial administrators and courts on the basis of customary rights because they
believed their claims would only be regarded as valid if they were presented in terms sanctioned by colonial "custom."

Assertions about rights in land also depended largely on when and where they were being made. People said different things at different times depending on their interests. For instance, the definition of land rights during an inheritance dispute when complex questions of social expectations and family solidarity are involved, could differ from the rights proclaimed in response to new economic opportunities or to challenge government-inspired land acquisition schemes. A person might say, "mine" if it was advantageous for him to sell or mortgage land. The same person may talk about "ours" – referring to the family – when asserting a right of inheritance against a larger lineage group of kin.61

Such diversity of perspective was quite evident in local debates on the land question in Western Nigeria, particularly from 1912 when the government began moving to control land in the name of state trusteeship. As law and precedence began to shape the pattern of land tenure, a vocal faction of the intelligentsia resisted what one newspaper described as a process by which "the rights of natives in the private ownership of their lands are being assailed and the recognition of those inherent and ancestral rights are being denied."62 Prominent educated African elites like Herbert Macaulay,63 J.E. Shyngle, O. Obasa, O. Johnson and British humanitarians like E.D.

61 Chanock, "Paradigms, Policies and Property," 73.


63 Herbert Macaulay was perhaps the most prominent Nigerian politician during this period and is widely referred to as the "father of Nigerian Nationalism." He was at the forefront of the early nationalist movement. His political activities are examined in more details chapter six.
Morel engaged in heated debates over government land policies, mainly under the auspices of the Lagos Auxiliary of the Aborigines Protection Society. O. Johnson and E.D. Morel in particular, exchanged several letters, both privately and publicly in the Lagos press, where they disagreed over government land policies and its implications for “native” rights and welfare. Johnson, like most Africans, staunchly opposed the government’s acquisition and control of land arguing that it served only to deprive the people of their ownership of, and access to, lands. Morel, on the other hand, believed that Johnson’s opposition was informed more by cultural nationalism than by an objective evaluation of the government’s land policy. Johnson, he argued, belonged to a group of Africans who “do not wish the British government to have the slightest power in dealing with the matter of land tenure.”

Morel argued that British “trusteeship” over land would ultimately benefit Africans by preventing large-scale alienation of land which could reduce the masses to the status of landless wage labourers. He advocated a system where the British government as “overlord” of West African land assumed the power of protecting the people against the effects of “human folly and human ignorance” in such complex land matters. Although these trusteeship arguments were not new and supported the official position, they indicate that even among advocates of native rights and welfare, fundamental disagreements arose over how best to protect “native” land rights.

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66 For instance *The Lagos Standard* argued that British protection over land which Moore advocated would be “a queer sort of protection that would not only take away from a person the right to dispose of his property as he saw fit, but also reduce his status from that of a landed proprietor to that of a squatter on his own land.” *The Lagos Standard*, 14 September 1913.
Tekena Tamuno has argued that people like Morel, Johnson, Macaulay, Shyngle and others who contributed actively to the land controversy in Southern Nigeria "differed not in the goal but in the means proposed to achieve it." Both sides appreciated the desirability of maintaining the rights and security in land tenure for the masses whose interests had been threatened by African and European speculators. Whereas Johnson, Macaulay, Shyngle and others wanted Africans left with the power of protecting themselves, Morel and others of his school urged the British government to assume that power legally and exercise it thoroughly. It is however reasonable to assume that individuals, in taking the positions that they took in these debates, may also have been partly motivated by self-interest.

Complex generational, class and gender-related interests were also at play in the discourses of rights to land during this period. Older and upper class men, including chiefs and village and family headmen, generally argued for communal rights in land, presenting them as "customary" or "traditional" practice. These arguments reinforced and maintained their influence and control over local affairs in the face of rapid social changes. In contrast, the younger generation, particularly educated men, tended to support permanent land ownership and the individualizing of rights in land.

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68 E. D Morel who was a strong advocate of government acquisition and control of land was a member of the West African Lands Committee. One newspaper insinuated that being a Briton, his views were more influenced by sympathy for the colonial government than the interest of Africans or his declared humanitarian agenda. It doubted whether Morel was "a true friend of the native" describing him as "the lucky recipient of a handsome purse, a feted and honoured friend of the colonial office and an aspirant for a seat in Parliament." The Lagos Standard 24 September 1913.

69 Chanock, "Paradigms, Policies and Property," 73.
In Benin these differences were at the core of protracted conflict between the Oba and a group of educated elites who organized themselves under the auspices of the Benin Community Association. In 1933 members of the association sent a petition to the District Officer of Benin Province protesting the restrictions that the Oba had placed on individual ownership and sale of land.\textsuperscript{70} Another group, The Benin Progressive League, also petitioned the Resident in 1935 complaining against the "subversion of the rights of individual ownership" by the Oba who had denied "three Benin young men" the right to lease their land to a French Company.\textsuperscript{71} A similar incident occurred in Warri Province, where the Isoko Youth League wrote a petition to the District Officer in charge of the Ughelli Native Authority in 1957 to protest restrictions by the local Native Authority on individual land acquisition.\textsuperscript{72}

In spite of these differences however, important alliances between youths and elders, and between educated elites and traditional chiefs, emerged around the land question. Educated and chiefly leaders sometimes came together, often under the auspices of the Lagos Auxiliary of the Aborigines' Protection Society, to assume the mandate of protecting the rights of natives to their land. In 1907 when a British merchant attempted to secure extensive timber concessions from the government in Ijebu, mission-educated reformers, led by Joseph Odumosu, acted in close patriotic concert with the chiefly elite led by the Ajiuwale to resist, using funds raised by popular subscription. Odumosu used his newspaper and the acumen of a leading

\textsuperscript{70} NAI Ben. Prof. 309, Petition by the Benin Community Association to DO.

\textsuperscript{71} NAI Ben. Prof. 309, Petition by the Benin Community Association to DO.

\textsuperscript{72} NAI War Prof 37/ Vol. III, Petitions by the Isoko Youth League to the Senior District Officer in charge of the Native Authority at Ughelli dated 6 July 1952.
Lagos lawyer to rally popular support to oppose the concessions while the Ajuwale worked through "ritual and sacrifice."  

The incident that precipitated the strongest local opposition from both the educated elites and traditional chiefs was the proposal by the Colonial Office in 1912 to extend the colonial land tenure system in Northern Nigeria to the south. The Land and Native Rights Ordinance introduced in Northern Nigeria in 1911 was based on the assumption that land ownership was communal, with the chiefs holding it in trust "for the collective benefit of the people." The colonial state used this principle to rationalize and legitimize its own trusteeship over land.  

The standard argument ran thus: firstly, all "native lands" were held by the paramount chiefs and heads of the community, in trust for that community; secondly, all these lands subsequently came under the control of the colonial Governor, who through British conquest had become the "paramount chief," to be administered by him, according to native law and custom for the "common benefit" of the people.  

Opponents of the Land and Native Rights Ordinance and the proposal to extend it to the South argued that these principles did not reflect customary land laws of the people of Southern Nigeria. Opinion leaders in Lagos regarded the proposal as an imperial move to deprive them of the right to their own land. In several editorials and commentaries, the Lagos newspapers criticized the proposition of the British  

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74 These efforts by the colonial government to establish control over land were not peculiar to Nigeria, Issa Shivji has argued that similar developments occurred in colonial Tanzania where a Land Ordinance was introduced in 1923. See Issa Shivji, "Contradictory Perspectives on Rights and Justice in the Context of Land Tenure Reform in Tanzania" in Mamdani (ed.) Beyond Rights Talk and Culture Talk, 40.  

75 The Lagos Weekly Record, 6 July 1912.
Crown to take over all lands and regulate their transfer. The *Nigerian Chronicle* argued that by "depriving the native of his right to land and vesting it in the state," the colonial government was not only destroying their customary laws but was also "reducing them from the status of proprietors in their own right into that of a peasant or a serf."\(^{76}\) On its part, *The Lagos Weekly Record* opined:

> It is but too obvious that anything in the shape of insecurity as regards the native’s rights of ownership to the land, which he has inherited from time immemorial, which he regards as his own and as the heritage which he would leave to his children must produce a profound shock to the native... No one, we venture to say would have the temerity to suggest that the native would be reconciled to a change which would deprive him of a right of ownership to his land.\(^{77}\)

These concerns over the loss of "native" rights in land prompted the convening of several mass meetings in Lagos to deliberate on the issue. Deputations were subsequently despatched to the Yoruba hinterland of Western Nigeria to awaken the chiefs and people there to what was considered a grave threat to their liberties.\(^{78}\)

The Aborigines Protection Society also despatched a delegation composed of both educated Lagosians and chiefs from such interior centres as Abeokuta, Ibadan, Ijebu Ode, Ilesha, and Ife, to London in 1913 to protest the government’s land proposals. As Raymond Buell argues, the concern over protecting "native" land rights "resulted

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\(^{76}\) *Nigerian Chronicle*, 8 November 1912, 2. Interestingly, as we have seen from the preceding discussion, the humanitarian activist, E.D. Morel advanced exactly the same to justify his support for British control over land.

\(^{77}\) *The Lagos Weekly Record*, 6 July 1912.

in the political mobilization of new elements of the population and brought together for the first time, educated Lagosians and chiefs from the interior.  

The series of public meetings which the members of the Lagos deputation had with the people in the hinterland over the government’s land proposal provides us unique insights into how ordinary people articulated their claims to land. Not only were these deliberations widely reported in the Lagos press, the specific comments of various speakers were often reported apparently verbatim. One newspaper commented that “the attitude of the people was one of unbounded astonishment at the land proposals coming from Englishmen, whom they had regarded as their friends and protectors.” The newspaper reported that at the meeting in Abeokuta, a local chief, the Asipa of Egba and the official spokesman of the Ologuns (traditional war chiefs) summed up popular objection to the proposals.

He recounted how the Egba fought the Oyos, the Ibadans, the Ijebus, the Dahomeans and the other foes who invaded their territories at different periods of their history and how these [people] could not succeed in taking their land from them. He asked why the British people who [sic] he thought was their friend wanted to take their land from them. They had no more slaves and pawns and land, which was their only heritage was also going to be taken from them by people for whom they had sacrificed their own interests to a great extent. He concluded by saying that when we were born, God gave the white man his land, the natural beauty of which is the ocean. The same God gave us our own land. They did not wish to take the white man’s land from him; he too should leave them in undisturbed possessions of their God-given property... He said that if the proposals are carried out there will be no more trade with the white man [and] the white man must find palm oil and palm kernels from his own country.


80 *The Lagos Standard*, 2 October 1912.

81 *The Lagos Standard*, 18 September 1912.
What is clearly evident from this is that for the Egba people, or at least the traditional elites who represented them, land ownership and control were fundamental rights, which they would not compromise under any circumstances. This right was more important than politics (friendship with the white man) or economic considerations (the palm oil and kernel trade with the white man). It was an existential issue that defined their collective identity and integrity as a people. The importance which people attached to their rights over land was also reflected at a personal level where individuals drew on the language of tradition and “custom” to articulate diverse claims of rights in land. Throughout the 1920s and 1930s, Africans continued to oppose and challenge colonial control over land. This intensified when the colonial government introduced the *Land Acquisition Ordinance* in 1937. Some of the opposition against government land control was expressed in individual and group petitions to colonial officials, as we shall see in the following section. However, the debate over land rights did not only centre on African opposition to colonial control. It also centred on competing claims among Africans over land ownership and control.

### 5.8 Asserting Land Rights: The Language of Petitions

Individual conflict over land was another important arena in which debates over rights were conducted. This was particularly so in circumstances where parties to a conflict requested official intervention in the matter. Getting official intervention in a land matter required a formal request in writing, usually in the form of a petition to an administrative officer. Because of limited access to the courts and the fact that many people found the court system too complex and expensive, petition writing became the preferred way by which people sought government intervention in land disputes. The petition files archives, both in Nigeria and in London, are replete with appeals on
land matters addressed to colonial officials at various level of the administrative hierarchy. My sample analysis of the archival records indicates that petitions relating to land constituted about sixty-eight percent of all the petitions addressed to the Commissioner for Colony and the Provincial Residents in the period between 1912 and 1950.\textsuperscript{82} These petitions provide a treasure trove of historical data on land-related discourses of rights.

What is significant about many land-related petitions in the colonial period is that although they were written by ordinary Africans, and sometimes by professional “public letter writers”\textsuperscript{83} who knew little of the technicalities of the law and legal language, they were characterized by the rhetoric of rights, freedom and liberty. A few such petitions will buttress this point. In 1939, one Cyprian Ugwu wrote a petition to the Commissioner of Colony in Lagos protesting the “unlawful” acquisition of his “family lands” by the local Native Authority. He argued that although the disputed land had been freely given to the Native Authority by his deceased father for temporary use, “the right of ownership was reserved by the giver.” His petition ended with a prayer to the Commissioner for Colony to protect his family’s “legal right of ownership of [their] ancestral lands.”\textsuperscript{84}

In a similar petition written in June 1951, Aina Eko Olowo petitioned the Commissioner for the Colony complaining that he had not been paid a share of the money realized by the \textit{Bale} (local head chief) from the acquisition of their communal

\textsuperscript{82} This conclusion is based on a sample statistical analysis of 20 petition files in the Com. Col., Abe. Prof., Ijebu Prof., Ben. Prof., War. Prof. and the Oyo Prof. series at the Nigerian National Archives in Ibadan. For a listing of some of these files see “archival sources” in the bibliography.

\textsuperscript{83} The role of public letter writers in the discourses of rights during this period is examined in more detail in chapter six.

\textsuperscript{84} NAI Com. Col. 1 General Complaints.
land. He prayed the Commissioner for Colony to enforce his “customary rights as a citizen of Onigbongbon” to the proceeds from the land. In both cases, the petitioners had clearly taken care to emphasize that their claims were based on their rights as members of a family or community, rather than individual rights.

It would be safe to assume that this was a strategy intended to give more validity to their claims and, hopefully, to elicit a more favourable response from colonial administrators. The petitioners were not always African or “aggrieved natives.” Missionaries, humanitarians and other sympathetic Europeans also wrote petitions, often on behalf of Africans claiming rights to land. Between 1914 and 1941 the British lawyer and humanitarian William Geary wrote several petitions on behalf of Africans and missionary groups to the Commissioner of Colony and the Secretary of State for Colonies in London protesting arbitrary government’s acquisitions of land.85

Some aggrieved parties even petitioned colonial administrators to intervene in court decisions over land on the basis of what they considered judicial subversion of their customary rights. They assumed colonial officials would be more attentive to these rights than the courts. In 1941 the “descendants of the Oloto family of Ebute Metta” sent a petition to the governor to protest a judgement delivered by the Supreme Court in favour of one “Mr. Fabiyi” against the family. The court had given Mr. Fabiyi the authority to sell the land and properties of the Oloto family, including the “family palace,” in settlement of a debt owed him by one member of the family. The petitioners protested this judgement, anchoring their arguments on collective family rights. They argued that the individual against whom the judgement was

delivered had no exclusive rights over the property because "traditional lands and particularly a palace belong not to any past or present ruling chief but to the family generally."\textsuperscript{86}

The Second World War also affected the discourses about land rights. During the war and in the post-war years, petitioners often sought government intervention in land matters anchoring their demands on the "war against Hitler for freedom and rights." An interesting example of this is a petition sent to the Governor in 1941 by the Farmers Protection Society protested against the government's price controls and the acquisition of the farmlands of some of their members. The association invoked treaty rights and the on-going war with Germany to make its case. While praying for the success of British arms against "Hitler, enemy of liberty, civilization and democracy, to whom a treaty is merely a scrap of paper," the petitioners implored the Governor to protect their own treaty rights to their "ancestral lands."\textsuperscript{87} Such references to the war and treaty rights were not peculiar to petitions over land or economic issues. As we shall see in chapter seven, references to the "war for freedom and liberty against Hitler" also characterized petitions relating to political and civil rights in the 1940s and 50s. This was part of the attempts by Africans to use the same rhetoric of rights and liberty that characterized British wartime propaganda to articulate their own political and economic aspirations.

\textsuperscript{86} NAI Com. Col. 1/197/Vol. III, Petition by the descendants of the Oloto Chieftaincy of Ebute Metta to the Governor dated 15 July 1941.

\textsuperscript{87} NAI Com. Col. 1/197/ Vol. III, petition by the Farmers Protection Society to the Governor dated 11 Feb 1941.
5.9 Rights, Development and State Trusteeship

As the nationalists movement gathered momentum in the post-war period, the notion of customary communal land rights, which had been used to rationalize state trusteeship over land in the hey day of colonial rule, found new meanings in state development agendas. The various strands that had earlier contributed to the hostility towards individual rights in land became interwoven with the new development ethos. Colonial officials assumed that freehold rights tie the hand of the government in all schemes of agricultural advance and that "ignorant peasants armed with freehold rights, could destroy the country's capital." On the other hand, it was also assumed that only effective state ownership assured judicious land use, the maintenance of the fertility of the soil, and maximize the exploitation of land for the ultimate benefit of all. 88

When Nigeria attained independence in 1960, the new government, like the colonial regime it succeeded, sought to assert control over the land, both in the name of protecting African "customs" and facilitating development. While the idea that state control of land promoted communal African custom was an old one, the development ethos was relatively new. Nevertheless both ideas converged in the attempts to accord the state even more powers over land. A customary veil was drawn over the national confiscation of land and the circumscription of individual rights to land. The problem with restricting individual rights in land in the public interest was more easily solved where the rights were seen to be "only rights of usage and enjoyment granted by the group to the individual." 89 Besides, the demands of a planned and directed economy -- a cardinal aspiration of the nationalist post-colonial

88 Meek, Land Law and Custom in the Colonies, 6-8

89 Chanock, "Paradigms, Policies and Property," 80
government -- were perfectly consistent with the old communal concept of customary law. Since development was seen essentially as a state initiative, state trusteeship over land was considered fundamental to the process of national development. These ideas, have continued to guide state policies towards land in the post-colonial period as they once did under colonial rule.

The idea of communal rights in land, which has provided the basis of state trusteeship, has served the interests of the post-colonial state and powerful constituencies within it, just as much as it served those of the colonial state. Immediately before independence and since then, hostility in the name of custom towards the emergence of individual rights in land, combined with the development ethos, have facilitated the state’s efforts to reinforce its power over land rather than the rights of individuals. As Chanock argues, this trend has left Africans “rightless against the state where land is concerned” and has contributed to the dominance of the state over society in African nations.90

The most significant demonstration of how colonial ideas about communal land rights and the development ethos have combined to define state trusteeship over land in post-colonial Nigeria was the promulgation of the Land Use Decree in 1978. This law (later Land Use Act) vested the governor of each state of the federation with control over all lands in the state just as it had been under colonial rule.91 The land was to be “held in trust” by the Governor and administered for “the use and common


91 Article 1, Land Use Act (originally Land Use Decree), Cap 202, No. 6 of 1978.
benefit of all Nigerians. The language of the decree drew extensively from colonial texts and law, particularly the Public Land Ordinance of 1876, the Public Lands Acquisition Proclamation of 1903, the Land and Native Rights Ordinance of 1911 and the Public Lands (Compulsory Acquisition) Act of 1917.

Like these colonial laws, the Land Use Decree of 1978 gave the governor exclusive authority to grant "statutory individual rights of occupancy," while local authorities were empowered to grant "customary rights of occupancy." The decree also made it clear that the ultimate ownership rights over land continued to reside in the state and that lands could only be transferred, assigned, mortgaged or improved with the permission of the governor who could also revoke a right of occupancy for "overriding public interest." This law, which is still operational in Nigeria, remains, in many ways, a legacy of the politics of colonial land policy and the discourses of customary rights that underlined it.

Interestingly, the ostensible rationale for the introduction of the Land Use Act was also strikingly similar to the pro-trusteeship arguments made earlier by humanitarian activists like E.D Morel, which many Nigerian intellectuals found objectionable at the time. The 1977 Land Use Panel, which recommended the Land Use Act, was asked by the government to "recommend a formula that would benefit the vast majority of our people." Like earlier colonial land ordinances, the main justification advanced for the Land Use Act was that it would make access to land

92 Section 1, Land Use Act.
93 Section 5a and 6a, Land Use Act.
94 Section 14, 15 and 28(1) of the Land Use Act. Article 14 of the decree provided that "the occupier [has] exclusive rights to the land against all persons other than the Governor.
easier both for the citizens and the state. It would also protect the "right of all
Nigerians to use and enjoy land."\textsuperscript{96} But as several studies have shown, far from
making land more accessible to citizens, the Land Use Act has mainly strengthened
the control of the state and ruling elites over land to the disadvantage to ordinary
citizens.\textsuperscript{97}

The same pro-trusteeship arguments of humanitarians like Morel, which were
criticized and dismissed by Nigerian elites as detrimental to their rights and interests
in the colonial period, have been vigorously pushed by ruling elites in the post-
colonial dispensation to justify state land control. The only change is the political
context. In the post-colonial dispensation, state land trusteeship served the interest of
ruling Nigerian elites who held political power. These elites, once outsiders and
opponents of government had become state-insiders with access to state resources
which they had an interest in protecting.

What does this tell us about the nature of the land rights discourse? First, it
underscores the argument made earlier that it is more useful to understand the debates
over land rights in terms of conflicts of interests rather than a clash between
customary regimes and colonial trusteeship. In this case, it is evident that arguments

\textsuperscript{96} A.A. Utama, "Customary Law and the Land Use Act," in Yemi Osibanjo and Awa
Kalu (eds.) \textit{Towards a Restatement of Nigerian Customary Laws} (Lagos: Federal

\textsuperscript{97} See J. A. Omatola, \textit{Law and Land Rights: Whither Nigeria} (Lagos: University of
Lagos Press, Inaugural Lecture Series 1988); Godfrey Uduehi, \textit{Public Lands
Acquisition and Compensation Practice in Nigeria} (Lagos: John West publication,
1987); Abayomi Fawehimi, "Land Tenure in traditional Nigeria (Africa): Relevance
to Contemporary Nigeria," paper presented at the International Conference on
"Politics, Society and Rights in Traditional Societies: Models and Prescription for
Contemporary Nation Building in Nigeria," organized by the Institute for Benin
Studies and the Carnegie Council on Ethics and International Affairs, University of
Benin, Nigeria, 16-17 May, 2002 and Utama, "Customary Law and the Land Use
Act."
for and against state trusteeship over land in both colonial and post-colonial dispensations were determined more by the interests of individuals and groups at different times than by the intrinsic tension between customary and non-customary systems.

Secondly, it demonstrates the way rights discourses changed over time. It shows how Nigerian elites moved from using rights talk to challenge colonial land control to using it to defend the status quo. In some way, this complicates one of the central arguments of the thesis. Rights discourses were used to promote complex agendas; they were not only used to legitimise the status quo but also to challenge it. But here we see that the "legitimizers" and the "challengers" were not always different interest groups, i.e. colonizers and colonized. We see here that those who used the rights discourse to oppose an established order at one point could also use it to defend the same order at another point. This process also illustrates how the discourse of rights became "Nigerianized" -- how the Nigerian political elite not only appropriated colonial rights talk to challenge colonial control but how they ultimately internalised and shaped it to serve their own needs in the post colonial period.

5.10 Women, Land and Property

An important issue, which deserves attention in the debates over land, is the ownership rights of women to land and other properties. Most pre-colonial societies in Western Nigeria like those of the Yoruba and Benin were predominantly patriarchal and patrilineal. 98 Early ethnographic data on the Yoruba indicates that ownership of

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98 There were some notable exceptions like the Owan whose societies were matriarchal rather than patriarchal. In his incisive study of the pre-colonial history of the Owan, Wilson Ogbomo concludes that the evidence from oral tradition and the imagery of totems, shrines and goddesses alludes to a matriarchal past. Wilson
land and property was mainly the preserve of men. Woman’s access to land was often restricted to use rather than absolute ownership. The same rules applied to property. Under the “customary” rules of succession, it was widely accepted that a woman—whether a daughter or a wife—could not inherit landed properties from her father or her husband. These “customs” were recognised and generally upheld by colonial officials. As one colonial judge argued in 1947, a woman “as a general rule, is not entitled to share in her deceased husband’s estate because under customary law; devolution of property followed blood lines. And what is more, she herself is an object of inheritance.”

Several scholars have sought to explain the limitations imposed on woman’s proprietary rights in terms of the socio-political and economic structures of both pre-colonial and colonial societies. This is not the place to go into a detailed


101 Justice Beckley in Sogeimo Davis Versus Aldophous Davis (1947), 9 NLR 99, 80.


103 Nina Mba, Ifi Amadiume and Cheryl Johnson have argued, in separate studies, that women in Nigeria wielded more economic and political power in the pre-colonial period than they later did under colonial rule. Cheryl Johnson, “Class and Gender”;
discussion of these issues. It suffices here to point out that the ambivalence of the colonial state towards the recognition of male rights in land did not occur when it came to women. Colonial customary law simply did not accommodate the idea of women as landowners. Claims by women in the name of custom were viewed with impatience and seen by colonial authorities as an impediment to the development process. The interpretation of women’s rights to land was often limited to use rather than outright ownership. Even then, such rights were based on social status. Rights to use land were connected with marriage. In most cases, a woman acquired rights to use land in her husband’s place of residence through marriage – rights that were forfeited if the marriage dissolved.\(^\text{104}\)

As Chanock has argued within the context of colonial Malawi and Zambia, the “rightlessness” of women that resulted from the development of the colonial land regime was part of the overall story of the interweaving of individualisation, protective and communal ideologies, the development ethos, and the facts created by the early colonial land grab.\(^\text{105}\) Whatever limited rights to land women traditionally had were further circumscribed by the transformations brought about by colonial policies and land tenure systems. The same was true for much of Western Nigeria where there was a clear male bias in European gender practices and assumptions.


\(^\text{104}\) H.L Ward Price, *Land Tenure in the Yoruba Provinces* (Lagos: Government Printer, 1939), 43. This practice was also common in other parts of Africa. See Martin Chanock, “Paradigms, Policies and Property,” 74.

\(^\text{105}\) Martin Chanock, *Law, Custom and Social Order*, 145-216
However, African women, like men, were not passive onlookers in the transformation of indigenous land tenure systems by the colonial state. They challenged and took advantage of these changes. For instance, in a petition to the Resident of Benin Province in 1940, one Maria Mgbo Olomu requested the Resident’s intervention to restore her ownership of a piece of land which she alleged the “chiefs of Umuezi Quarter” had taken from her and “unlawfully transferred” to a European firm, the United African Company. The tone of Maria Olomu’s petition provides no indication that she felt any less entitled to the land she claimed because of her gender or social status. Her emphasis was on the justification of her claim and her rights as a British “subject.” Part of her petition read:

I feel as one of the British protected individuals of the British Empire, that I have the right of freedom and in these days, I am sure that the gospel of “might is right” is no more preached, but equality of rights and fair play... I appeal for your intervention in the interest of fair play which had been ideally represented by the British Government; which your Honour duly represents as a virtuous woman with bandaged eyes holding impartial scales.\(^{106}\)

Although the petition does not provide much information about her personal background, there is some indication that Maria Olomu belonged to a small group of women in Western Nigeria in the 1930s and 40s who had acquired missionary education and were beginning to break the traditional and colonial barriers on women to assert their rights in economic, social and political matters. Her petition is significant in many regards. First, it was written by a woman. Colonial records indicate that very few women in the 1940s wrote petitions on matters relating to land and property. As we shall see in the next chapter which deals with social rights, most petitions from women in this period dealt with domestic and matrimonial issues.

\(^{106}\) NAI Ben Prof 203/439
Second, unlike most petitions in this period that were written by professional public letter writers, the tone and format of her letter suggests that Maria Olomu may have written the petition herself. It did not have the mandatory attestation and signature of the letter writer required by law under the Illiterate Protection Ordinance. The language of the petition was also remarkably different from the generic phraseologies that characterized petitions written by professional public letter writers. Maria Olomu’s references to “might and right,” equality, fair play and “the virtuous woman with bandaged eyes” indicates, perhaps, an attempt to draw attention to her position of weakness as a woman in a male-dominated society, seeking justice from an impartial arbiter. However, as would be expected, the Resident refused to intervene and advised Maria Olomu to “enforce her rights through the law courts.”

Apparently, the colonial Resident was not inclined to intervene in a land matter on the side of one woman against a group of influential chiefs and a European firm -- both powerful constituencies of the colonial state.

Colonial administrators made little or no attempt to mask their ambivalence towards women’s proprietary rights. While they were willing to intervene in social issues like marriage and abolish customary marital practices deemed repugnant to women, there was no such concern for women’s access to economic resources. One colonial report on “The Right of Women to Succeed to, Hold, and Dispose of Properties” submitted to the League of Nations in 1936 simply stated that it was not customary for women to hold land and landed property among the “tribes” of

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107 The Illiterates Protection Ordinance was introduced by the colonial government in 1910 to protect illiterates from exploitative professional letter writers and to regulate the burgeoning profession of letter writing. The provisions of the ordinance are outlined in the introductory chapter. See “Research methodology.”

108 NAI Ben Prof 203/439.
Nigeria. The colonial state’s ambivalence towards women’s proprietary rights differed markedly from its attitudes towards social rights issues like marriage, divorce and inheritance. On these matters, the state, following the lead of earlier missionaries, demonstrated a greater tendency towards decisive intervention, as we shall see in the following chapter.

5.11 Conclusion

Land and property were important issues in the debates about rights because they were central to people’s daily lives and economic struggles within the colonial state and with each other. Land was at the heart of the attempts by the colonial state to exercise greater control over economic resources and this process was characterized by complexities and contradictions. Colonial land policies turned and shifted according to the local exigencies. For the colonial state, the rhetoric of rights was useful in promoting its land policies – so useful, in fact, that it could be deployed to promote two contradictory policies at different times. While the first decade of colonial rule was dominated by ideas about the evolutionary superiority of Western liberal concepts of individual land and property rights, it closed with a general atmosphere of suspicion of these rights and an emphasis, instead, on “customary” communal rights.

109 The report was in response to the league’s effort to place the question of women’s political and economic rights on its agenda in 1935. In that year the League passed a resolution to extend the resolution on the Equal Rights Treaty signed at Montevideo in 1933 to colonial world. Colonizing powers were subsequently invited to send to the Secretary-General, for consideration by the Assembly, their observations on the question of the status of women in their respective colonies. The colonial regime in Nigeria, like those elsewhere in the world was required to a report on the rights and status of women in the colony. Its report, which was presented as part of a larger report on “The Status of Women in British Protectorates,” dealt with such issues as “The Right of Women to succeed to, Hold, and Dispose of Properties” and “The Right of Women under the Marriage and Divorce Law.”
For much of the period of colonial rule, colonial administrators elaborated models of African societies that linked the integrity of the family, community and tribe to collective control of land. Fearful that uncontrolled expansion of private property right would undermine chiefly powers and its system of indirect rule, the colonial state restricted individual ownership and emphasized communal customary rights in land. This became the basis of the colonial and post-colonial policy of state ownership and "trusteeship" of land. Also significant in the debates over the land was the way in which Africans used the rhetoric of rights through the courts and in petitions, to articulate their interests on land matters. This appropriation of rights talk was not strictly cut along the lines of urban-based, rights bearing "citizens" on one hand and custom-bearing rural "subjects" on the other. Urban and rural-based Africans appealed to English-style individual property rights and communal African "customary" land rights at different times, depending on which they believed strengthened their claims, before colonial courts and officials. This process was not limited to the land question. As we shall see in the following chapter, it was also evident in the debates over social issues like marriage, divorce and inheritance.
CHAPTER SIX

NEGOTIATING INCLUSION: SOCIAL RIGHTS DISCOURSES

The law and the courts must serve to liberate [women] from the old positions of servitude to which they were doomed.

We earnestly entreat that the Obi be urged to give us our complete freedom – freedom to live as others; freedom to speak; and freedom to mix with the other sections of Issele. We urge that the Obi of Issele and his relatives be forced to put a stop to all principles and policies that have hitherto marred or hindered our rights as citizens.
Petition by the Idumuashaba Family Union (1945)

6.1 Introduction

This chapter examines the discourse of rights that underlined debates over social issues in Western Nigeria during the period of this study. Much of these discussions revolved around issues like marriage, divorce, polygamy, child custody, betrothals, inheritance and demands for social inclusion. Because of the wide range of social issues over which rights discourses were deployed and the difficulty of addressing all of them within this limited space, I have isolated a number of salient themes to guide the chapter’s discussion. Oral and archival records suggest that these were the dominant social themes generating public discussions over rights. This chapter focuses on three of these themes – marriage and divorce, debates about family rights, and the agitation for social inclusion by marginalized groups within colonial society.

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1 NAI CSO 26/2 11930 111, Owerri Province, Annual Report for 1925.

2 NAI Ben. Prof. 203/252, Petition by Paul Nwani and others to the Resident Commissioner, Benin Province on behalf of the Idumu-Asaba Family Union dated 4 June 1945.
As in economic matters, colonial authorities sought a reorientation of African social life along a more "modern" and liberal European model. Colonial social policies such as those relating to marriage and divorce, child custody and inheritance were justified on the grounds that they protected the rights of women, children and other vulnerable groups from patriarchal customs, some of which were considered "repugnant to natural justice, equity and good conscience." They argued that women should be free to choose their husbands and not bound by customary practices of betrothals, exchange marriage and widow inheritance.

Many Africans opposed and resisted these changes, seeing them as disruptive of the "customary" social order. However, others welcomed these changes and took advantage of them. Some women welcomed colonial liberal marriage and divorce policies and exploited them to assert their independence and escape patriarchal control. Men also invoked the language of rights, asserting their "customary matrimonial rights" to regain some of the control over women lost in the early colonial period. In the same way, marginalized social groups such as former slave communities used colonial discourses of freedom, rights and liberty to demand state intervention in enforcing their social and political integration into society. These processes show the complex and sometimes contradictory ways in which various groups asserted, opposed and negotiated social interests and agendas using the rhetoric of rights and liberties.

6.2 Marriage and Divorce

Marriage and divorce were two related themes on which there were extensive debates

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3 See the section on the "Repugnancy Doctrine" in chapter four.
over women's rights. Much of these discussions were conducted within the context of missionary and colonial notions of the "civilizing mission." As we saw in chapter three, early missionaries identified religious conversion with cultural transformation and called on African converts to embrace Western social practices as well as Christian religious beliefs. Rights discourses within this context centred on missionary and colonial attempts to make modern rights-bearing subjects out of "native" peoples by changing their social attitudes and practices towards a more "civilized," moral and enlightened outlook. The observations of Jean and John Comaroff in their study of Tswana encounters with European missionaries in nineteenth century South Africa reflect missionary activities in Western Nigeria as well. Missionaries tried unceasingly to reform local notions and practices of matrimony through the language of legalism and rights.4

European missionaries in Western Nigeria, particularly among the Yoruba, preached the merits of monogamy and the vices of indigenous practice of paying bridewealth and "buying" wives. They emphasized the freedom of all God's creatures to enter into contracts of their own freewill including the "contract" of matrimony. Whether preaching from the pulpits or teaching in the classrooms, European missionaries sought to inculcate a legalistic view of selfhood in the "native," presenting the marital bond as a sacred contract and an ensemble of enforceable rights and duties. Both the "rite and the rights" entailed in Christian unions became increasingly important in the construction of

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relations and identities. On its part, the colonial government sometimes encoded these notions in specific legal obligations particularly with regard to marriage. In Western Nigeria as in most of British Africa, colonial marriage ordinances legislated that Christian unions should be monogamous and should rest on new property and inheritance rights.

As with its land policy, colonial attitudes towards marriage in Western Nigeria changed significantly over time. In the early years of colonial rule, European officials regarded polygamy and arranged marriages as repugnant and misguided. District officers, and judges looked with sympathy on women who testified that they had been forced into marriage against their will and readily intervened to “liberate” them. Later on, however, official attempts at improving the lot of “benighted” African women shifted to a preoccupation with curbing their loose morals, believed to have been adversely affected by colonialism, by bringing wives under the tighter control of their husbands. This shift in policy was also partly due to local opposition and resistance, particularly from men, against earlier colonial attitudes towards marriage and divorce. Thus, while the colonial period opened with official concern with liberating women from the constraints of customary marital practices, it ended with greater concern about restoring “traditional”

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7 Kristin Mann, Marrying Well, 114.
social and moral values. The pursuit of the latter meant abandoning, or at least de-emphasizing, the former.

Here too, the dual frameworks of legitimizing and oppositional rights discourses are useful analytic categories. Using the rhetoric of women’s rights and liberties, the colonial state initially sought to “reform” traditional marital practices as part of a larger program of social transformation. Discourses about women’s rights validated and legitimized the colonial social agenda to break down patriarchal customs that were considered oppressive to women. On the other hand, those who stood to lose their influence and control over women – particularly elderly and upper class men – also invoked the rhetoric of rights to articulate their opposition to these new ideas about women’s liberation. They too invoked “customary” rights, traditional family values, or as one male petitioner put it “the right and liberty of the human family” to challenge liberal colonial policies on marriage and divorce.⁸

From as early as the 1880s, the colonial authorities began putting in place laws intended to change local attitudes towards marital relationships. They emphasized the rights of women to have a say in the choice of their husbands and to be able to divorce their husbands under certain conditions. The *Marriage Ordinance*, introduced in Lagos in 1884, contained a provision that permitted children over the age of twenty-one to marry without their parents’ consent. This was intended to check the practices of child betrothals and arranged marriages which were prevalent among the Yoruba and to “give women the liberty of entering into the contract of matrimony on their own terms.”⁹

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⁸ NAI Com. col. 1 3/9, Petition by O. B Ekereke.

⁹ *Lagos Observer* 12 October 1890.
Similarly, section 24 of the *Native Court Ordinance* of 1914, which restricted the Native Courts to making rules that were "not opposed in letter or spirit to the ordinances of Nigeria," had important implications for indigenous practices relating to marriage. The application of the Native Court Rules under the direction of colonial administrative officers almost entirely abrogated indigenous customs regarding marriages, divorce and custody of children, and replaced them with practices which European officers regarded as moral, and more in accordance with the principles of natural justice. For instance, unlike in pre-colonial times when a girl often had no choice in the contraction of marriage, the *Native Court Marriage and Adultery Rule* required her express consent. Under the Rules, girls married as children could legally renounce such marriages upon maturity.

The colonial authorities also worried about the tradition of "widow inheritance" or *levirate* marriages, which was common to most communities in Western Nigeria.

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11 E. I. Nwogugu, a leading authority in Nigerian family law argues, however, that the term "inheritance" gives a wrong impression of operation of the customary law in this respect, as it suggests an automatic acquisition by right of the widow as a wife. Rather, the general practice he argues, recognised the right of the widow to either elect to remarry within her late husband's family or not. If she chose to do so, she even had a preference as to which brother or other close relative to elect as husband. See E. I. Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann, 1990), 399.

12 The term "Levirate marriages" comes from the tradition among the Levi and the Biblical description in Deuteronomy 25:5. "If brothers are living together and one of them dies without a son, his widow must not marry outside the family. Her husband's brother shall take her and marry her and fulfill the duty of a brother-in-law to her" (New International Version of the Bible).

13 These include the Benin, Esan, the Etsako, the Urhobo and the Midwestern Igbo. The
Among the Yoruba, the younger brother or the eldest son of a deceased man customarily "inherited" the deceased's property and his wives, the latter being considered chattels. Although this custom also permitted a widow to redeem herself from such marital obligations by refunding the bridewealth paid by her late husband, colonial officials generally saw the practice as immoral and repugnant, mainly because it was thought to violate women's liberties. Laws were subsequently enacted to discourage these practices. Women were also given jural status and the right to pursue litigation in the Native Courts. All these changes relating to marriage, divorce and "widow inheritance" disrupted social life. Although these colonial rules were sometimes subverted, a general fear of prosecution progressively weakened parental and other male control over young women.

Women took advantage of these new circumstances to assert their freedom and independence in matters of marriage and divorce. One newspaper commented in 1945 that, "wives of modern times, whether literate or otherwise, are becoming conscious of their rights and are increasingly prepared to assert them." Kristin Mann has also shown in her study of marriage and social change in colonial Lagos that women used the practice also exists among the Igbo, the Yoruba and the Tiv. See Imoagene, *The Edo and their Neighbours of Mid Western Nigeria*, (Ibadan: New Era Publishers, 1993), 55.

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colonial arguments about women's liberties and the need to change "immoral" customary marriage practices to escape from marriages that displeased them. This trend was further encouraged by the Native Courts' propensity to grant divorce based on absence of true consent in marriage contracts as required by colonial law. Ayandele argues that the divorce laws introduced in the colonial Native Courts "upset many homes by encouraging divorce by making it easier." He argues that in traditional societies divorce was very rare and only the gravest crimes by a husband – not poverty or misfortune – were acceptable grounds for divorce. The colonial administration changed this tradition and legislated that the "ability to pay from £5 to £12 to the husband of a woman was the only condition necessary for divorce." Judith Byfield has shown in her study of marriage and divorce in colonial Abeokuta, that women used the opportunity provided by this colonial social and legal restructuring to defect from traditional authority and fled to spaces governed by British commissioners. The experience was similar elsewhere in British Africa.

17 Kristin Mann, Marrying Well, 114.


20 For instance, Jane Parpart has shown in her study of sexuality and power in the Zambian Copperbelt that when the British first arrived in Central Africa, they reacted negatively to African customs that patently mistreated women. Colonial officials and missionaries indignantly set about stopping such "repugnant" marital traditions. In order to improve their position, women were given the rights to pursue litigation at the Boma (government). Local women quickly adapted to these new opportunities and soon, "a flood of litigation deluged colonial and chiefly officials." See Jane L. Parpart, "Sexuality and Power on the Zambian Copperbelt 1926-1964" in Jane Parpart & Sharon Stichter (eds.) Patriarchy and Class: African Women in the Home and the Workforce (Boulder: Westview Press, 1988), 117.
The attitude of the courts towards divorce reflected the greater scope accorded the personal status of women in society. As one colonial administrative officer put it, the law and the courts were intended to “liberate [women] from the old positions of servitude to which they were doomed.”

Many colonial officials viewed marriage without consent and without the option of divorce as de facto slavery. Indeed, the colonial courts were exceedingly liberal in their approach to requests for divorce – in defiance of the traditional code of behaviour, which made marital separation difficult and rare. The courts became battlegrounds where women challenged patriarchal authority. According to N. A. Fadipe, who wrote in the 1930s, “women who wanted to renounce their husbands simply went up the hill to the officer or the court of the [British] Resident Commissioner to sue for divorce.”

Similarly, young girls availed themselves of the opportunity offered by the law and courts to defy tradition by rejecting unwanted marriage proposals imposed on them by their parents.

Some of the petitions written by women to colonial officials give us an idea of how women exploited colonial institutions and policies towards marriage to escape the control of men. In one such petition to the Resident of Agbor District in 1935, one woman, Nwanokpa, complained about her forceful seizure by the Obi (King) of Uteh-

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22 Renne Elisha, “If Men are Talking, They Blame it on Women”: A Nigerian Woman’s Comments on Divorce and Child Custody, Feminist Issues (10, 1, 1990), 37.


24 Fadipe, The Sociology of the Yoruba, 92.
Okpu as a wife, in replacement for her late sister who had been married to the Obi. She alleged that she had been forced into the King's compound against her will and had undergone "abundant cruelties" and only narrowly got the chance to escape from the Obi's custody. She requested the intervention of the Resident so she "may be set at liberty."\(^\text{25}\) Although, like most illiterate petitioners, Nwanokpa contracted the services of a professional public letter writer to write her petition, the petition bore her thumb mark and the mandatory attestation that the contents were "factual and accurate translations" of her narration from the vernacular as was required under the *Illiterate Protection Ordinance.*\(^\text{26}\) In a minute to the local District Officer, the Resident directed that Nwanokpa's allegation be "promptly investigated." The District Officer subsequently reported that upon investigation, he had found the material facts of Nwanokpa's petition to be true but that "the woman has been away from the Obi for so long, she does not appear to be greatly in need of deliverance." He added that he had however assured the woman that she could contact the Resident if she "had any further trouble."\(^\text{27}\)

Another example of colonial attitudes towards marriage and divorce is the celebrated case of *Ekpenyong Edet v. Nyon Essien* in 1932, which we examined in

\(^{25}\) NAI Ben. Prof. 204/49, Petition by Nwanopka of Uteh-Okpu against the Obi of Uteh-Okpu for seizing her for a wife and requesting that she may be set at liberty, dated 11 September 1935.

\(^{26}\) I have identified and discussed the dangers of relying too much on petitions written by professional public letter writers in the introductory chapter of this thesis. In this case however, the petition by Nwanopka was duly signed and attested to by the writer and bore the thumb mark of the petitioner as required under the *Illiterate Protection Ordinance* of 1910. The petition was written by F. D. Imosiri, a prominent public letter writer in Agbor, for a fee of ten shillings.

\(^{27}\) NAI Ben. Prof. 204/49.
chapter four. In this case, the court held that it was "repugnant to natural justice, equity and good conscience" to allow a man to lay claim to a child of another simply because his bridewealth paid on the woman bearing the child for the other man had not been repaid upon divorce. In adjudicating such marital matters, colonial administrative officers, with their English backgrounds, placed more emphasis on individual rights and tended to grant divorce to women much more easily than was the case under pre-colonial judicial systems. This explains why marital cases dominated the civil cases heard in the colonial courts. In a 1934 memorandum, the District Commissioner for Ekiti stated that seventy percent of the civil cases in the district are "concerned with divorce and it is granted in most cases." The petitions in nearly all the cases came from wives against their husbands. Similarly, Adewoye's analysis of the court records indicates that in most cases women's requests for divorce were granted. In one court alone, out a total of 125 petitions for divorce in 1924, divorce was granted in 123 cases.

6.3 Patriarchy, Family Values and "Public Morality"
While women generally welcomed colonial changes to marriage practices, most African men strongly opposed them. The Marriage Ordinance provoked pubic outcry when it was introduced in Lagos in 1884. Elders complained that by permitting children over the

28 See section on “Repugnancy Doctrine” in chapter four.

29 11 NLR (1932), 47.


31 These figures were based on analysis of the Native Court Judgement Book of the Ondo Division for 1924. Adewoye, The Judicial System in Southern Nigeria, 206.
age of twenty-one to marry without their parent’s consent, the state was weakening parental control and working against traditional family values. In Abeokuta, this concern was raised repeatedly at the meetings of the local council. Council members complained that as a result of European civilization, parents had lost control of their children. The Alake lamented that in the old days, a girl who ran away from her husband would have been “promptly shackled and returned to him.” Under British rule, parents could no longer resort to such measures and for some council members, the lack of such coercive measures contributed to the high divorce rate. The chiefs also complained that young men had lost respect for them and were having adulterous liaisons with the wives of the Obas or wooing girls away from their betrothed. In short, they were concerned that colonial liberal policy on divorce was leading to a breakdown of public morality and traditional social values. These complaints are important because they add another layer to our understanding of how Africans engaged with the process of colonial social transformation.

While several writers have examined the ways in which women used colonial institutions to free themselves from traditional male control, what is consistently ignored or underplayed are men’s counter strategies for challenging these changes and renegotiating their control over women. One example of this is the insistence by former


34 Byfield, “Pawns and Politics,” 203.

35 For instance Kristin Mann, *Marrying Well*: Cheryl Johnson, “Class and Gender: A
husbands that their bridewealth or “dowry” be returned to them upon divorce – a request that colonial officials and the courts did not accord the importance they gave to women’s requests for divorce.

Bridewealth return was both a social and economic issue. Many men put themselves in debt, often becoming pawns (iwofas, among the Yoruba), to raise the necessary capital for marriage. The strong connection between indebtedness and marriage, particularly in periods of economic depression, hardened many men to divorce. It was economically easier to take back an errant wife than to become entangled in an effort to reclaim the original bridewealth. However, if the wife could not be convinced to return, the husband was strongly inclined to demand bridewealth return.\footnote{Byfield, “Women, Marriage, Divorce and the Emerging Colonial State,” 45.} Apart from its economic value, the return of the bridewealth was important to men because customarily it was considered a condition for the nullification of marriage. Without the return of the bridewealth, a woman was still considered bound to her husband even if they were separated. Any liaison she had with another man before returning the bridewealth was thus both adulterous and sacrilegious.\footnote{Interview with Josiah Akinbode, Ibadan, 17 December 2000.} Because of these deep-seated traditional beliefs, the issue of bridewealth return became a major source of grievance among men. If women had the right to divorce, they reasoned, men too had a right to have their

bridewealth returned. Most men could not understand why colonial officials were so eager to grant women’s requests for divorce and yet so ambivalent about their own demands for the return of their bridewealth. One local chief reportedly asked a District Officer in exasperation whether the colonial government had paid the bride price on their wives! 

Since marriage, accumulation and indebtedness were so intertwined, men had a vested interest in limiting their wives’ ability to leave them for another partner. The need to control wives and daughters also intensified with the rapid changes in the colonial economy, which placed a premium on access to labour and credit. Cases of men seeking the refund of their bridewealth became so common in the Abeokuta Native Courts in the 1920s that Alake Ademola attempted to redress the situation by reviving and altering an old Egba custom, dipomu, which empowered him as king to detain women in the palace until their bridewealth was refunded. Although in the past the practice of dipomu enabled both men or women who were experiencing a crisis to seek refuge in the palace, the system in practice in Abeokuta in the 1920s became limited only to women involved

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38 Interview with Josiah Akinbode, Ibadan, 17 December 2000.


41 In pre-colonial times, dipomu was the method that women used to secure divorce. In cases of ill treatment, women went to the palace and took hold of one of the pillars. Their husbands could not touch them there for it was considered an insult to the king to touch a woman in “the land of refuge,” Isaac Delano, *The Soul of Nigeria* (London: T. Werner Laurie, 1937), 142.
in matrimonial disputes. Women could be brought to the palace either by their parents or their ex-husbands for being unable to refund their bride price following a divorce.\footnote{Minutes of Council Meeting, October 24, 1927, ECR 1/1/38, cited in Byfield, “Pawns and Politics.” 302.}

This modified dipomu system was clearly an attempt by traditional authorities, working within the ambit of the colonial Native Authority system, to stem the high divorce rates. It was also an effort by elders and upper class men to re-assert control over Egba women and junior men. It represented an attempt by men to use traditional institutions to mediate the disadvantageous effects of colonial policies and institutions on their power and control over women. The educated African elites also voiced their concern over the high rate of divorce in the colony and its implications for “family values and Public morality.” In one editorial in 1908 The Lagos Standard lamented that woman who had been “living peaceably under their husband have been forced out by the proclamation of freedom.”\footnote{The Lagos Standard, 9 September 1908. Interestingly, while many newspapers deplored the high rate of divorce, there were sharp divisions over the question of bridewealth or “dowry.” The Ijebu Weekly News in an editorial titled “Slavery in Disguise” supported colonial attempt to abolish bride wealth. It condemned the “dowry” system in Yorubaland and likened it to slavery: “It is no use mincing matters. Let us call a spade a spade and nothing more. The dowry [bride wealth] system wherever it is in practice in Yorubaland is indirect slave dealing… No one quarrels with native custom as long as it does not interfere with the liberty of the subject. But the dowry system as it is now interferes very much with the rights and liberties of the subject.” Ijebu Weekly News, 13 March 1937, 5.} Such views were widespread throughout the colonial period. Even as late as 1945, the issue of divorce continued to attract the attention of the press. The Daily Service commented:

Native Courts spend about eighty per cent of their time adjudicating on divorce cases. The bulk of their revenue is supplied by men and women
who desire to be put asunder. Divorce has become a serious problem in this country. Something must be done to check it.\textsuperscript{44}

In their criticism of the prevalence of divorce in the Native courts, some Nigerian intellectuals even argued that the practice of divorce was alien to indigenous culture and was a European creation. Samuel Johnson argued that divorce was "practically non-existent" among the Yoruba before European incursion.\textsuperscript{45} N. A Fadipe also suggested that Yoruba women in the nineteenth century were more or less locked in their marriages.\textsuperscript{46} Even as late as 1944, a prominent Nigerian politician, S.L. Akintola, argued that "traditionally" African marriages were "irrevocable" and divorce was "inconceivable."\textsuperscript{47} These arguments were made within the context of a widespread concern both among traditional and educated male elites about the rising divorce rates and nostalgia for the old order in which men exercised more control over women. In fact, as recent studies have shown, divorce was not as alien to Yoruba society as Johnson and Fadipe suggested. Although public opinion weighed against divorce, estrangement between spouses were known and accepted.\textsuperscript{48}

\textsuperscript{44} The Daily Service, 17 June 1945.


\textsuperscript{46} Fadipe, The Sociology of the Yoruba, passim.

\textsuperscript{47} Daily Service, 11 November 1944.

\textsuperscript{48} Matory suggests that Yoruba divorce practice applied to various degrees of estrangement, the most extreme of which occurs only when a woman has found a new partner and decides to legalize her union with him. See Lorand J. Matory, Sex and the Empire that is No More: Gender and the Politics of Metaphor in Oyo Yoruba Religion (Minneapolis: University of Minnesota Press, 1994), 11. Also see Byfield, "Women, Marriage, Divorce and the Emerging Colonial State," 32-33.
The issue of the prevalence of divorce in the Native Courts and its “adverse implications for public morality” was taken up at the annual conference of West African bishops in 1935. The conference selected the Bishop of Lagos and Bishop Akinleye to hold discussions with government officials on what they considered “an alarming and disturbing trend.” The Bishops’ concern was that Native courts, under the supervision of colonial officials, were granting divorce without proof of genuine separation. They argued that “the mere repayment of bride price was insufficient for the dissolution of marriages.”49 The question of divorce continued to engage the attention of the clergy well into the late 1930s. At the Lagos Diocesan synod in 1937 the president in his address stated that, “divorce is so easily obtained that it has become a very real danger to the morality of the people.”50

The concern over the detrimental effects of colonial policy towards marriage was not limited to African men. Some colonial administrators also spoke out against these developments and regarded the high rate of divorce as a serious threat to the social solidarity of the community.51 In 1943 colonial judge J. Jackson decried the effects of colonial policy on indigenous marriage practices pointing out that “native custom” regarding marriage, divorce and the custody of children had been “almost entirely abrogated by administrative directions.” He noted that in marriage, the “free will of the woman” which was a matter of little or no considerations under “native custom” had become a cardinal principle. To secure a divorce in a Native Court had become “as


50 Nigerian Daily Times, 27 May 1937.

simple a matter as buying a railway ticket." Even Chief Justice A. R Pennington was similarly concerned that the rate of divorce in the Native Courts may engender "a wholesale degradation of the marriage status according to native law."

Concerns like these prompted a quiet review of the government policy towards divorce and official intervention in marital and other domestic affairs. This shift in policy is evident from a memorandum sent by the Senior Resident of Oyo Province, W. A. Ross in 1929 to District Officers in Oyo, Ibadan, Ife and Oshogbo. It read in part:

I have to invite your attention to my written and constantly repeated verbal instructions in regard to adultery and divorce cases... The Yoruba are naturally a very moral people and before the break down of native and parental authority the moral standard was quite high. With the establishment of the native courts and fixed dowry fees, parental and patriarchal control over morality has greatly diminished and wives and woman are dealt with in the Native Courts as property for barter or the security for a deposit. This is entirely foreign to Yoruba thoughts. The Obas and Chiefs are constantly complaining that the system introduced by us has made divorce so easy and the morals of the people distinctly lax. I entirely agree with their view. ...Generally speaking litigants should not be allowed to lay their matrimonial grievances before the District Officer, and orders in regard to matrimonial cases should not be sent by the District Officer to the Native Council except in very rare circumstances. Any complaint in such cases should be dealt with only in the presence of the Judges of the native courts and as far as possible the District Officer should refrain from interference in matrimonial cases.

The latter instruction, that complaints in cases of adultery and divorce should be dealt with only in the presence of the Judges of the Native Courts, was clearly an attempt to

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54 NAI CSO 3/II/ 36592, Commission of Inquiry into the Native Court System.

55 NAI Oyo Prof. 1/70, Memorandum from the Senior Resident, Oyo Province to District Officers on "Divorce and Adultery Cases in Native Courts," dated 25 March 1929.
restore the traditional influence and control of men, particularly chiefly authorities, over marital practices. This was borne out of the recognition by colonial officials that their system of indirect rule would never succeed if rural chiefs lost control over women. This became the basis of what Jane Parpart has described as a “patriarchal coalition” formed by African chiefs and colonial officials with the intent of creating state and ideological structures to bring women under control.⁵⁶

What is most significant to our concern with discourses of social rights here are the ways in which men, like women, invoked the language of rights to restore some of the control over women which they had lost in the early colonial period. This was particularly evident in the demands by husbands for the return of their brideweight or their run-away wives. In several petitions to colonial administrators and cases brought before Native Courts, men requested official intervention in enforcing their “customary matrimonial rights.”⁵⁷ A typical statement of claim in such cases stated: “The plaintiff is claiming the restitution of conjugal rights on the Defendant who deserted away from lawful husband....”⁵⁸ One colonial official confirmed that the majority of civil cases in Benin district in 1905 were instituted by men demanding the return of “run-away wives.”⁵⁹ Similarly, in the 1918 Annual Administrative Report for Benin Division, the


⁵⁷ NAI Com. col. 1 3/9, Petition by O. B. Okereke to the Commissioner for Colony, dated 7 July 1939.

⁵⁸ NAI Ben Prof 203/704, Agbonghae of Ekpoma v. Ekhator of Irrua, case heard at the Oba’s Judicial Council holding in Benin, 15 August 1933.

⁵⁹ NAI, BD 13/1/1, Annual District Report for 1905 by Acting District Commissioner, C.C Pyke, cited in Igbeafe, Benin under British Administration, 241.
District Officer, H. G Aveling, stated that "the majority of cases in the Jesse Native Court were concerned with the return of 'dowry'."\(^{60}\)

Apart from using the Native Courts, men also petitioned colonial administrative officers directly, requesting official intervention to enforce their "matrimonial" or "conjugal" rights. In one of such petitions in 1939, O. B Okereke, an Efik clerk working in Lagos, requested the Commissioner for Colony to intervene in the "repatriation" of his run-away wife who had left him on the "instigation" of a Senior Nursing Sister in the government's Department of Medical Services. He alleged that the Senior Nursing Sister had encouraged his wife to divorce him because he objected to his wife’s employment in the department. According to his petition, the Nursing Sister even promised to help his wife refund the bride price telling her that "Lagos is a free country and she, being of age could earn her living independently."\(^{61}\) Okereke complained against the Nursing Sister’s interference in his "domestic and private matter" which had deprived him of his "comfort and happiness."\(^{62}\) He therefore sought the intervention of the Commissioner in the repatriation of his wife "in the interest of the Civil Service and of the rights and liberty of the human family."\(^{63}\) The matter, which appears to have dragged on for some time, was eventually resolved when the Director of Medical Services, to whom the petition was referred by the Commissioner, called a "peace meeting" between Okereke, the accused.

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\(^{60}\) NAI, BD 13/1/1, Annual District Report for 1905 by Acting District Commissioner, C.C Pyke, cited in Igbafe, \textit{Benin under British Administration}, 241.

\(^{61}\) NAI Com. col. 1 3/9, Petition by O. B. Okereke to the Commissioner for Colony dated 7 July 1939.


\(^{63}\) NAI Com. Col. 1 3/9, Petition by O. B. Okereke.
Nursing sister and "a few leading men of the Efik community in Lagos." Remarkably, there is no evidence that Okereke's wife, who was at the centre of the conflict, was either invited to or represented at the "peace meeting."

In a similar letter of petition titled "Restitution of Marriage Rights" addressed to the Commissioner for Colony in 1940, Robert Madukwe, a night watchman at the Government Rest House at Ikoyi, sought official intervention to effect the repatriation of his wife "of Christian marriage" who had "absconded to live with her lover in Kano." What is significant about Madueke's petition is that the petitioner anchored his petition not only on his "marriage rights" as a Christian and as a British "protected person," but also on his loyalty and service to the British Crown. The petitioner emphasized that he was a veteran of the First World War who had received the King's medal for "meritorious work."

These petitions and several related cases brought before the Native Courts for "wife repatriation" and "return of dowry" provide us with new insights into the gendered nature of rights discourses in the colonial period. They represent another layer in the complex ways in which the rhetoric of rights was deployed over social issues like marriage and divorce in the colonial period. As in other arenas of colonial intervention, legitimizing discourses about civilization, morality, natural justice, rights and liberties were deployed to legitimate attempts by the colonial state to transform indigenous marriage practices and free "native women" from the bondage of patriarchal customs.

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African women drew upon these notions and used them effectively, within the framework of colonial legal and administrative institutions, to escape male control.

But as we have seen, the language of rights deployed over issues of marriage and divorce was not only a tool for legitimizing specific social agendas. It was also an instrument of opposition and negotiation. Men, who mostly bore the brunt of colonial marital reforms, also used the language of rights to renegotiate and reassert their positions within a changing society. These insights improve our understanding of the gendered and generational tensions that characterized the process of social change in colonial, and early post-colonial Nigeria. Also significantly, they underscore the limitations of Mahmood Mamdani’s suggestion that we go beyond the confines of “rights talk and culture talk” and embrace instead a “language of protest.”

In some contexts, the language of rights provides a broader and more useful framework for understanding oppositional discourses than the language of protest. As evident here, the language of rights was not only a means of protest. It was much more. It was invoked as a means of legitimizing the status quo, opposing it and even negotiating it. This multiple use of rights talk was not limited to issues of marriage and divorce. Africans also used the rhetoric of rights and liberty to resist social exclusion and demand greater integration into colonial society. A good example of this is the case of the Idumuashaba community.

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67 Mamdani’s arguments have been discussed and critiqued in chapter two. See section on “Rights Discourse in the African Context.” Also see Mahmood Mamdani (ed.) Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture (New York: St. Martin Press, 2000), 3.
6.4 The Idumuashaba Agitation

The Idumuashaba agitation provides another perspective of how ordinary Africans used the language of rights to articulate social demands in the colonial period. The Idumuashaba (Idumu-Asaba) community in southwestern Nigeria had, since pre-colonial times, been the section of Issele-Uku used exclusively for the settlement of war captives, bondservants and slaves. As in many other Igbo societies, the people of Idumuashaba, who were considered of slave descent, were derogatorily referred to as “Oshu” (slaves). They suffered discrimination, social stigmatization and were denied certain entitlements and privileges within the larger community.

Beginning with the formal abolition of slavery in the colony in the early 1900s, the people of Idumuashaba began a concerted campaign to redress their social condition. In 1905, the elders of Idumuashaba paid to the Obi (King) of Issele-Uku on demand, the sum of £12.10.0d and eighteen bullocks as “ransom” to free themselves from their “traditional” slave status. But the Obi refused or failed to “grant the liberty after receiving

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68 There is no consistency in the archival records consulted, on the spelling of the town’s name. In earlier documents, it is “Idumuashaba” but later on, “Idumu-Asaba” became a more common spelling. I have chosen to use the former spelling because it was more frequently used by the people themselves in their letters and petitions. The latter spelling was more frequent in the official records.

69 In the Ibo societies east of the Niger River, these category of slave of people of slave descent were variously called “osu” or “ohu.” Don Ohadike and Carolyn Brown have studied the changes and continuities engendered by antislavery on the conditions of the “osu” in Igboland. See Don Ohadike, “The Decline of Slavery among the Igbo People” in Suzanne Miers and Richard Roberts (eds.) The End of Slavery in Africa, (Madison, University of Wisconsin Press, 1988), 437-461 and Caroline Brown, “Testing the Boundaries of Marginality: Twentieth-century Slavery and Emancipation Struggles in Nkanu, Northern Igboland, 1920-29,” Journal of African History, 37, 1 (1996), 51-80.
the agreed ransom.” By 1912, some educated indigenes of Idumuashaba working in Lagos organized themselves under the auspices of the Idumuashaba Family Union to, among other things, campaign against the prejudice and social stigmatization of the Idumuashaba people. Between 1912 and 1945, this group of literate Idumuashaba workers in Lagos, acting under the auspices of the Idumuashaba Family Union, wrote several petitions and instituted several court actions to bring attention to their plight. They wrote not just for themselves but also on behalf of the elders and people of Idumuashaba (See appendixes).

In 1912, the elders of Idumuashaba sent another delegation to Obi Esemene I requesting for “the rights of full citizenship.” Dissatisfied with the response of the Obi,

70 NAI Ben. Prof. 203/252.

71 Many Africans, who migrated from their rural communities to seek employment in the urban centres, often formed family unions and town unions in the urban centres as a way of keeping connected with themselves and with their local communities. These unions became platforms for addressing issues affecting their members and their rural communities. Carolyn Brown traces the origins of “ethnic unions” in Eastern Nigeria. She points out that educated “new men” who were blocked from political power in the village by the warrant chief system, organized “family meetings” when they migrated to the urban centres to find work. These unions saw themselves as a progressive force for change in the village and an aid to the new immigrant in the city. They challenged the powers of the chiefs, whom they considered backward. See Caroline Brown, “Testing the Boundaries of Marginality.”

72 Such was the intensity of the campaign by the Idumuashaba people that several files on the case were opened in the office of the Resident of Benin Province to whom many of their petitions were directed. The files titled “Petitions against District Officer: The Idumu-Asaba Case,” (NAI, Ben. Prof. 203/252, Ben. Prof. 204 and Ben. Prof. 207) are currently held at the National Archives Ibadan. They contain many of the original petitions and provides much of the information in this section. See Appendixes.

73 NAI, Ben. Prof. 203/252. Petition by Nicholas Nwaukpele and others on behalf of the Idumu-Asaba Family Union to the Senior Resident of Benin Province dated 3 March 1937.
the elders appealed to the Ogwashi-Uku Native Court in 1913 requesting that the Obi grant them the full rights and liberties enjoyed by other citizens of Issele-Uku. One of their main complaints was the prohibition of inter-marriages between the people of Idumuashaba quarter and those of other quarters in Issele-Uku. They asked the Court to proclaim this prejudice “repugnant and contrary to British law against slavery.”\footnote{NAI, Ben. Prof. 203/ 252. Petition by Nicholas Nwaukepele and others.} The District Officer who presided over the case did not agree with this submission. He delivered a judgement in favour of the Obi on the grounds that the Obi was acting in conformity with Native law and custom. Protesting the decision in a later petition to the Chief Commissioner, the Idumuashaba Family Union argued, “It is ridiculous to suggest that such atrocity is condoned in a British territory or countenanced by its Administrative Officer.”\footnote{NAI, Ben. Prof. 203/ 252. Petition by Nicholas Nwaukepele and others.} The petitioners noted that the judgement of the District Officer had made their plight so much more deplorable that many Idumuashaba people had left Issele-Uku on voluntary exile and “several others had died from their own hands by committing suicide.”\footnote{NAI, Ben. Prof. 203/ 252. Petition by Nicholas Nwaukepele and others.}

In 1936, at the request of the Idumuashaba Family Union, an official from the District Officer’s office held a public inquiry into the issue of slavery at Issele-Uku where representatives of the Idumuashaba people presented their case once again. They stressed that the continued prejudices and discrimination against them within the larger Issele-Uku community had made them “second-class citizens.” They requested the
government’s intervention to restore their rights as “British protected persons.”\textsuperscript{77} The official was not convinced that there was much the government could do under the circumstance, seeing the problem as one of social custom and tradition that would best be dealt with by the local Native Authority.\textsuperscript{78}

However, the Obi as the head of the local Native Authority was not inclined to change such a deeply entrenched social custom. In March 1937, the Idumuashaba Family Union sent a more detailed petition to the Senior Resident of Benin Province. The petition outlined their grievances and the remedies they sought.

\ldots [W]e are treated most disdainfully as outcasts; and even that condition is aggravated by our exclusion from the exercise of civic rights as well as the enjoyment of our native privileges and social equality... We are constrained to state that, left to himself, the Obi will never entertain our request for freedom and for the full privilege of exercising our civic rights.... Our desire, which we fervently pray may be conceded, is for the authority of His Majesty’s Government to secure and establish for us our freedom and rights as free people unencumbered by limitations: that the derisive expression “oshu” in allusion to any one of us in public or private may be prohibited: that the enforced taking of an oath of servitude – administered at the Isu Indichie (juju place) [sic], to every offspring of Idumu Asaba – be declared unlawful, and banned: that the headman of our quarter may be accorded a seat in the Issele-Uku Native Court as a Sub-Chief: and for all such reforms and rights to which the improved conditions will entitle us. ...[A]ll assessed persons among us are regular taxpayers; we are law abiding, industrious, and with ambition innate in the minds of good citizens everywhere in the world. We need and we seek the full protection of Government as a unit of the Protected Subjects of His Britannic Majesty KING GERoge VI in the Colony and Protectorate of Nigeria – a rich gem in the crown of Imperial Britain, on whose soil (or possession) [sic], no slave breaths.\textsuperscript{79}

\textsuperscript{77} NAI, Ben. Prof. 203/ 252. Petition by Nicholas Nwaukpele and others.

\textsuperscript{78} NAI, Ben. Prof. 204. Report of inquiry into Allegations of Slavery in Issele-Uku, 6 December 1936.

\textsuperscript{79} NAI, Ben. Prof. 203/ 252. Petition by Nicholas Nwaukpele and others.
The petition ended with a suggestion by the petitioners as to how the government might go about introducing the necessary reforms to end the long-held prejudice and discrimination against the Idumuashaba people as slave descendants. They suggested that this could be done by oral announcements made publicly at mass meetings of all the inhabitants of the various quarters and all the communities comprising Issele-Uku. They suggested that the Obi and all his chiefs be required to be present, with “European Representatives of Government protected by a platoon of policemen.”³⁸⁰ In short, having lost faith in the Obi and the local Native Authority, the Idumuashaba petitioners were requesting more direct government intervention, backed by the coercive power of the state, to protect their rights and liberties.

The language used in this petition reveals much. Apart from the frequent references to “rights” and “liberties,” the writers make an effort at the end, to state the grounds for their demand for these rights. There is an effort to legitimate their rights demands. First, they claim that they are “law abiding, industrious, good and ambitious citizens” — apparently attributes which, in their reckoning, earn them the rights and freedoms they demand. Secondly, they are “Protected Subjects of His Britannic Majesty” who are entitled to the same rights accorded British protected persons elsewhere. Finally, they make subtle reference to British antislavery policy and the obvious contradiction of this policy that their case presents. Thus, in employing the language of rights and liberty to make their case in this petition, the petitioners appeal to the libertarian ideals that they thought would resonate with colonial officials. While such deployment of the language of rights may well have been a statement of the petitioners’ beliefs, it also represented a

³⁸⁰ NAI, Ben. Prof. 203/ 252. Petition by Nicholas Nwaukpele and others.
creative use of the same language that was employed by the colonial state to legitimize its policies and agendas. The Idumuashaba petitioners did not simply redeploy colonial rights rhetoric; they adapted it to suit their demands in their confrontation with both the colonial state and the traditional status quo.

In his reply to the Idumuashaba petitioners in October 1937, the Acting Resident of Benin Province, N.C Denton stated that he found no grounds for intervening in the matter because he had been informed that all previous disabilities imposed on the Idumuashaba people had been removed except for intermarriages with people of other quarters of Issele-Uku. However, since such intermarriages were not forbidden under any penalty, there was not much the government could do about it. He maintained that social equality could not be attained by an order of government as the petitioners had requested and the Government “can not compel men and women to enter into contract of marriage.”

While assuring the petitioners that the Government would not countenance an involuntary state of slavery, he opined that the spread of education would, in course of time, remove the conservatism of the other quarters of Issele-Uku and end their prejudice against the Idumuashaba people.

This response reflected official thinking at the time. While the government was willing to enact laws abolishing slavery in the country, it believed that the “social residues” of the long tradition of slavery in Africa could not be abolished by legal fiat. That would only come with time and the gradual changes in social attitudes that were

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81 NAI, Ben. Prof. 203/252/24. Reply by the Acting Resident Commissioner, Benin Province to the Petition by Nicholas Nwaukpele and others dated 20 October 1937.

82 NAI, Ben. Prof. 203/252/24. Reply by the Acting Resident Commissioner, Benin Province.
bound to come with the spread of Western education, Christianity and "civilization." Thus, although antislavery laws prescribed stiff penalties for trading and holding slaves, they were silent on institutionalized discrimination against former slaves and people of slave descent. This was thought to be beyond the scope of government regulation for, as the Resident put it, "government cannot decree social equality." Moreover, it was assumed that there were already adequate provisions in the legal system for redressing "social grievances" like those of the Idumuashaba people. Because colonial officials saw slavery only as a labour system, they tended to underestimate the social and political restrictions which the status of "oshu" imposed on affected individuals and communities. This may explain why the Acting Resident simply advised, in his response to the Idumuashaba petitioners, that if the term "oshu" (slave) is applied to a person of Idumuashaba, that person could obtain legal redress by means of an action in the Native Court.

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83 It is clear from this argument that the Resident did not consider the discrimination and prejudice suffered by the Idumu-Asaba people by virtue of their slave ancestry, a repugnant custom. If he did, he could have acted against them on the basis of the repugnancy doctrine. Under the repugnancy doctrine, local customs and cultural traditions were allowed only if they met the "repugnancy test." They had to be customs that are not "repugnant to natural justice, equity and good conscience" or incompatible with any enactment of the colonial legislature. The repugnancy doctrine was intended to allow for the regulation and control of local customary laws and practices, which under the prevailing legal system, were expected to operate alongside the imported English legal system. This repugnancy doctrine is discussed in greater detail in chapter four which deals with the rights discourse within the context of the colonial legal system.

84 Caroline Brown, "Testing the Boundaries of Marginality," 73.

85 NAI Ben. Prof. 203/253/252/24. Reply by N. C. Denton (Acting Resident Commissioner, Benin Province), to the Petition by Nicholas Nwaukepele and others on behalf of the Idumu-Asaba Family Union dated 20 October 1937.
The attitude of the Resident towards the Idumuashaba petitioners supports the argument of Ohadike in his study of the decline of slavery in Igboland that in the 1930s there was nothing the government could do for those who were legally free to leave the communities that kept them in “social bondage” but who, in practice, could not or would not do so. No court of law could free them from their social servitude or elevate them to higher levels on the social ladder or “even make them enjoy all the rights and privileges of other sections of society.”^86 The post-Second World War problem of slavery in Idumuashaba as in many other parts of Southern Nigeria was not one of emancipation but rather of incomplete assimilation. It was also an issue of parties seeking to protect or challenge entrenched class interests. Thus, in spite of the abolition of slavery, some communities continued to regard ex-slaves and their descendants as social inferiors, denying them certain rights and privileges.

The responses of colonial officials to their grievances were clearly not what that the Idumuashaba petitioners had expected. Unlike the Resident Commissioner, the petitioners did not see the discrimination and prejudice that they suffered, as a result of their slave status, as merely a matter of “social grievance” over local customs and traditions. Rather, they saw these issues as an affront to their fundamental rights and liberties as “British protected persons” and they expected the government to actively intervene on their behalf. As they pointed out in a subsequent letter, the government’s attitude to their petition was indicative of “an absence of a full appreciation of the dilemma in which we and our people live.”^87

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87 NAI, Ben. Prof. 203/252. Petition by Nicholas Nwaukpele and others.
In February 1945, Paul Nwani, as secretary and four others writing on behalf of the Idumuasahaba Family Union sent yet another petition to the Resident of Benin Province and the Chief commissioner of the Western Provinces at Ibadan restating their grievances in terms similar to those used seven years earlier. This time though the language of rights and freedom that they employed was even stronger and the justification for demanding the intervention of the government to protect their rights and liberties more compelling.

In submitting this petition, we earnestly entreat that the Obi be urged to give us our complete freedom – freedom to live as others; freedom to speak; and freedom to mix with the other sections of Issele. We urge that the Obi of Issele and his relatives be forced to put a stop to all principles and policies that have hitherto marred or hindered our rights as citizens of Issele...We are fully aware of the fact that our Empire (the British commonwealth) is engaged in a titanic war against Hitlerism [sic]. We on our side share greatly in men and materials in the struggle. Several of our youths are in the front fighting to suppress oppression. ...Our sufferings and experiences under Obi Osemene II who continues to undermine our rights and freedoms, justify our action – for world peace would mean nothing to our gallant sons who today give up their lives that humanity might survive in peace, whilst some who may survive, return to find themselves and their future generations still being regarded as slaves and wickedly ostracized in the land of their fathers. Consequently, peace under our present state has no significance for us.\(^8\)

The reference to the efforts of the “gallant sons” of Idumuashaba in the fight against Hitlerism as a justification for their rights demands is significant. References to the Second World War and Allied propaganda about the war fought to free the world from “the oppression of Nazism and Hitlerism,” characterized most local petitions in the 1940s and the post war era. Thus, African petitioners quickly appropriated the rhetoric of

\(^8\) NAI Ben. Prof. 203/252, Petition by Paul Nwani and others to the Resident Commissioner, Benin Province on behalf of the Idumu-Asaba Family Union dated 4 June 1945.
rights, liberty and global peace, which the Allies employed in the war Nazism, to justify their own local rights demand. The impacts of the Second World War and the rhetoric of "universal human rights" that characterized local politics during the period are examined in greater detail in chapter seven which deals with Civil and Political Rights Discourses.

At this point we need to emphasize the gap between official attitudes towards antislavery and those of local peoples directly affected by slavery. This gap reflects the difficult challenge, earlier outlined, that faced the colonial authorities caught between demands for wider antislavery intervention by the government (like those of the Idumuashaba petitioners) and other groups opposed to the extension of antislavery policies to supposedly customary social sphere. These latter groups sometimes articulated their opposition to the extension of antislavery to pre-colonial caste systems on the grounds that it could jeopardise the traditional social order in local communities. In fact, this was the basis of the counter argument made by the Umueze Issele Family Union, which represented the ruling family of Issele-Uku, to the allegations of discrimination and prejudice by the Idumuashaba petitioners. They argued: "We are now in a Christian era, it is true, but we adhere to the quotation of Reverend Delano that [although] the ways of our ancestors cannot be the ways of the future, the future must not be built without foundation belonging to the past."\(^{89}\) This view was shared by the government.

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\(^{89}\) NAI, Ben. Prof. 203/252. Reply by the Umueze Issele Family Union, Lagos to the Petition by the Idumuashaba Family Union, Lagos, dated 18 April 1944. Rev Isaac Delano referred to here was a prominent Nigerian intellectual of the 1930s and 40s who wrote and commented extensively on a variety of topical issues. Like many Nigerian intellectuals of the time Delano was an advocate for the protection and promotion of local culture and values in the face of growing christianisation and westernization of the country. In 1937, he wrote the launched his search for the Soul of Nigeria with an extended tour to immense himself with the people. See Isaac Delano, *The Soul of Nigeria*, (London: T. Werner Laurie, 1937). For a commanding discussion of the views
Under these circumstances, colonial officials, even where they privately sympathized with the plight of the Idumuashaba people, were unwilling to act on their demands.\textsuperscript{90} The Idumuashaba people were a small, even if vocal group within the larger Issele-Uku community. Officials worried that acceding to their demands would stir wider social dissent and upheaval within Issele-Uku community. The government chose not to stir the hornet’s nest even when legitimate concerns of rights and liberties, which it considered central to its anti-slavery policy, were involved. In a final reply to the Idumuashaba petitioners in June 1945, the Acting Resident L.L. Cantle stated rather curtly: “You know that slavery does not exist under British rule. If anyone calls you a slave you may at once take action in your courts against him for ‘defamation of Character’ and recover damages.”\textsuperscript{91}

Although the Idumuashaba petitioners failed in their bid for government intervention, their petition campaign spanning four decades, demonstrates the ability of Africans to appropriate and deploy in diverse ways, the same language of rights and liberty that was so central to British antislavery agenda. It is important to stress, however, of Delano and other Nigerian intellectuals of the period, see Philip Zachermuk, \textit{Colonial Subjects: An African Intelligentsia and Atlantic Ideas}, (Charlottesville & London: University of Virginia Press, 2000), 119-124.

\textsuperscript{90} In several confidential memos to the local District Officer at Ogwasi-Uku, the Resident expressed his “deep concern over the sorry plight of the Idumuashaba people.” In one memo he requested the District officer to “please warn the Obi that if complaints of oppression are substantiated against him, or if he continues autocratic practices he will be removed from membership of the his Council and Court.” NAI Ben. Prof. 203/252/55. Confidential memo from the Acting Resident Commissioner, Benin Province to the District Officer, Asaba Division, Ogwasi-Uku

\textsuperscript{91} NAI, Ben. Prof. 203/252/55, Reply by L.L Cantle, Acting Resident of Benin Province to the Petition by the by Paul Nwani and others on behalf of the Idumu-Asaba Family Union dated 23 June 1945.
that more than simply appropriating colonial rights talk, the Idumuashaba petitioners creatively adapted it to meet their own needs. They extended rights talk beyond the limits of colonial usage, invoking the language of rights and liberty within antislavery in a wider sense than did the colonial administration.

Much of this bears relevance to the arguments of Cooper and Packard, highlighted in the introduction of the thesis, about the dialectics of control and contestation in colonial development discourse. They argue that development in the 1940s was a framing device with which the colonial regimes tried to respond to challenges and reassert control and legitimacy, but it was a device that could itself be challenged and seized by the colonized for different ends. Colonial governments thought of development as an idea that would reinvigorate colonialism. But like other justifications of empire, development also appealed to nationalist elites. In the end, Africans took over the development project along with the state apparatus built by the colonial regime. Thus, in challenging the standard instrumentalist argument that the development discourse was a tool for promoting colonial hegemony, Cooper and Packard argue that the engagement of the development discourse was more complex and nuanced. Development was a shared discursive terrain where both colonizer and colonized appropriated the language of development in diverse ways and for varied ends.


93 Frederick Cooper, “Modernizing Bureaucrats: Backward Africans and the Development Concept,” in Cooper and Packard, International Development and the Social Sciences, 64.
The same argument can be made of rights discourses particularly with regard to social movements like the Idumuashaba agitation. For the most part, the colonial regime in Nigeria used the language of rights and liberty to justify and legitimize antislavery and other social agendas but only to the extent that it found convenient to maintaining administrative control. However, some Africans like the Idumuashaba petitioners were able to appropriate this language of rights and extend it to their demands for wider antislavery intervention in ways that the government did not originally intend or envisage. For them, the rights agenda articulated within antislavery could not be guaranteed only by the enactment of laws abolishing slavery. Further government intervention to guarantee the social equality of ex-slaves and people of slave descent with others in their communities, was a necessary part of this agenda. Such adaptive reuse of the language of rights was not peculiar to the Idumuashaba petitioners. The ability of local people to appropriate the language of rights and liberties originally deployed to justify colonial agendas, for their own ends is characteristic of rights discourses in western Nigeria as we shall see in the course of the thesis.

The Idumuashaba petitions have another significance that needs to be further emphasized. These petitions provide unique insights into how Africans used the language of rights and liberty in this period to articulate at a communal level, their demands for social justice and political representation. They also demonstrate how these rights-based demands intersected with the exigencies of colonial administration. The evidence from the Idumuashaba petitions suggests that long before the Atlantic Charter and the Universal Declaration of Human rights (UDHR) in 1948 (which are often identified as the foundations of the contemporary human rights discourse), the language of rights was
a dominant feature of entitlement claims within the colonial state.\textsuperscript{94}

This language of rights was not always localized but sometimes drew from global or universal ideals. For instance, the Idumuashaba petitioners stated that "world peace" would mean nothing to them if their "gallant sons," who were ready to sacrifice their lives in the war against Hitler so that humanity might live in peace, continued to be deprived of their full rights upon return from the battlefields. This appeal to a universalist ideal predated the UDHR and lends credence to one of the main arguments of this thesis – that universalist traditions of rights discourses existed in Nigeria, and presumably elsewhere in Africa that preceded, and were different from, the Second World War/UDHR traditions. What is apparent, however, is that the universalist ideal became more resonant in the discussions over social rights as the country moved towards independence in the 1950s. Nowhere was this more evident than in the late colonial and early post-colonial debates over the right to family life.

6.5 "The Right to Family Life"

By the 1950s and 60s public discussions about social rights in Nigeria had taken a different turn. They became more formal and intertwined with the political debates about decolonisation, independence and nation building. In 1957 a commission of inquiry, set up by the colonial government to inquire into the fears about oppression and marginalization by minority ethnic groups in the country, recommended the inclusion of a bill of rights into the independence constitution. The Commission recommended a bill of rights as the best way to protect the rights of minority groups in an independent and

\textsuperscript{94} The dominant arguments that the post-war developments marked the origins of contemporary human rights have been examined in the introductory chapter.
democratic country. The presence of a bill of rights, it stated, "defines beliefs widespread among democratic countries and provides a standard to which appeal may be made by this whose rights are infringed." A year later, a conference of Nigerian politicians set up to draw up an independence constitution for the country unanimously approved the inclusion of the bill of rights into the constitution.

The bill of rights subsequently included in the constitution made extensive provisions for a wide range of "fundamental human rights" which were guaranteed to all Nigerians. The full range of these constitutional/fundamental human rights and the debates over them, is examined in greater detail in the next chapter. For present purposes, it suffices to note that the bill of rights included elaborate provisions for the protection of social rights. Perhaps the most significant of these was the guarantee of the "the right to private and family life" under Section 22 of the independence constitution.

This section guaranteed, among other things, a legally enforceable right to "private and

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97 The basic rights guaranteed in the 1960 constitutions included the right to life; freedom from inhuman treatment; freedom from slavery and forced labour; the right to personal liberty; the right to fair hearing; the right to private and family life; freedom of conscience and religion, freedom of expression; freedom of peaceful assembly and association; freedom of movement and residence; freedom from discrimination; and freedom from deprivation of property without compensation.

98 Section 23 of the *Constitution of the Federal Republic of Nigeria 1963*. 
family life.”

Although the inclusion of a bill of rights in the constitution was borne out of the increasing global awareness of human rights following the Second World War and the 1948 United Nation’s Universal Declaration of Human Rights (UDHR), the provision for the right to family life was unique to the Nigerian constitution. There were no similar provisions in either the UDHR or the European Convention for the Protection of Human Rights and Fundamental Freedoms, which were the models for the Nigerian bill of rights. The inclusion of the right to family life in the independence constitution was clearly an attempt by Nigerian politicians and intellectuals to uphold what they considered “customary” social values and “traditional” African regimes of rights in the constitution. By providing a guarantee of family life, it was thought that “traditional African family and community-oriented values,” which had been circumscribed by colonial rule, could be transposed into the modern nation state. The constitutional right to family life was intended to represent a synthesis of Western and traditional values – African traditions incorporated in a bill of rights patterned after Western models.

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99 This section of the constitution states: “Every person shall be entitled to respect for his private and family life, his home and his correspondence.” Curiously, there is no definition of what is meant by “family life” in the constitution for the purpose of this section.

100 D.I.O Ewezukwa, “Nigeria: Constitutional Developments,” in Albert P. Blaustein and Gisbert H. Flanz (eds.) Constitutions of the Countries of the World (Dobbs Ferry, N.Y.: Oceana Publications, 1986) 176. Although the UDHR provided generally that “no one shall be subjected to arbitrary interference with his privacy and family” (Article 12), it did not affirm the right to “family life.” What it affirmed was protection of the law from interference in the privacy of the family rather than an enforceable entitlement to family membership.

101 Interview with Josiah Akinbode, nationalist activist and retired politician, Ibadan, 17/12/00.
Ironically, the debates over family rights and the need for constitutional guarantees to protect them were reminiscent of earlier colonial debates over the need to regulate African marital and family relations in order to ensure that they conformed with "customary" models. In a 1941 editorial titled "The Sanctity of Family Life," the West African Pilot, a newspaper owned and edited by the nationalist activist and politician Nnamdi Azikiwe, who became the president of Nigeria at independence, stated:

In our social evolution as a people, among the things that must be held sacred and jealously guarded is a respect for family life... If the whole country is to move forward, as it definitely must, the beginning must be made from a recognition of the sanctity of family life with a set determination to battle against anything that must come to shatter the tranquility of the family.102

Arguments were put forward about the ideals of traditional African family life and the need to uphold them in an independent state. Much of this were articulated in the language of "human rights" which had gained currency in the 1950s and 1960s. Membership of an extended family was a "fundamental right" protected by the community in traditional African societies. In a modern society, it was the duty of the state to protect this right.103 It was argued, for instance, that extended family membership among the Yoruba gave the individual certain enforceable rights – the right to succession to the family property which is held in common; the right to be supported in times of scarcity; the right to claim societal and psychological help at moments of need. The problems associated with old age, infirmity, widowhood and being orphaned were also

102 West African Pilot, 24 November 1942, 2.

103 Ondo Provincial Pioneer, 16 June 1956, 2.
primary concerns of the family to which individuals were entitled as of right. These and similar arguments provided the bases for the including the right to family life as a fundamental human right in the independence constitution.

However, the constitutional provision for the right to family life was more than just a reaffirmation of traditional social values. It had profound legal implications since it was interpreted by the courts to mean that a person’s exclusion from membership of an extended family was a violation of his or her fundamental human right to family life under the constitution. Another legal implication of this provision for existing social order, as soon became evident, was that it became illegal and unconstitutional for a family to expel any of its members either by physical force or in the sense of alienating them, disowning them and denying them the right to participate in its activities.

As would be expected, this constitutional guarantee of the right to family life proved quite problematic when it came to actual enforcement. Before this law, it was a common practice, particularly among the Yoruba, for family heads or family councils to sanction erring members with expulsion and alienation. But with the introduction of the constitutional right to family life, new situations arose where expelled family members challenged their expulsion in the courts on the grounds that their expulsion

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106 S. N. Chinwuba Obi argues that in traditional Yoruba societies, a family council could terminate a person’s membership on certain grounds; if he was an incorrigible rogue, a wilful murdered, a coward in war, a traitor to his people or a person given to incestuous relations. Obi, Modern Family Law in Southern Nigeria, 35-36.
violated their fundamental human right to family life. In most of these cases, the courts tended to find the "customary" grounds for the expulsion of a petitioner from his extended family insufficient to warrant the expulsion.

In cases where the grounds for a person's expulsion from his family constituted a criminal offence under Nigerian criminal law, the courts ruled that the relevant section of the criminal code, rather than the traditional sanction of exclusion from the family, should be exclusively applied. In other cases where the particular act warranting a family member's expulsion was considered one of "mere social disgrace to the family" or an offence considered criminal only under local customary law (and not under the state's criminal law), the courts also reversed family orders to expel erring members.

One of the leading cases on the right to family life was Aoko v. Fagbemi in 1961 where the applicant committed adultery and was expelled by the elders of her family. Adultery was considered a crime under "customary law" but not under the English common law model adopted at independence. The expelled family member then applied to the high court for an injunction against her expulsion from the family on the grounds it would violate her fundamental human rights guaranteed in the constitution. The court allowed her application on the grounds that since adultery was not an offence under the

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107 Interview with Tunde Alo, retired civil servant and politician, Ibadan, 16/06/01; Interview with F. O Omorogbe, retired politician, Benin City, 18/06/01.


Nigerian criminal code, her expulsion indeed constituted a violation of her constitutional rights.

This and similar decisions of the Nigerian courts created conflicts between the new constitutional human rights regime and long-standing customary law regimes. Ultimately, constitutional rights provisions could not provide expelled family members with the relief they sought in the courts. Although the courts ruled that family members should not be expelled, they were powerless in actually enforcing the reintegration of such expelled members back into their family.\textsuperscript{111} The courts simply could not mandate social conduct or regulate family life. In the case of the Yoruba village of Ishogba for example, a court injunction in 1962 to stop a number of family expulsions proved to have no practical effect. The expelled members were shunned and ostracized by their own families and the larger community. They were eventually compelled to leave their homeland for other locations. Many sought refuge in the anonymity of urban centres to start a new life. Other expelled persons later chose to come to terms with their family and paid reparations to the family in order to gain readmission.\textsuperscript{112}

At the end, the constitutional and legal guarantees of the right to family life, which were introduced to promote family life and traditional social values, may only have served to complicate family relationships. The price extracted by family councils for readmitting an expelled member, both in monetary and human terms, was greater in cases where an expelled member had taken the family to court to enforce his rights. In such

\textsuperscript{111} Interview with Tunde Alo, retired civil servant and politician, Ibadan, 16/06/01.

\textsuperscript{112} Marasinghe, "Traditional Conception of Human Rights in Africa," 35.
cases the process and conditions for readmission were also more complicated.\textsuperscript{113} Perhaps for this reason, the number of family expulsions actually taken to court was very low.\textsuperscript{114} In fact, it soon became clear, even to the most ardent supporters of the constitutional right to family life, that legal regulation of informal social relations by the state, even when done under the rubric of "human rights," was impractical. This may explain why the "right to family life" provision was dropped from the revised constitution in 1979.\textsuperscript{115} It has remained so through several subsequent revisions.

The point to note here is the increasing formal and legalistic tone which discussions about social rights took from the 1950s and 60s. This was not peculiar to social rights discourses. As we shall see in the next chapter, the tone of civil and political rights discourses also became more formal and legal during this period. The increasing global consciousness of human rights following the introduction of the Atlantic Charter and the Universal Declaration of Human Rights in the post war period, led to a tendency among Nigerian intellectuals and politicians articulate and promote social ideals in the language of human rights. The language of "human rights" accorded these ideals more importance and legitimacy even it was obvious that they could not always be enforced as legal rights.

\textsuperscript{113} Interviews with Adebayo Takpe, retired railway worker, Abeokuta, 17/12/00 and Tunde Alo, retired civil servant and politician, Ibadan, 16/06/01.

\textsuperscript{114} Marasinghe, "Traditional Conception of Human Rights in Africa," 35.

\textsuperscript{115} Although the right to family life was included in the draft constitution that was submitted to the Constitution Drafting Committee in 1979, it was omitted in the final report. The report of the Constitutional Drafting Committee does not provide any reasons for the omission, although there is speculation that the CDC may have been convinced of the impracticality and unenforceability of such a constitutional right. See Report of the Constitution Drafting Committee, Vol. 1 (Lagos: Federal Ministry of Information, 1976).
The ideas and notions that underlined the constitutional provisions for the right to family life were partly borne out of a sense of cultural nationalism and quest by the Nigerian intelligentsia to reaffirm "traditional" African social and family values. As we have seen, similar ideas and notions about "native" customs underlined earlier colonial attempts at social restructuring. The language of rights whether deployed in the context of "liberating women" from oppressive marital traditions (as in the colonial period) or in the context of guaranteeing the right to family life (as in the post-colonial period), served more to promote and legitimize specific social agendas above anything else. What is important to note here is the change in the tone of rights talk in the post-colonial period. After independence, rights talk began to assume new meanings and significance for Nigerian elites. It shifted from being mainly a means of challenging the colonial state to becoming a means of validating nationalist post-colonial agendas. This buttresses one of the central arguments of this thesis – Nigerian elites did not simply use rights talk in an oppositional sense to challenge the colonial state. They ultimately internalized and "Nigerianized" it. Beyond challenging Empire, the language of rights was also useful in furthering postcolonial social agendas.

6.6 Conclusion

Rights discourses were extensively deployed over social issues in both the colonial and immediate post-colonial period. As with its land policies, colonial attitudes to marriage and divorce, and the rhetoric of rights that became associated with it, changed according to the local administrative exigencies. Early missionary and colonial ideas that African marriage practices like polygamy, betrothals and "widow inheritance" were repugnant
and immoral led them to pursue policies aimed at “liberating” women from repressive customary practices. Later, however, concerns about social disruption and immorality prompted colonial authorities to whittle down its policy of “women’s liberation.” Also significantly, Africans – both men and women -- deployed rights talk in complex and creative ways to advance their interests in matters of marriage, divorce and the demands for social inclusion.

As we have seen in the case of the Idumuashaba agitation, marginalized social groups used the language of right to articulate demands for social justice from the colonial government. Contrary to the assumption that rights discourses before the introduction of the UDHR in 1948 were localized, we have seen that the language of rights and liberties deployed by the Idumuashaba petitioners drew upon universal ideals of the period. The Idumuashaba petitioners used references to the war against Hitler to strengthen and legitimize their own demands. Even after independence, the universalist language of “fundamental human rights” became part of the project of cultural nationalism and the quest to promote “traditional” African family values.

The central argument of this chapter is that although discourses of rights deployed by the colonial state served primarily to legitimize imperial social agendas, they also provided a complex discursive terrain on which Africans could challenge the state, confront competing entitlement claims, and negotiate their positions in a changing society. However, the use of rights talk to promote and legitimize specific social agendas was not limited to the colonial state. Rights talk remained an instrument with which African elites promoted their social ideals in the immediate postcolonial period. This point becomes even more evident in the next chapter which examines how political rights
discourses originally deployed by the colonial state in wartime propaganda against Nazism, were appropriated by African nationalists and used as the core justification for demanding independence and, in the postcolonial period, as a means of dealing with internal class, ethnic and regional power struggles.
CHAPTER SEVEN

CITIZENS OF THE WORLD’S REPUBLIC: POLITICAL AND CIVIL RIGHTS DISCOURSES

We want to prove ourselves men, gentlemen, and loyal citizens of not only the empire that offers us protection but citizens of the World’s Republic.... Civis Mundi Sum; Civis Mundi Sum!\(^1\)

*The Lagos Standard, 1917.*\(^2\)

We doubt the sincerity of colonial powers which make promises to dependent peoples in languages couched according to the peculiar ordinance of a peculiar form of prevarication, dressed up in the garb of what, for the want of words, they call diplomacy. Expressions like the “Four Freedoms,” “Atlantic Charter,” “Colonial Charter,” “Partnership,” “Guardianship” and “Freedom from fear of permanent subjugation” are to us bunk. We regard them as ruses to mislead simpletons among the leaders of colonial people.

*West African Pilot, 1945.*\(^3\)

7.1 Introduction

Debates about political and civil rights in Western Nigeria within the period of this study were inextricably linked with other aspects of the rights discourse that have been examined in the preceding chapters.\(^4\) If politics is conceived broadly as the tactics and strategies of gaining, contesting and negotiating power, then most discussions about rights are ultimately political in nature. However, this chapter focuses specifically on the issues and debates that dominated the struggles for political influence and control in both the colonial and immediate post-colonial contexts. I have already examined some of these issues in the preceding chapters. In

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\(^{1}\) “I am a citizen of the world; I am a citizen of the world.”

\(^{2}\) See the *Lagos Standard*, 2 November 1917 and 10 October 1917.


\(^{4}\) I recognize that the concept of “civil rights” can be problematic. I use the term here to refer generally to the basic guarantees of freedom, justice, equity and equality that the colonial state pledged itself to, in principle, and which Africans came to expect both as British subjects and British protected persons. Although these rights are not exclusively political, they are often associated with politics.
chapter three we saw how early colonial authorities sought to justify political intervention in the name of protecting the rights of African subjects from despotic local chiefs and how debates about “treaty rights” were deployed by Africans to challenge British incursion.

This chapter focuses on later debates about rights and liberties that characterized the political process of policy-making, nationalism and constitutionalism in the colonial and immediate post-colonial state. Two important developments shaped these discourses -- the First World War between 1914 and 1917 and the Second World War between 1939 and 1945. The first war had far reaching political consequences that contributed to the rise of organized nationalist movements in Nigeria. The loyalty and contributions of Nigerians to the Allied cause during the war produced a new sense of entitlement which was often expressed in the language of rights. Nigerians, particularly the vocal elites, were no longer content with their status as colonial subjects and “British protected persons.” They demanded their rights as “full citizens of Empire.”

The second war had even more significant implications for discussions about political rights. As we have seen in chapter two, the emergence of the contemporary human rights movement has been linked to certain outcomes of the war, particularly the 1948 United Nations Universal Declaration of Human Rights (UDHR). Many

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5 I have used the terms “First World War” and “Second World War” in this thesis only for purposes of clarity and the want of a more acceptable term. Like many others, I believe that these terms are inappropriate for describing what was essentially a European war. Manifestly little military action took place south of the Sahara besides sporadic campaigns in North and East Africa. Moreover, the “First World War” is described in documents of the period as “the Great European War” while most Nigerians referred to the “Second World War” simply as “Hitler’s War.” This is also true of other parts of Africa. See Makau Wa Mutua, “Reformulating the Discourse of the Human Rights Movement,” *East African Journal of Peace and Human Rights*, 3, 2 (1996), 306.
human rights scholars have argued that the inauguration of the UDHR after the Second World War marked the "origin" of the concept of human rights. Before then, they contend, we can only talk of generalized notions of "human dignity" and "distributive justice." While it is difficult to wholly accept this argument for reasons outlined in chapter two, it is nevertheless true that the war and its outcome marked an important shift in global rights discourses. In Nigeria, as elsewhere in the colonized world, the language of "universal rights" in the Atlantic Charter and the UDHR became an important part of the nationalist rhetoric and a model for the constitutional rights regime introduced at independence.

This chapter examines rights discourse within the context of the major political developments in Nigeria between the outbreak of war in Europe in 1914 up to the constitutional debates of the late colonial and post-colonial era. It focuses on the impact of both world wars in fostering a sense of entitlement among Nigerians and how this sense of entitlement, as articulated in the language of rights and liberties, influenced the movement for political reforms and independence. The important questions that this chapter seeks to address are: To what extent did both world wars affect existing patterns in rights discourses? Did the introduction of the UDHR and the "universalization" of rights talk in the post-war era mark a radical change in the tradition of rights discourses in Nigeria in ways that have been suggested? What important continuities underlined discussions about rights and liberties during and after the wars? And in what ways, if at all, did post-Second World War "universalism" shape the human rights debates of the decolonisation and immediate post-colonial period?

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6 See the arguments outlined under the subheading "Human Rights: Issues of Change and Continuity" in chapter two.
7.2 Colonial Politics and the Rights Question

Much of the debates about political rights in colonial Nigeria centred on two issues. The first was the concern of chiefly authorities and their supporters among the Western educated elite, about the erosion of their political power following British incursion and expansion. For the most part, Western educated Africans opposed British intervention in local politics and sought to defend the rights of chiefs against imperialist excesses. In 1894 one Lagos newspaper lamented that to the African "anxious for the preservation of his race, there is something despairingly distressing in the spectacle of native chiefs and tribes being hunted down and made fugitives."7

Putting aside their sometimes-acrimonious differences, Western-educated Africans allied with traditional rulers to promote the political rights and interests of the latter as the reach of British power expanded.8 A second issue that raised widespread concerns about political rights was the opposition of educated Africans to their exclusion from colonial administration. Although these issues affected two distinct groups of Africans, both converged in early debates about colonial rule and the limitations it placed on political participation by Africans.

As we have seen in the preceding chapters, the exclusion of educated Nigerians from meaningful roles in the central government was an explicit policy of British colonial administration, particularly in the period up to the late 1920s. This policy was based on the oft-quoted principle enunciated by Governor Lugard that "the

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8 Zachernuk, Colonial Subjects, 61.
interest of the large native population shall not be subject to the will of a small minority of educated and Europeanized natives who have nothing in common with them, and whose interest are often opposed to theirs."9 Lugard's successor, Governor Hugh Clifford, expressed the same view even more forthrightly when he described the National Congress of British West Africa -- one of the earliest nationalist political organisations formed by African educated elites -- as a "self-selected and self-appointed congregation of educated African gentlemen."10

The denial of the political claims of educated Nigerians was based on the view of the colonial authorities that they lacked a cultural connection with the "unsophisticated masses."11 However, there were other important factors at play in the tension between the colonial authorities and the educated elites, particularly in the operation of the Native Authority system. One of these was that the Native Authority system was introduced at a time when the educated elite, brought up under Western ideas and conscious of their rights in a society that they thought should be democratized, were becoming increasingly vocal and anxious to participate in all aspects of local government.12 The elite also sought participation as a means of empowering themselves within the colonial and global economies. They saw their


10 Quoted in Joan Wheare, The Nigerian Legislative Council (London: Faber & Faber, 1950), 31-32.

11 Indeed, in the early 1920s and 1930s, there was ample evidence to support this belief. In 1921, approximately 18 per cent of the English-speaking Africans in Nigeria were native foreigners -- educated African mainly from the Gold Coast and Sierra Leone. See James Coleman, Nigeria: Background to Nationalism (Berkeley: University of California Press, 1958), 162.

exclusion from government as denial of their rights on two grounds. First, it was a
denial of their right as Africans to participate in the management of their own affairs.
Second, and perhaps more importantly, it was a denial of their “right” as a class of
educated and enlightened Africans to lead their people. “The intelligentsia of this
country,” wrote one newspaper contributor in 1916, “have a right to represent their
people; to govern the majority in order to safeguard the interest of the whole and
create a situation where the greatest good can be done to the greatest number.”\textsuperscript{13}

The grievances of the elites were compounded by the extensive powers that
the colonial authorities gave to chiefs under the Native Authority system. In many
cases, the pre-colonial checks and balances to chiefly powers were either removed or
ignored under the Native Authority system. Some traditional rulers like the Oba of
Benin were designated “Sole Native Authorities.” Subject to the supervision of the
colonial Resident, he had absolute powers over local administration. This was a recipe
for conflict and discord. It led to multiple tensions over political power between
Western-educated elites and the colonial authorities; between educated elites and the
chiefs who ran the colonial Native Authorities; and even among the chiefs who
constituted the Native Authority administration.\textsuperscript{14} In these struggles over political
power, entitlement claims were often articulated in the language of rights.

\textsuperscript{13} Lagos Standard, 6 May 1916.

\textsuperscript{14} In Benin, for instance, subordinate chiefs were disappointed with the extensive
powers which colonial authorities ascribed to the Oba as “Sole Native Authority.”
They were dissatisfied with their loss of positions as district heads and their reduction
in status to positions of obscurity. It was this situation which produced the reported
outburst of a leading chief who asked the District Officer whether the British were in
Benin solely for the benefit of the Oba or whether they were there for the chiefs and
peoples as well. These chiefs accused the Oba of arbitrary creation of titles and
persistent encroachment on their ancient rights and privileges. For a fuller treatment
of the political tension in the Benin Native Administration see Igbafe, Benin under
British Administration, 316-319.
The response of the educated elites to the government's position that indirect rule already ensured African participation in governance was that the limitations of chiefly powers under the system effectively made them instruments of colonial domination.\textsuperscript{15} However, although the intelligentsia rejected the ideas and institutions of Empire, they did not always reject the ideals of empire. They still needed and pursued the advance of British imperial power, with its commitment to social and economic reordering. Despite their continuing advocacy for the rights of Africans in the management of "native" affairs, most elites favoured British overrule. The emphasis at this stage was not on the "right to self determination" as it became in the 1940s and 1950s, but on the right to political participation in colonial administration. Between the alternatives of the colonial status quo or incorporation by another European empire, the intelligentsia remained ardently pro-British. "The Natives of Africa," wrote the \textit{Lagos Weekly Record} in 1892, "love the Queen not only for what she is, but for what she represents – the freest and best system of government the world has ever known."\textsuperscript{16} Similarly, the prominent Lagos lawyer, Osho Davis wrote in 1914, "Our cry is not against British justice, as we are bred to it, and love and admire it, but against the endeavour being made to deprive us of that justice."\textsuperscript{17}

The main reason for these pro-British sentiments was the elite's belief that even under colonial overrule, they could be beneficiaries of the full rights of British subjects. This was however possible only when colonial officials on the spot upheld "traditional British" values. Studying medicine in Edinburgh, Bandele Omoniyi called

\textsuperscript{15} \textit{Lagos Weekly Record}, 1 February 1919.


for the continued adherence to the “true British school” of colonial policy, which
“admitted the capacity of Africans to enjoy full political and civil rights.”18 For the
educated elites, there was no contradiction in their defence of the political rights of
African chiefs while at the same time advocating British ideals and their own rights as
British subjects. To them, both agendas were compatible. Indigenous political systems
and enlightened British rule each had a place in their vision of a modern and civilized
polity. These sentiments that appealed to both the “traditional” rights of the African
and his acquired rights as British subject would be ardently reiterated during the First
World War.

7.3 Citizens of Empire: War, Liberty and Justice

The outbreak of the First World War in 1914 significantly affected politics in Nigeria.
Despite Nigeria’s relative non-involvement in the war, important external developments
influenced the thoughts, aspirations, and activities of Nigerians, particularly the educated
elites.19 The immediate and most palpable effect of the war was that it strengthened the
African’s sense of belonging to the British Empire. In declaring war against Germany,
Britain seemed to Nigerians not only to be fighting to ensure her own survival and
consequently the survival of the ideals which Nigerians so fervently cherished, but also
appeared to be fighting Africa’s battles against a symbol of ruthless colonialism. In the
period leading up to the war, stories of the brutality and repression of German colonial
rule in East Africa were widely reported in the local press and the war was seen partly as
a battle to liberate Africans burdened by German colonial rule.

18 Bandele Omoniyi, In Defence of the Ethiopian Movement (London: St. James,

19 Coleman, Background to Nationalism, 188.
To educate the public about the war, some educated Nigerians in Lagos inaugurated a "Committee of Emergency" with Dr Obadiah Johnson as chairman. The newspapers threw themselves into the effort to "conquer and vanquish" Germany, presenting a picture of a progressive British Empire united against a common foe.\textsuperscript{20} The Lagos Standard commented in 1916 that the war was a "titanic struggle" in which "might and brute force are arrayed against Right and Justice."\textsuperscript{21} Even newspapers like the Record, which were unsympathetic to the colonial government, dropped their anti-imperialist roles and urged the public to "think imperially" by supporting the Nigerian Overseas Contingents Comforts Fund. "Our destiny," wrote the Lagos Standard, "is indissolubly linked with England and we must rise or fall with her."\textsuperscript{22} Although some discordant voices questioned popular support for the war, most of the African intelligentsia remained solidly behind British war efforts.

This solidarity was demonstrated when Sir Hugh Clifford, author of The German Colonies: A Plea for Native Races, arrived in Nigeria in 1918 to take over from Governor Lugard. He was greeted warmly by the press, who saw him as a liberal open-minded British official and shared his opinions about Germany as a colonial power. In Clifford's book, which was well known among Nigerian elites, Germany was described as "the most tyrannic, oppressive, and illiberal" colonial power, as opposed to England, the most liberal and accommodating colonial power. Germany

\textsuperscript{20} Fred Omu, Press and Politics in Nigeria, 1880-1937 (London: Longman, 1978), 212

\textsuperscript{21} Lagos Standard, 14 August 1916.

\textsuperscript{22} Lagos Standard, 8 October 1914.
had come into the “non-European” world in 1884, Clifford argued, solely for the purpose of exploitation and as “a roaring lion seeking whom she may devour.”

These views were echoed in the press as it waged its own war of words against Germany. The Nigerian Pioneer commented that Germany’s successes in the previous century had made her drunk with power and that “with dreams of still greater greatness, she suddenly and ruthlessly attacked other countries in utter disregard the very fabric of civilization.” In contrast, Britain was presented as the beacon of liberty and the ideal of imperial rule. The Lagos Weekly Record wrote about the “benign influences of British imperial rule, whose watch words are liberty and progress.”

But if the war against Germany promoted a stronger sense of patriotism and commitment to Empire among the Nigerian intelligentsia, it also provided new grounds for questioning and challenging colonial rule. British involvement in the war encouraged educated Africans to believe that all nationalities, however small, had a right to their independence and to the sanctity of their treaties. Britain was understood to have declared war on Germany in defence of the treaty guaranteeing the political independence and territorial integrity of Belgium. Educated Nigerians took seriously the British war-time resolution affirming her “inflexible determination to continue to a victorious end the struggle in maintenance of the ideals of Liberty, Justice and Freedom” – ideals that were said to be the common cause of the allied powers.


25 Lagos Weekly Record, 10 October 1914.

26 Times of Nigeria, 6 August 1918.
statements of President Wilson and Prime Minister Lloyd George regarding liberty and self-determination as justifications for the war were echoed by Nigerian elites. The *Lagos Standard* quoted with approval, President Wilson’s statements concerning America’s aims in the war: “liberty, self government freed from alien dictation, and unhampered development.”

Special weight was also given to Lloyd George’s statement in 1918 that the principle of self-determination was as applicable to the colonies as to occupied European territories, even though subsequent qualifications made it clear that his statement did not refer to African territories. The idea remained strong among Nigerian elites that Britain’s war against Germany was a war for the principles of honour, freedom and liberty, as the *Lagos Standard* indicated in an editorial in 1918.

....“We are fighting,” says the Governor General “for the observance of treaties which the Germans regard as scraps of paper to be disregarded when they no longer serve their advantage. We are fighting that there may be, remaining the world some regard for the liberty to live our lives in freedom in our own way... The right of all men to live in peace and the sanctity of the pledged word.”

Although these statements were originally made in relation to the political conditions in wartime Europe, many Nigerian commentators extended them to their own status as colonized peoples. In a letter to the editor of the *Standard*, one contributor called for the “emancipation of weaker races” whether in Europe or in Africa. Similarly, the *Lagos Weekly Record* advised that any treaty of lasting peace after the war must affirm that “the native inhabitants of tropical Africa have rights, however obscure.

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27 *Lagos Standard*, 1 August 1917.

28 Coleman, *Background to Nationalism*, 188.

29 *Lagos Standard*, 7 August 1918.

which must be respected and that the European nations, who stand in relation of a
guardian to his ward, also have obligations towards the native.”\(^{31}\) One major
development, which prompted these concerns about the political rights of African
peoples during the war, was the termination of Egba independence in 1914.

7.4 The Termination of Egba Independence

The ideals of freedom, liberty and self-determination highlighted in British war
propaganda, provided new standards with which Nigerians judged the colonial
government. They could not but notice that the colonial government did not always
uphold the ideals for which Britain was purportedly fighting in Europe. This was
made particularly obvious in the decision of Governor Lugard to terminate the
autonomy and independence of Egbaland in September 1914. This was the
consequence of civil unrest, for the suppression of which the Egba government had to
rely on British troops from Lagos.

Under the terms of the Egba Treaty of 1893, the Britain recognized the
autonomy and independence of Egbaland even when all other parts of Nigeria fell
under colonial rule.\(^{32}\) Under this arrangement, a wholly African government -- the
Egba United Government (EUG) -- administered Egbaland largely independently of
the colonial government. Many Nigerian elites saw independent Egbaland as a symbol
of African autonomy, initiative and potential.\(^{33}\) Little wonder, therefore, that the

\(^{31}\) Lagos Weekly Record, 7 October 1916.

\(^{32}\) See “Treaty of Friendship and Commerce made at Abeokuta in the Egba Country
on 18\(^{th}\) January 1893,” appendix in T. N. Tamuno, The Evolution of the Nigerian

\(^{33}\) One year before the termination of Egba independence the Weekly Record
remarked: “Abeokuta [the capital of Egbaland] is sailing as a self-independent barque
on the ocean of politics... We in Lagos take a special pride in the autonomy and
termination of Egba independence by the colonial government, in contravention of the
terms of the 1893 treaty, exasperated Nigerian elites. More so when it resulted in the
extension of the principles of indirect rule and Native Administration to the area – a
system of government which many educated Nigerians abhorred.

In their protests against the termination of Egba autonomy, the educated elites,
particularly the Lagos press, launched a concerted onslaught on the colonial
government. In several newspaper editorials, commentaries and public meetings the
elites expressed strong opposition to the decision of the colonial government. What is
significant here is the language of this opposition and protest as deployed by both the
educated and vocal minority and by ordinary Nigerians. Protestations against the
termination of Egba independence, like those against other unpopular wartime
decisions of the colonial government, were characterized by references to the
inconsistencies in imperial rhetoric. Many public commentators stressed the
contradictions in the rhetoric of rights, freedom and self-determination that underlined
Allied war propaganda, and colonial actions that undermined these ideals. The Lagos
Weekly Record commented that the termination of Egba independence had “borne out
the hypocrisy of Britain and her disinclination to apply to Africans, the same rules
that she readily applies to her fellow Europeans.”

When violence broke out in Abeokuta in 1918 over a domestic political
conflict, the ruling Egba leaders worked with the colonial government to suppress it
with military might. It was widely believed that colonial military intervention in Egba

progress of the Government of Abeokuta as demonstrating to the world at large the
resources of self-government... possessed and practiced by the Native and sincerely
pray that nothing may ever happen to waken that autonomy or hinder that progress.
Lagos Weekly Record, 22 March 1913.

34 Egbaland Echo, 12 June 1915.
“internal affairs” was a consequence of the loss of Egba political autonomy. More than 500 Egba citizens were reported killed in the fighting between Egba insurgents and colonial troops.\textsuperscript{35} The \textit{Lagos Standard} condemned the military operation describing it as reminiscent of “Germanic barbarism, brutish outrage and inhuman cruelties.”\textsuperscript{36} Such comparison of colonial policies and actions to Germany was typical of the criticisms from the Nigerian intelligentsia during and after the war. Although these criticisms did not translate into a weakening of overall support for British war efforts, it became an effective way of drawing attention to the excesses of the colonial government. While the ideals of Empire remained attractive to most educated Nigerians, the actions of the colonial man on the spot were seen as a betrayal of these ideals, tending towards “autocracy, oppression and brute force” which they had come to associate with German imperial rule.\textsuperscript{37}

When Governor Lugard seized the opportunity of the war to further censor the press beyond the general provisions of the wartime “Defence of the Realm Act,” the press mounted another campaign to oppose him. Many saw the move towards press censorship as a way of dousing criticism of the government over the Egba incident. The \textit{Lagos Weekly Record} argued that if the press was under a moral obligation to refrain from criticizing the government on account of war exigencies, the government was “also under a moral obligation to refrain from springing any measures upon the people or adopting any actions calculated to evoke such criticism.”\textsuperscript{38} Many in the press criticized the tendency of the colonial government to “lean towards a more

\textsuperscript{35} Omu, \textit{Press and Politics in Nigeria}, 217.

\textsuperscript{36} \textit{Lagos Standard}, 1 January 1919.

\textsuperscript{37} \textit{Lagos Weekly Record}, 7 October 1916.

\textsuperscript{38} \textit{Lagos Weekly Record}, 12 Sept. 1914.
repressive system of administration,"" using the war as an excuse.\footnote{39} Evidently, the press was using wartime anti-German fervour and the rights rhetoric that underlined it to further its main political agenda of opposing the government's indirect rule policy and demanding a more inclusive form of administration.\footnote{40} These long-standing political grievances were compounded by popular discontent over the difficult economic conditions of the war years.

Another significant feature of the rights discourse in the context of the political debates in Nigeria in the period of the First World War was the global perspectives it sometimes assumed. The Nigerian intelligentsia was well informed and engaged with events in other parts of the Empire and even beyond it, particularly in England, India, Germany, Japan and the United States. They referred to developments elsewhere in the world to strengthen their demands for political concessions from the colonial government. Perhaps the most prominent of these influences was the black Atlantic race discourse.

\section*{7.5 Race, Rights and the Black Atlantic}

Although racial discourses from the United States of America and other parts of the Atlantic world had influenced educated Nigerians from the early nineteenth century, the First World War ushered in a period of even greater influence of these ideas. The Nigerian intelligentsia was influenced by black Atlantic race and rights discourses in two main ways. One was through the writings and activities of Americans of African descent who highlighted issues of race in Nigerian and black empowerment. Another

\footnote{39} Lagos Weekly Record, 7 October 1916.

\footnote{40} Osuntokun, Nigeria in the First World War, 69.
was through the influence of Nigerians who had studied in the United States and returned home to propagate the Atlantic race discourse. This group of Nigerian intellectuals drew parallels between the conditions of the “American Negro” and the “colonized Native.”

Much of the Atlantic race discourse centred on rebutting the scientific racism of the early nineteenth century. It was also aimed at challenging well-developed American racial doctrines, resurgent after the post-civil war reconstruction, which provided the basis for disenfranchisement and official discrimination against African Americans. These issues were widely addressed in local newspapers and discussed extensively among Nigerian intellectuals. The Lagos press seemed to have been particularly preoccupied with reporting and commenting on developments concerning African-Americans. This interest became even greater with the return in the 1940s of American-trained Nigerian intellectuals like Nnamdi Azikiwe, Mbonu Ojike and Ozuomba Mbadiwe who became actively involved in the Lagos newspaper press.

In Nigeria, as in the black Atlantic, the intelligentsia turned to race pride to defend themselves against an increasingly prejudicial power structure. The stress on racial pride and solidarity informed the growing Pan-African sentiments that animated the diaspora by the end of the century. W.E.B Du Bois, one of the leading African American intellectuals, emphasized the collective destiny of the African race. He argued that “negroes must strive by race organisation, by race solidarity, by race unity” to establish their place among the races of the world. These writings of early Pan-Africanists like Du Bois and Marcus Garvey, struck a chord with many educated

41 Zachernuk, Colonial Subjects, 64.

Nigerians and the message of emancipation and empowerment which underlined them resonated in the pages of the Lagos newspapers.

The main link between Atlantic intellectuals and the educated elites in Nigeria were “native foreigners” like Edward Blyden and John Payne Jackson who became the early proponents of Nigerian nationalism. Their early writings reveal the main themes of latter-day nationalist ideology. The dominant note of their thought was that Africans should not indiscriminately emulate other races, but should seek the regeneration of their continent by bringing forth and demonstrating its unique contribution to humanity. A lesser known American of African descent who was involved in early local discussions about race and rights was Orishetukeh Faduma. Educated in the United States, Faduma was a frequent contributor to the Lagos newspapers where he wrote about pan-African unity and called on black peoples of the world to take the opportunity of the First World War to assert their right to self-determination.

The impact of early African intellectuals like Faduma, Blyden, Johnson and others influenced by the black Atlantic ideas, on the early nationalist movement in Nigeria have been examined in detail elsewhere. It suffices here to point out that these intellectuals were important contributors to the rights discourse in Nigeria. They gave local meaning and relevance to the Atlantic ideas about liberty, equality, black

43 The term “native foreigners” was used to refer to Africans or peoples of African decent who were not indigenes of Nigeria.

44 Times of Nigeria, 7-8 March 1916.

consciousness and rights, which they promoted through their control of the newspaper press. This included the *Lagos Weekly Record*, which was one of the most popular newspapers in Nigeria. From 1891 to the early 1930s, the *Lagos Weekly Record*, established by John Payne Jackson, was a determined agent in the propagation of "native rights" and racial consciousness. Johnson himself became one of the early symbols of African opposition to the colonial government. His pungent criticisms, many of which touched on the rights and welfare of Africans, were expressed in lengthy editorials in his newspaper.\(^{46}\) He urged Africans to be aware of their "common nationality" and jointly safeguard their liberties. "Liberty," he wrote, "was never conferred upon any nation. It has to be won, and even at that, it has a price...it is only through sacrifice and martyrdom on the alter of patriotism that success can be achieved."\(^{47}\)

The spread of these Pan-Africanist sentiments in Nigeria were further stimulated by two major events in the post-war period. The first was the convening of the First Pan-Africanist Congress in Paris in 1918-19 by W.E.B Du Bois and Blaisé Diagne, an African deputy from Senegal. The congress aimed at impressing on the victorious Allied powers, the importance of Africa in the future world. It demanded a "Charter of Rights" for Africans including the right to participate in government.\(^{48}\)

The demands of the congress struck a chord with Nigerian intellectuals who had long championed similar ideas. In Du Bois and other Atlantic pan-Africanists, they found allies who could voice their concerns about political marginalization and visions of

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\(^{46}\) *Lagos Weekly Record*, February 26, 1910.

\(^{47}\) *Lagos Weekly Record*, February 19, 1921.

empowerment on a world stage. Commenting on the writings of Du Bois in 1915, the Lagos Standard found them both "apt and inspirational." A Lagos branch of the Garveyite movement (the Universal Negro Improvement Association) was organized in 1920 and was strongly supported by Nigerian intellectuals. The movement served as an inspiration to men like Earnest Ikoli and Nnamdi Azikiwe, leaders of the nationalist movement in the 1940s and 50s.

Azikiwe in his time was undoubtedly the most important and celebrated nationalist leader in the West Coast of Africa, if not all imperial Africa. From the time of his return to Nigeria from his studies in the United States in 1934 until the late 1940s, Azikiwe generally thought and acted along universalist and racial lines.  

49 His work up to 1937 was an eclectic adaptation of nineteenth century black Atlantic ideas rather than a leap into post war themes.  

50 Writing on the influence of Garvey on him, Azikiwe stated that the motto of Garveyism: "One God, One Aim, One Destiny" prompted him into a resolve to formulate his philosophy of life, as far as practicable, towards the "evangelization of Universal fatherhood, Universal Brotherhood and Universal Happiness."  

Another important factor in the discussions about rights and liberties within the pan-Africanist movement was the role of organisations formed by Africans or people of African origin in the United Kingdom. These included the African People’s Union, the League of Coloured Peoples, and the West African Student’s Union (WASU). Perhaps the most important of these bodies was WASU, formed in 1925 by

49 Coleman, Background to Nationalism, 220-222.


the Nigerian lawyer, Ladipo Solanke. Although based in London, WASU decisively shaped political debates in Nigeria in the 1930s and 1940s and was supported by both the educated elites and chiefly authorities.\footnote{52}

Several scholars have examined the impact of Atlantic ideas on the Nigerian intelligentsia and the nationalist movement. Osuntokun posits that the main consequence of these ideas was that race became a rallying point for various groups of African intellectuals in their opposition to the colonial government.\footnote{53} Zachernuk argues that the Nigerian intelligentsia was both empowered and weakened by their participation in the intellectual currents of the Atlantic in the colonial years. These connections helped raise an assertion of cultural pride but in so doing, they supplied an ideal and symbolic Africa better designed for use outside Africa than inside.\footnote{54} This assessment is generally true of the intellectual connections between the Nigerian intelligentsia and Atlantic ideas. With specific regard to the rights discourse, it would appear that the interests of the Nigerian intelligentsia were well served by their engagement and dialogue with the black Atlantic. For one, the engagement with the black Atlantic rights discourse internationalized and invigorated issues about the racial prejudices, African/black identity and the inadequacies of colonial rule, which concerned Nigerian intellectuals. This process of “discourse integration” brought broader perspectives to local discussions about rights and liberties.

By drawing diasporan affinities and connections between the Atlantic pan-Africanist/race discourse and their own concerns about segregation and racial


\footnote{53} Osuntokun, \textit{Nigeria in the First World War}, 80-82.

\footnote{54} Zachernuk, \textit{Colonial Subjects}, 79.
discrimination at home, Nigerian intellectuals found universal themes which reinforced their own positions. References in the press to "Jim Crow colonial policies" and comparisons of racial segregation in Lagos with the experiences of the American Negro in the "ghettos of Harlem" were part of this discursive integration. The Atlantic context not only inspired anti-colonial sentiments but also reinforced the basis of the assertion of African rights by the Nigerian intelligentsia. The influence of Atlantic ideas on the rights discourse became even more evident in the 1920s as Africans became more assertive in their demands for colonial reforms.

7.6 The Movement for Reform

Influenced partly by Atlantic pan-Africanist ideas, the developments among Negro groups in America, the nationalist ferment in India and Ireland, and taking advantage of the climate of idealism generated by the war, a few educated Africans in the British West African territories organized the National Congress for British West Africa (NCBWA). The NCBWA, which was inspired by the Indian National Congress, was formally established as a result of a conference held in Accra in 1920 at the invitation of J. E. Casely Hayford, a Gold Coast lawyer. The congress adopted several resolutions that were subsequently included in a memorandum presented to the Secretary of State for the Colonies. The memorandum demanded a range of political and economic rights. These included, inter alia, greater political participation of

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55 West African Pilot, 26 March 1940, 2 (editorial titled “Jim Crow Hospitals”).

56 The Daily Service, 29 March 1940, 2 (editorial titled “Race Superiority”)

Africans in the governance; the appointment and deposition of Chiefs by their own people rather than the colonial state and the abolition of racial discrimination in the civil service. Although the colonial government opposed the NCBWA on the ground that it did not represent the views of Africans, the Congress was able to promote its demands through Non-governmental organisations like the League of Nation Union, the Welfare Committee for Africans in Europe, the African Progress Union and the Union of Students of African Descent in London.

The role of the NCBWA in the development of nationalist consciousness in Nigeria is significant because it ultimately stimulated colonial constitutional reforms in 1922 and the formation of political organisations. The most important of these organisations was the Nigerian National Democratic Party (NNDP). For the educated elites, these political parties provided a more effective vehicle for expressing grievances, dissent and nationalist aspirations. A central figure in the NNPD was Hebert Macaulay, a former civil servant and publisher of the Daily News who became a dominant figure in post-war Nigerian politics. Macaulay had been a leading campaigner for the welfare of Africans for nearly forty years. The many and varied anti-government activities of his career won him many titles in the press -- "father of Nigerian nationalism," 58 "the Ghandi of West Africa" and "the champion of the people’s rights and liberties." 59

Macaulay’s chief strength lay in his newspaper, the Lagos Daily News; his party, the Nigerian National Democratic Party (NNDP); the highly organized Lagos market women and his unique ability to fire the imagination of semiliterate and illiterate masses of the country. His fiery public speeches and newspaper

58 Coleman, Background to Nationalism, 197.

commentaries appealed to both educated elites and chiefly authorities. The NNDP under Macaulay’s leadership campaigned against racial discrimination in the civil service; demanded free and fair trade in Nigeria and sought the repeal of certain “obnoxious” laws which excluded legal practitioners from Native and Provincial Courts. However, like most first generation West African nationalists, Macaulay was essentially conservative in his approach. Though deeply critical of the British imperial policies and the colonial administration in Nigeria, he also at times demonstrated great loyalty to the British Crown and devotion to the British cause.

Some have seen this seeming paradox in Macaulay’s political beliefs as a limitation of his political vision for Nigeria. Nnamdi Azikiwe, then editor of the influential West African Pilot and one of Macaulay’s critics, opined that the name of the Macaulay-led NNDP was a “misnomer because it was not national and neither democratic nor Nigerian.” Some contemporary writers have expressed similar views in their assessment of the roles of early Nigerian intellectuals like Macaulay. Ayandele argues that this crop of Nigerian intellectuals were “deluded hybrids” who remained “mentally enslaved” to foreign ideas. Ayandele also talks about the “total ideological barrenness” of the interwar intelligentsia.

I would argue, however, that more than being simply an ideological limitation, the seeming paradox of Macaulay’s political vision was also partly a function of


62 West African Pilot, 22 October 1938.

prevailing ideas about African rights and liberties and how best they can be protected in the context of imperial rivalry and an African continent subject to competing European colonial powers. Macaulay's loyalty to the British crown and attachment to British rule were founded on the belief that the interests of the elites, and perhaps those of all Nigerians, were best protected within the ambit of the British Empire.⁶⁴ He believed that rights and liberties of Nigerians could best be protected through the ascription of equal status to all peoples within the British Commonwealth. In one of his many public lectures in 1943, he advocated “co-equal citizenship throughout the British Empire.”⁶⁵ His vision for promoting the rights of Nigerians lay within rather than beyond the British empire.

Macaulay was more in the tradition of Victorian radicalism and thus, more conservative and “constitutional” than later nationalists like Azikiwe. Where Azikiwe, drawing more from the black Atlantic race discourse, would talk of natural or universal rights, Macaulay demanded his rights as a British subject.⁶⁶ Yet, both of them appealed to a language of rights that each found most expedient for their times. African intellectuals like Macaulay stressed their connections to Britain in the early twentieth century to better secure their required colonial setting and then emphasized their black Atlantic ties to counter colonial denigrations of all Africans.⁶⁷ Their “nationalism” was not simply the antithesis of “imperialism” but rather, a necessary function of their attempts to engage and dialogue with imperialism. As John Flint argues, this was a

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⁶⁴ Daily Service 2 February 1943, 2. (Lecture titled “Co-Equal Citizenship Throughout Empire” delivered by Herbert Macaulay under the auspices of the Lagos Weekend Club at the Tom Jones Memorial Hall on 30 January 1943).

⁶⁵ Daily Service 2 February 1943, 2.

⁶⁶ Coleman, Background to Nationalism, 266.

⁶⁷ Zachernuk, Colonial Subjects, 123.
period when the relationship between those who made colonial policy and those who articulated nationalist aspirations was not always one of opposite and mutually repellent forces. 68

By the mid-1930s, Macaulay's political organisation, the NNDP, was beginning to lose its popularity. A new breed of men, more radical than him, replaced his influence. These men, many of whom had been trained in England and the United States and had therefore been more intensely and directly exposed to race discourses, came back to their country to right what they regarded as historic wrongs by the Europeans and the colonial state against African peoples. 69 This led to the formation in 1934 of the Lagos Youth Movement (later, Nigerian Youth Movement) which proclaimed as its political goal, "a complete taking over of the government of Nigeria into the hands of the indigenous people of our country" and "complete independence in local management of our affairs." 70 The NYM demanded universal suffrage; an end to colour prejudice; admission of Nigerians into the colonial legislature and civil service; abolition of the indirect rule system and its replacement by "a form of indigenous local government." 71

68 It has been customary, in writing about the emergence of nationalism in colonial Africa, to regard "nationalism" and "imperialism" as bipolarities in a state of extreme opposition and tension. But as Flint has argued, the relationship between those who made colonial policy and those who articulated nationalist aspirations was not always one of mutually repellent forces. Although there was, inevitably, considerable tension in the relationship, it was a tension more like the irascibility of a family quarrel rather than the clash of totally alien forces, ignorant of, and unwilling to know each other. John E. Flint, "Managing Nationalism": The Colonial Office and Nnamdi Azikiwe," Journal of Imperial and Commonwealth History, 27, 2 (1999), 145.


71 Nigerian Youth Movement, NYM Charter, 2.
However, by 1941 the NYM itself had become less influential and splits within its ranks led to the formation of two political organisations that subsequently dominated nationalist movement -- the National Council of Nigeria and the Cameroons (NCNC) led by Nnamdi Azikiwe and the Action Group (AG) led by Obafemi Awolowo.\textsuperscript{72} Both parties dominated politics in Western Nigeria during the Second World War and the decolonisation process. The war considerably increased political awareness among ordinary Nigerians. It provided the colonial government with an opportunity to enhance its influence and power through propaganda but it also strengthened nationalist anti-imperialism and the emergent universal human rights movement.

7.7 War Rhetoric and Anti Imperialism

“To say that the Second World War was important,” remark Killingray and Rathbone, “is to make the last uncontroversial statement in African Studies.”\textsuperscript{73} Although everyone agrees that the war was either the end of the beginning or the beginning of the end of colonialism in Africa and that the huge global upheaval it unleashed had far-reaching effects upon politics and socio-economic life, historians and other scholars have not looked very closely at the wartime experiences that brought about such momentous change. Most historians, assume the “immense significance” of the event but do not examine it as a period in history or pay attention to its complexities.\textsuperscript{74}


\textsuperscript{74} Nancy L. Clark, “Gendering Production in Wartime South Africa,” \textit{The American
This section examines the significance of the Second World War in shaping discussions about, and attitudes towards promoting African rights during and after the war.

It is generally assumed, particularly among human rights scholars, that the Second World War and the developments following it marked a fundamental shift in attitudes towards individual rights, not only in Africa but also globally. I have examined in chapter two, the thesis that the concept of “human rights” is a modern creation -- the consequence of post-war developments such as the adoption of the UDHR.\(^\text{75}\) However, as Killingray and Rathbone rightly observe, such assumptions about the epochal nature of the Second World War and related post-war developments in the context of African history seems to have been taken more as an article of faith than the product of sustained empirical research.

Although much has been done on the history of Nigeria during the Second World War, few of these works go beyond the “conventional wisdom” that war significantly affected the lived experiences of Nigerians.\(^\text{76}\) The concern here is to examine the extent to which the Second World War and related post-war developments shaped rights discourses in Western Nigeria. How much influence did the Second World War and the UDHR have on rights discourses deployed within the nationalist movements in Nigeria? How did wartime rights talk differ from earlier traditions of rights discourses? What salient continuities underlined these discourses?

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\^\text{75} See section titled: “Human Rights: Issues of Change and Continuity” in chapter two, which examines this argument in greater detail.


_Historical Review, 16, 4 (2001), 1181._
As with the First World War, most Nigerians supported Britain and the Allied powers in their campaign against Germany during the Second World War. Both the colonial state and the local press extensively deployed anti-German propaganda in a way strikingly reminiscent of the period of the First World War. In both official and public circles it was believed that Germany was the aggressor and Nazism, an evil force against which were ranged the forces of good represented by Britain and the Western democracies. Governor Bernard Bourdillon emphasized that the British Empire was fighting for "the right of the ordinary man in every part of the world to live out his own life in freedom and peace," and that the struggle was against those who believed that the pinnacle of civilized man was the perfection of a military machine which would deprive individuals of all freedom of thought and action.\footnote{Cited in Olusanya, The Second World War and Politics in Nigeria, 49.} These views were shared within the nationalist movement and the press where there was a consensus that Nigeria should unequivocally identify herself with the forces of good -- the Allied Nations. The West African Pilot emphasized the loyalty of Africans to the British Empire and their willingness to make the ultimate sacrifice in the defence of Empire. In one editorial, the paper pointed out that the youths of Britain and France were "shedding their blood in order that the ideals of liberty, democracy and peace might strive in the world."\footnote{West African Pilot, 4 September 1939.}

Some educated Nigerians organized events to rally public awareness and support for British and Allied war efforts. The rationale was that in the war, Britain and the allies were fighting for the ideals of liberty, freedom and rights, which were also the basis of the nationalist demands for independence. On September 6, 1939, at the initiative of A. Alakija, a mass meeting attended by about 10,000 Nigerians was
held in Lagos under the chairmanship of the king of Lagos, Oba Falolu, to renew Nigeria’s assurances of loyalty and determination to stand by the British Government, and to “help with all the resources at her disposal in the fight against Germany.” The turnout at the meeting demonstrated that support for British war-efforts was therefore not limited to a small group of educated elites.

However, in spite of their support for British war efforts, Nigerians continued to push their demands for political reforms and challenge state policies. As Flint argues, Nigerian nationalists continued with their fight for democratic reforms during the war even as they declared a “fierce loyalty” to the British cause. Opposing the government’s proposals to introduce censorship laws during the war, the West African Pilot stated: “On no pretext whatsoever should the cherished freedom of the press be restricted and constricted in Nigeria … This war is being waged with the avowed aim of preserving, among others, the right to publish news and make comments, without fear or favour, provided this is done within the ambit of the law.” Thus, as with the First World War, the rhetoric of freedom and liberty deployed by the state within war propaganda also found resonance within anti-imperialism and the nationalist movement.

Allied propaganda that the war against Germany was being fought to preserve democracy and to ensure that every man in every part of the world might live in freedom and peace, provided a basis for Nigerians to demand that these same ideals be extended to them. Writing under the title “Anti-Imperialism,” the West African

79 Olusanya, The Second World War and Politics in Nigeria, 43.
80 Flint, “Managing Nationalism,” 151.
81 West African Pilot, 8 October 1942, 2.
*Pilot emphasized* that since the citizens of Britain and Empire were being called upon to fight, Britain must not deny Nigerians those democratic rights which were being fought for nor “must the enemy be given the opportunity to create propaganda from colonial repression.” 82 In another editorial, the paper emphasized the need for Britain to specify her war aims not only with regard to the British people but also as they concerned the entire Empire which was affected in one way or another by the war. It went on to assert that, “justice which discriminates is not justice.” 83 Striking a similar note, the *Daily Service* in an editorial in 1940 asserted that to be secure against “Hitlarism,” democracy and liberty must be universal. It stressed the importance of extending to Africans and other “weaker peoples” the same ideals of freedom and liberty for which the war against Hitler had been waged. 84

What is evident from these statements is that Nigerian intellectuals, even at these early stages of the war, attempted to link their political demands with global issues associated with the war. They used war rhetoric and particularly, allied propaganda, to press home their political agenda by increasingly articulating their demands in terms of “universal rights” and “global liberty” rather than merely their rights as “citizens of Empire.” They criticized the composition of the colonial Legislative Council as an anachronistic institution which did not hold out any hope to the people of Nigeria for a better status under the British Empire. The Nigerian Youth Movement stated in 1942 that the Legislative Council “reminds one of Nazi

82 *West African Pilot* 19 January 1940, 2.

83 *West African Pilot*, 24 January 1940, 3.

84 *The Daily Service*, 16 November 1940.
Germany.”

This was clearly an attempt to express nationalist political aspirations within the broad framework of the emerging global rights movement.

Wartime discussions about rights and liberties within the nationalist movement were further stirred in the early 1940s by Governor Bourdillon’s reply to the demand of the nationalists for a clarification of British war aims with regard to Nigeria. Bourdillon had argued that there was no basis for asking what political reward Nigeria would get from her loyalty to Britain during the war since it is “unusual for a man to expect a reward for failure to cut his own throat.” In his view, it was inappropriate for a “few Nigerians” to make political capital out of Nigeria’s loyalty and support of the war efforts since any other cause would have been suicide. He emphasized that there would be no change in British colonial policy which remained, “a commitment to training people to take a greater share in the management of their affairs as they became fitted to do so.” The war did not provide any reason for its acceleration.

The nationalists considered this answer most unsatisfactory. The Pilot described the Governor’s statement as a “brutal faux pas and an unkind cut.” It stated that the Governor was, in effect, saying that since the evolution of the people of the country had been influenced by Great Britain, it was unusual for them to demand the right to democracy. Nnamdi Azikiwe, then the editor of the Pilot, aptly expressed the disappointment of the Nigerian Nationalists when he stated that he had become “sceptical” about the fate of colonial peoples and the “realization of the legitimate aspirations of Africans as equal members of any European colonial empire in Africa.”

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85 *The Daily Service*, 30 September 1942.

86 *The Daily Times*, 24 December 1940 (Governor Bourdillon’s Christmas message).

87 *West African Pilot*, 4 January 1941, 2.

88 *West African Pilot*, 9 August 1941, cited in Olusanya, *The Second World War and*
Such feelings of disappointment and discontent became even more resonant in the debates about the right to self-determination stirred by the Atlantic Charter and the controversy generated by Britain’s subsequent interpretation of it.

7.8 Atlantic Charter or “Atlantic Chatter”?

The controversy over Governor Bourdillon’s statement was still raging when disagreement between President Roosevelt and Prime Minister Churchill over the interpretation of the Atlantic Charter raised further concern among Nigerian nationalists over Britain’s post-war intentions for the colony. The document that became known as the Atlantic Charter was not originally intended as a formal document. It was essentially a press release on the outcome of a meeting in 1941 between Prime Minister Churchill and President Roosevelt at Placentia Bay aimed at drawing up a common declaration of purpose concerning the Second World War. The Charter declared that both leaders “respect the right of all peoples to choose the form of government under which they will live” and that they wished to “see sovereign rights and self-government restored to those who have been forcibly deprived of them.” The Charter, which has been described as the first major document of global significance to affirm the right to self-determination in both humanistic and universalist terms, was subsequently incorporated by reference in the Declaration of the United Nations and the UDHR.

The Atlantic Charter became the focus of global discussions and debates about the right to self-determination soon after it was issued. In Nigeria, public discussion over

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Politics in Nigeria, 56.

89 Clause 3 of the Atlantic Charter

the charter centred on its famous third clause, which affirmed "the right of all peoples to choose the form of government under which they will live." This statement excited the hopes of colonial nationalists everywhere who saw it as an unequivocal recognition of their right to self-determination and independence. However, they cautiously welcomed the charter fearing that its ideals would turn out to be no more than mere platitudes.91 The Pilot feared that the charter might turn out to be "just one of those human instruments nobly conceived but poorly executed."92

These fears were confirmed in November 1942 when Churchill stated in the House of Commons that he and President Roosevelt had only European states in mind when they drew up the Charter and that the charter "is a guide and not a rule."93 Even more controversial was his widely quoted remark that he had not become Prime Minister to preside over the liquidation of the British Empire. "Let there be no mistake in any quarter," he proclaimed, "we intend to hold what we have. I have not become the King's first Minister to preside over the liquidation of the British Empire."94 To further complicate matters, a different and contrasting interpretation of the Charter soon came from Roosevelt who maintained that the "Atlantic Charter applies to all humanity."95 Roosevelt's liberal interpretation of the provisions of the Charter was more in tune with the expectations of the Nigeria intelligentsia who responded to Churchill's statements with disappointment and vehement criticism.

91 Olusanya, The Second World War and Politics in Nigeria, 57.

92 West African Pilot, 6 March 1943, 2.

93 Quoted in the West African Pilot, 5 November 1941, 2.

94 The Times, 11 November 1942.

95 Quoted in West Africa Review, February (1946), 167-168.
In its November 1941 editorial titled “Even Mr. Winston Churchill!,” the *Pilot* stated that for a British Prime Minister to utter such a statement during a war which had cost colonial peoples much of their material resources and manpower was “most uncharitable.”96 The newspaper subsequently sent a telegram to Churchill asking him to clarify Britain’s position on the Atlantic Charter. Copies of the telegram were sent to various British newspapers, *Time* magazine and the Associated Negro Press.97 Although Churchill subsequently explained that the Atlantic Charter was not incompatible with the progressive evolution of self-governing institutions in Nigeria and elsewhere in the British Empire, this clarification did not satisfy an already incensed and disappointed intelligentsia. Dismissing Churchill’s explanations, the *Pilot* remarked that the Prime Minister had merely resorted to equivocation and “verbal gymnastics.”98 In its editorial of 3 March 1945 titled “Churchill’s Consistent Inconsistencies” the *Daily Service* stated:

Winston Churchill is a bundle of contradiction. He believes in “liberty and freedom for all men.” He is at the same time a die-hard imperialist. Imperialism and liberty are by no means coterminous. Churchill believes in ruling irrespective of the will of those who are ruled and yet he decries dictatorship of the world by Great Powers.99

Commenting on Churchill’s statement that the Atlantic Charter did not apply to colonies, the *Comet* remarked that “certain underground methods” were being employed to nullify the ultimate utility of the Charter.100 Many shared this view. In an editorial titled “The Atlantic Chatter,” the *Pilot* lamented that millions of people all over the world had been “hoodwinked by some of the most influential bamboozlers of


97 *West African Pilot*, 13 November 1941.


99 *Daily Service*, 3 March 1945, 2.

100 *The Comet*, 5 December 1942, 3.
all time, on the ‘blessings’ of the Atlantic Charter” which did not exist at all. What existed, according to the Pilot, was an Atlantic Chatter rather than an Atlantic Charter. “A charter is a document bestowing certain rights and privileges… chatter on the other hand, means to utter sounds rapidly …or to talk idly or carelessly.101

Criticism of Churchill was not limited to Nigeria. Perhaps the most trenchant criticism came from across the Atlantic. As Coleman rightly points out, American criticism, not only of Churchill’s statement but also of the whole imperial project, unleashed a trans-Atlantic debate over the ethics of colonialism.102 In 1941 Wendell Wilkie, a Republican presidential candidate called for an end to colonialism and the “rule of people by other people.”103 The notion that the war settlement should include a deal for colonized peoples also figured prominently in post-war schemes advanced by private American individuals and organisations.104 In 1944 the League of Coloured People at a conference in London drew up a “Charter for Coloured Peoples” which it called upon the United Nations to adopt. The charter affirmed the same “political, economic, educational and legal rights” of all persons irrespective of colour. It demanded that indigenous peoples of all dependant territories be granted full-self government at “the earliest possible opportunity.”105 As would be expected, the Nigerian intelligentsia enthusiastically received this “alternative charter.”106

101 West African Pilot, 22 December 1944, 2.

102 Coleman, Background to Nationalism, 232.


104 An “Atlantic Charter Committee” working under the auspices of the Phelps-Stokes Fund in New York issued a statement recommending that the eight points of the Atlantic Charter be applied to Africa “in keeping with the broad humanitarian and democratic principles enunciated in it.” West African Pilot, 6 March 1943, 2.

Even within the usually conservative British press and political circles, there was stiff opposition to Churchill’s position on the Atlantic Charter. The *Times* of London questioned the rationale for Churchill’s qualifications of the Charter while the *Manchester Chronicle* urged him to “think again” about his position “otherwise, the Atlantic Charter will become, for hundreds of millions, a symbol of hypocrisy.”\(^{107}\) Similarly, the anti-imperialist British Labour Party and its close associate, the Fabian Council Bureau strongly opposed Churchill’s interpretation of the Charter. Labour spokesmen, both inside and outside parliament, demanded the application of the “spirit” of the Atlantic Charter to the colonies.\(^{108}\)

These British objections to Churchill’s statements on the Atlantic Charter reverberated in Nigeria and fortified the intensity of the criticism heaped upon Churchill by Nigerian intellectuals. Commenting on British self-criticism, Azikiwe stated in 1943:

> These British criticisms leave me and those of my kind who are living in the outposts of the British Empire to begin to ponder (as we did after the ominous explanations, in 1941, that the Atlantic Charter was not applicable to the colonies) whether we should not prepare our own blueprint ourselves, instead of relying on those who are too busy preparing their own? I can see no hope of a more prosperous and contented Nigeria under the present colonial status.\(^{109}\)

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\(^{106}\) *West African Pilot*, 26 September 1944, 2.


Azikiwe did in fact go about preparing his own blueprint of rights. In his *Political Blueprint for Nigeria*, published in 1943, he listed the basic rights that should be guaranteed to every "commonwealth subject." These included the right to health, education, social equality, material security and even the right to recreation.\(^{110}\) He recommended that the Virginia Bill of Rights, which served as a model for the American constitution, should serve as a model for preparing the Nigerian constitution. The Virginia Bill of Rights, he argued, was ideal because, "it embodies all the basic rights for which democratic-loving humanity had fought to preserve in the course of history."\(^{111}\)

Azikiwe used every opportunity to promote his ideas on the establishment of a regime of constitutional rights in the country. In 1943, a delegation of journalists from West Africa (including Azikiwe) invited to London as guests of the British Council submitted to the Secretary of State for Colonies, a memorandum drawn up primarily by Azikiwe entitled, "The Atlantic Charter and British West Africa." The document made several proposals based on the Atlantic Charter which included demands for the "immediate abrogation of the crown colony system of government; immediate Africanization and full responsible government."\(^{112}\) Based on this memorandum, the NCNC, the main political party of the period, introduced its "Freedom Charter," which was a proposal for the constitution of a "Commonwealth of Nigeria and the Cameroons." The Freedom Charter is historically significant because it included the first comprehensive blueprint for a regime of fundamental human rights in Nigeria.


\(^{112}\) Coleman, *Background to Nationalism*, 240.
The charter affirmed a wide range of political, economic and social rights for all Nigerians. It included a condemnation of slavery, servitude and imperialism; an affirmation of the right to life and dignity of the human person; the equality of all persons; the right to basic education and health; the right to free expression and association, and the right to “recreation and leisure.”

The Freedom Charter particularly stressed the right to self-determination. Alluding to the Atlantic Charter, its preamble affirmed the “right of all peoples to choose the form of government under which they may live.” It further proclaimed: “The Tribes, Nations and Peoples of Nigeria and Cameroons... Now undertake, as of right, to arrogate to themselves the status of a self-governing political community.”

Although drawn up by the NCNC, the Freedom Charter was welcomed across the political divide. Azikiwe publicized and promoted it in his newspapers, presenting it as a more suitable constitution for Nigeria which should be adopted in place of the colonial constitution introduced by Governor Richard. (See Figures 4 and 5). Also justifying the Charter in 1949, Eyo Ita, one of the leaders of the NCNC stated: “Our Freedom Charter is not an artificial, abstract political code. It springs from our fundamental African political experience and agrees with the Universal Declaration of Human Rights.”

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113 NCNC, Freedom Charter, 2.


115 West African Pilot, 26 April 1949.

Figure 4: Illustration: “Yes, she would look best in this new one.”

Akinola Lasekan, *West African Pilot*, 7 December 1948
Figure 5: “The People’s Choice”

A major significance of the Atlantic Charter was that it partly inspired and
formed the basis of the creation of the United Nations in 1945. The Atlantic Charter
ultimately found expression in Chapter XI of the United Nations Charter which urged
member states with colonies to develop self-government and "take due account of the
political aspirations of the peoples." The Atlantic Charter also provided the basis for
introduction of the Universal Declaration of Human Rights in the post-war era. The
inauguration of the UDHR marked the first time in history that certain fundamental
rights and freedoms were set forth at an international forum as inalienable universal
values to which all individuals are entitled simply by virtue of their humanity. At its
adoption, the UDHR was heralded as "a world milestone in the long struggle for
human rights" and "a magna carta for all humanity."\(^{117}\) This was in spite of the reality
that half of the world's peoples were, at the time, still under colonial domination. This
was also in spite of the fact that most colonized peoples were not represented at the
United Nations and had no opportunity to make any input into the preparation of the
UDHR. The exclusion of the voices of colonized peoples in the process of drawing up
the UDHR remains one of the strongest challenges to its claim to universality.\(^{118}\) Yet,
the UDHR has been widely acknowledged as the cornerstone of the contemporary
human rights movement.

The precise extent to which the Second World War, the Atlantic Charter, and
the UDHR affected the nationalist movement and ultimately, the decolonisation
process in Nigeria, is difficult to assess. Taken together, these developments clearly

\(^{117}\) United Nations Department of Public Information, The Universal Declaration of
Human Rights: A Magna Carta for all Humanity (Vienna: UN, 1997).

\(^{118}\) However, at the World Conference on Human Rights held in Vienna (Austria) in
June 1993, 171 countries, including many African countries, reiterated the
universality, indivisibility and interdependence of human rights, and reaffirmed their
commitment to the Universal Declaration of Human Rights.
marked a critical phase in the nationalist movement. Anthony Enahoro, a prominent journalist and nationalist politician of the late colonial period conceded that the Second World War, and particularly discussions about the Atlantic Charter, exposed Nigerians to new ideas and increased popular support for the nationalists.\textsuperscript{119} My interviews with nationalist politicians, labour union activists, journalists and other actors in the nationalist movement support this observation. Many informants confirmed that the Second World War and the ideals for which it was fought, strengthened their commitment to the nationalist movement.\textsuperscript{120} One informant stated that Prime Minister Churchill’s statements concerning the Atlantic Charter convinced him of two things -- first, that Britain was determined to keep Nigeria under “perpetual colonial domination” and second, that independence was not going to be won on “a platter of gold”; Nigerians had to fight for it.\textsuperscript{121}

The debates over the Atlantic Charter also marked an important chapter in the globalization of the rights discourse, although significantly, not the actual application of these rights. For the Nigerian intelligentsia, the language of universal rights that underlined discussions about the Atlantic Charter provided a framework for articulating and legitimizing long-standing demands for political reforms. As we have seen earlier in this chapter, the rhetoric of freedom and liberty during the First World War provided a similar discursive framework. The important difference, however, was that rights

\textsuperscript{119} Anthony Enahoro, \textit{Fugitive Offender: The Story of a Political Prisoner} (London: Cassell, 1963), 77.

\textsuperscript{120} Interview with Tunde Alo at Ibadan, 16/06/01; with Ishola Coker at Lagos, 13/06/01; with M.O Ugowe at Benin City, 19/06/01 and with Adebayo Takpe at Abeokuta 17/12/00.

\textsuperscript{121} Interview with Ishola Coker at Lagos, 13/06/01.
discourses during the First World War were deployed mainly within the context of Empire. In making their political demands, the early generation of Nigerian intellectuals like Herbert Macaulay, O. Johnson and James Bright Davis emphasized their rights as “subjects of His Majesty’s Government.” Rights discourses during the Second World War and after, took a markedly different turn from these earlier traditions. In the period of the Second World War, Nigerian intellectuals used the language of rights to advance their political aspirations, not within the limited framework of Empire, but within a much broader context of global citizenship. Where Macaulay demanded his rights as a British subject, Azikiwe and the later nationalists talked more of their universal and inalienable rights.

However, despite this shift in the tone of the rights discourse during the Second World War, it would be erroneous to conclude, as some human rights scholars have, that the Second World War, the Atlantic Charter or the UDHR marked the beginning of an entirely new concept and tradition of “human rights” distinct from previous notions of “human dignity” or “distributive justice.” The evidence from Nigeria simply does not support this assumption. Although there was a significant change in the pattern rights discourses during and following the Second World War, this change did not mark the beginning of an entirely new tradition of rights talk. If anything, discussions about rights and liberties in the period of Second World War were built on earlier traditions of rights discourses in which Nigerians were engaged. These discussions, despite their more universalist appeal, were part of a historical continuum. They were part of a long tradition of rights discourses in Nigeria which, as I have attempted to show, dates back to the early Christian humanism of the missionaries, the antislavery movement, the colonial legal system and debates about rights within the context of Empire during the First World War. In appealing to
“universal human rights” to advance their demands for self-determination in the 1940s and 50s, Nigerian nationalists were not starting a new tradition. The language of rights and liberty that they deployed was neither novel nor unique to their time. This language had been deployed at various times in the past by the colonial state and various groups of Africans to legitimize, oppose or negotiate specific economic and social agendas. What needs to be examined is how Nigerians, following in this tradition, deployed the language of "universal rights" which gained currency in the post-war era to advance nationalist political demand.

7.9 Radical Nationalism and "Universal Rights"

The Second World War marked the beginning of a new era in which the nationalist movement took a different turn from the direction of the preceding generations. Coleman has described this period as a transition from a "tired and parochial older set" more inclined towards gradualism and accommodation of colonial status, to a younger group of intellectuals whose ambitions and aspirations were far more intense, positive and urgent.\(^{122}\) Indeed, the profound social and economic changes during the Second World War not only brought forth new leadership, but also mobilized new forces, creating a radically different climate of opinion and a setting that was more congenial to the development of radical nationalism. The controversy generated by the Atlantic Charter was also an important factor in creating this atmosphere of radicalism.

The phase of radical nationalism was marked by numerous protests of post-war political and economic conditions. Most of the political grievances of Nigerians, or at least the vocal minority, in the post-war period centred on the demand for franchise and

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\(^{122}\) Coleman, *Background to Nationalism*, 229.
broader political representation in the government. There were also demands for an end to racial discrimination, particularly in the civil service. While official racism had always been condemned as a contradiction of Britain’s professed liberal and “enlightened” colonial policy, it became increasingly indefensible and intolerable to the intelligentsia after the war.\footnote{Zachernuk, Colonial Subjects, 140.} In April 1947 a dramatic incident occurred which brought the issue of racial discrimination to a head. An official of the Colonial Office, who was of African descent, visited Lagos and was denied accommodation at one of the country’s premier hotels even though the Nigerian government had made a reservation for him. When this news reached the Lagos press, there was an instantaneous outburst of anger. Mass meeting were held to protest the incident and a deputation sent to deliver a strongly worded letter of protest to the governor. So vehement and widespread were the protests that the governor was forced to issue a circular condemning and abolishing all forms of discrimination in public facilities.\footnote{For more details of this episode see John Flint, “Scandal At The Bristol Hotel: Some Thoughts on Racial Discrimination in Britain and West Africa and its Relationship to the Planning of Decolonisation, 1939-47,” Journal of Imperial and Commonwealth History, 12, 1 (1983).}

Other issues also contributed to the rise of radical nationalism in the post-war era. Among these were the agitations of Nigerian ex-soldiers and trade union leaders who led popular protestations against the economic hardships that Nigerians faced after the war. \footnote{For more details on the role of the labour union movement during this period see Wale Oyemakinde, “Michael Imoudu and the Emergence of Militant Trade Unionism in Nigeria, 1940-1942,” Journal of the Historical Society of Nigeria, 7, 3, (1974).} Another group that was very active in the radical nationalist politics of the post-war years and universalist language of rights that underlined it were the public letter writers. Unfortunately, the role of this group of Nigerians of the post-war
period has received very little attention. As we have seen in the course of this thesis, these public letter writers were the main intermediaries between ordinary Africans and the colonial state and were particularly influential during and immediately after the war. Adewoye describes the 1940s as the hey day of professional letter writers who practiced their trade throughout Southern Nigeria and could be found in both big cities and small remote towns. In Ibadan alone, there were some thirty-five public letter writers. Although not formally qualified in law, they generally had a good working knowledge of the basic principles of English law and the legal process judging from the petitions they addressed to colonial administrative officers.

In a largely illiterate society where few could afford the services of lawyers, the public letter writers or "wigless lawyers" as they became known, served an important role as advocates of their clients, often with regard to infringements on their rights and liberties. Many of them saw themselves as social activists and public interests campaigners. Edema Arubi, a prominent letter writer in Warri in the 1940s described himself as the "defender of the rights and liberties of Itsekiri-Sabo-Ijo against the wrongs of the Nigerian government." I have argued elsewhere that these individuals and their organisations were, in many respects, the precursors of present day human rights and pro-democracy NGOs in Nigeria. These public letter writers,


127 Adewoye, "Legal Practice in Ibadan," 59.

128 NAI War Prof 1/507/6, Letter from the Arubi Independent Defence Services to the Kwale District Court, 11 March 1946. This inscription was boldly written on the Edema Arubi's official letterhead.

along with the nationalist politicians, the press, the ex-soldiers and the trade unionists constituted what Odumosu has described as a large population of discontented people “created” by the Second World War.\textsuperscript{130} Their activities created an atmosphere in which radical nationalism and anti-imperialist sentiments could flourish.

Mention must also be made of the important role played by organized women’s groups in raising an awareness of women’s rights in the 1940s and 50s.\textsuperscript{131} The main demand of these organisations was women’s enfranchisement. One of the most influential of these groups was the Abeokuta Women’s Union (AWU) led by the charismatic Funmilayo Ransome Kuti. Johnson-Odim and Mba have produced an incisive biographical study of Funmilayo Kuti and her role in the nationalist movement.\textsuperscript{132} It suffices here to emphasize that Kuti and the AWU were actively engaged in the discussion about political rights and reforms in the post-war era. Johnson-Odim argues that although she was deeply engaged in the political sphere, Kuti did not consider herself a politician but rather, a “human rights activist.”\textsuperscript{133} The declared objective of the AWU was to “unite, defend, and protect women and preserve their social, economic, and political rights.”\textsuperscript{134} An AWU-sponsored

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  \textsuperscript{130} Odumosu, The Nigerian Constitution, 39.
  
  \textsuperscript{131} The organisations include the Lagos Market Women Association, the Nigerian Women’s Party and the Abeokuta Women’s Union.
  
  \textsuperscript{132} Cheryl Johnson-Odim and Nina Mba, For Women and the Nation: Funmilayo Ransome-Kuti of Nigeria (Champaign: University of Illinois Press, 1997).
  
  
  \textsuperscript{134} Cheryl Johnson, “Class and Gender: A Consideration of Yoruba Women During
\end{itemize}
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publication in 1949 quoted the United States Declaration of Independence on the right of the governed to overthrow unjust governments, to support the AWU’s stance against the colonial government.\textsuperscript{135}

Given this atmosphere of increased tension and opposition from various sections of the population, it became apparent to the colonial government that political reforms were inevitable. The reforms came in the form of a new constitution introduced by Governor Arthur Richard in 1946. The constitution met some of the demands of the nationalists. It established an all-Nigerian Legislative Council and introduced semi-autonomous regional assemblies in each of the three regions of the country. However, some nationalists criticized the constitution for falling short of a responsible form of government which they had hoped would be introduced at the end of the war. Further constitutional reforms by Governor John Macpherson five years later allowed for the inclusion of more educated Nigerians into the civil service and eased the tension between the government and the elites.

7.10 Placing the Universal Declaration of Human Rights

In appraising post-war political developments in Nigeria, one important question that arises is the extent to which the introduction of the UDHR influenced discussions about rights and liberties within the nationalist movement. This question is significant given the prevailing arguments within human rights scholarship that the Second World War, and specifically, the UDHR marked the foundations of the contemporary

\textsuperscript{135} Johnson-Odim and Mba, \textit{For Women and the Nation}, 74.
concept of human rights. There is no doubt that the UDHR and the Atlantic Charter marked an important phase in the global discourse of rights. Its influence reverberated across western Nigeria where many intellectuals welcomed its adoption by the United Nations. But as with the Atlantic Charter, they were cautiously optimistic about its impact on their aspirations for independence. The Pilot hailed the declaration as "a courageous initiative" stating that

while the principles of the charter will be found difficult to implement by the nations who subscribed to it, particularly the imperialist powers, the fact that they have enunciated these principles and accepted them in theory, is sufficient to provide oppressed and colonial peoples everywhere, and most especially the black and coloured peoples of the world with a tribune.

In another editorial titled "Human Rights and Nigeria" the Pilot deplored the "silence" of the colonial government on the application of the principles of the UDHR to Nigeria and called for a discussion at the Legislative Council on the relevance of the charter to the people of Nigeria.

Also writing on the significance of the UDHR to the nationalist movement in 1949, Eyo Ita remarked: "The Universal Declaration of Human Rights provides the yardstick by which peoples of all lands may measure the excellence or failure of their political reforms. For us, it states the fundamental rights of human beings which must be respected and safeguarded if we must have enduring peace, progress and security in the world." Ita further stated that the UDHR is a "direct condemnation of imperialism in

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136 See the arguments of Rhoda Howard, Jack Donnelly, Bassam Tibi and B. Weston discussed under the subheading "Human Rights: Issues of Change and Continuity" in chapter two.


all its forms” and that the universal language employed in the UDHR had ushered a “one-world era in which Africa is no more an isolated asylum of slavery.” Nigeria and her freedom, he argued, “are now the concern, not only of Nigerians but of the whole world... Forces of fundamental change are now being judged not merely by the light of isolated local history but in the light of contemporary humanity.” 140 It is evident therefore that the UDHR provided an internationally accepted standard of rights to which the nationalists could appeal in their demands for political reforms and expressions of nationalist aspirations.

However, it is important not to overstate the influence of the UDHR on post-war rights discourses in Western Nigeria. For one, the introduction of the UDHR did not stimulate the kind of extensive and impassioned debates about the right to self-determination that followed the Atlantic Charter. One possible reason for this may be because after the Second World War the Nigerian intelligentsia tended to focus more of domestic issues and their internal struggles for independence rather than on developments on the international front, which concerned them during the war. Added to this is the point earlier made that most Nigerians did not see the United Nations in 1948 as a forum for African voices or those of other colonized peoples.

Another reason for caution in evaluating the significance of the UDHR is that it does not seem to have directly influenced the major constitutional proposals put forward by Nigerian nationalists for promoting human rights in the country. The NCNC Freedom Charter, first put forward in 1943, which was the most comprehensive statement of rights produced by Nigerians in the post-war period, preceded the UDHR. 141 Moreover, the provisions of the Freedom Charter were much

140 Ita, Freedom Charter, 1.

141 Nnamdi Azikiwe, Zik: A Selection from the Speeches of Nnamdi Azikiwe (London:
broader than those of the UDHR. While the UDHR was basically a statement of civil and political rights, the Freedom Charter had elaborate provisions for economic, social and cultural rights. This was 28 years before the UN's Covenant on Economic, Social and Cultural Rights was adopted.

The point here is not to deny the influence of the UDHR on the rights discourse in Nigeria as elsewhere in the world. Rather, my argument is that the immediate impact of the UDHR on the rights discourse in Nigeria as perhaps elsewhere in the colonized world need not be overstated. This call for caution is in response to the tendency within human rights scholarship to ascribe too much to the UDHR and too little to other long-standing traditions of rights discourses that have shaped the contemporary human rights movement. Although the evidence from Nigeria shows that the UDHR had some influence on the political rights discourses within the nationalist movement, it does not support the assumption that the UDHR inaugurated an entirely new concept or tradition of rights discourse in Nigeria. The most that can be said of the UDHR in this regard, as we shall see in the next section, is that it provided a model for the regime of constitutional rights that was adopted at independence.

7.11 Decolonisation and Constitutional Rights

The political reforms that were inaugurated in the late 1940s continued into the 1950s and signalled the beginning of decolonisation process. In 1951, Governor Macpherson introduced a new constitution to replace the one introduced in 1946 by Governor

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142 Although the UDHR makes some provisions for economic and social rights, these have been overshadowed by the emphasis placed on civil and political rights.

143 See the arguments of the "UDHR as epoch school" discussed in chapter two.
Richards. Unlike the earlier case, Macpherson ensured that Nigerians were involved in the making of the constitution through participation in regional conferences. This marked the first time that Nigerians had been called upon to work on their own constitution and so it was seen by the elites as an opportunity to express long held views on their expected role in the new dispensation. A major consequence of the 1951 constitutional reforms was that it stimulated the formation of more political parties. Although there had been some Nigerian political parties before this period (such as the NNDP and the NCNC), the new dispensation was the first to constitutionally guarantee the full participation of Nigerian political parties. The rise of new political parties increased the level of popular participation in Nigerian politics. But with this increased political participation also came the intensification of regional and ethnic rivalries.\textsuperscript{144}

The new political parties that emerged emphasized regional and ethnic interests. The \textit{Egbe Omo Oduduwa} which later evolved into the Action Group (AG) in 1948 was essentially a Yoruba political party.\textsuperscript{145} It had as one of its main objective, "the inculcation of the idea of a single nationalism throughout Yoruba land."\textsuperscript{146} Similarly, the Northern People's Congress (NPC) founded a year after the Action Group was a purely northern political party. Membership of the party was limited to people from the Northern region and its declared objective was to seek regional autonomy within Northern Nigeria. Nigerian scholars and politicians have advanced several reasons to explain the regional and ethnic character of Nigerian politics during

\textsuperscript{144} J.F.A Ajayi, \textit{Milestones in Nigerian History} (London: Longman, 1980), 36.

\textsuperscript{145} Society for the Descendants of Oduduwa. The organisation was a pan-Yoruba socio political and cultural organisation.

this period. This is not the place to examine these in detail.\textsuperscript{147} It suffices to state for the purpose of our discussion that the regionalization of politics invariably meant the regionalization of the rights discourse.

Political groups began to articulate their rights demands on the basis of regional, rather than national aspirations. This shift is evident in the debates over political rights at the various constitutional conferences leading up to independence in 1960. Leaders of minority ethnic and political groups became more insistent on their demands either for separate states of their own or for constitutional safeguards to prevent their domination by majority ethnic groups in an independent Nigeria. The concerns of the minority ethnic groups was based on the fact that the major regional parties were effectively controlled by leaders of the numerically dominant ethnic/cultural groups -- the NPC by the Hausa-Fulani, the Action Group by the Yoruba, and the NCNC by the Igbo. It followed in the eyes of many minority leaders that self-government would mean permanent Hausa, Yoruba, or Ibo domination. These minority ethnic groups therefore demanded, as a safeguard, the creation of additional political subdivisions in which their minority status was either extinguished or minimized.\textsuperscript{148}

By the mid-1950s numerous minority, separatist and ethnic based groups emerged, the most prominent of which were the Calabar-Ogoja Rivers State Movement in the Eastern Region, the Mid-West State Movement in the Western Region and the Middle-Belt Movement in the Northern Region. The agitation for


\textsuperscript{148} Coleman, \textit{Background to Nationalism}, 388.
these states assumed a political character as various political parties supported specific demands for states for political and strategic reasons. By 1957, these demands had reached such a dimension that the conference held in London to fashion an independence constitution for the country could not ignore them. At the conference, considerable time was dedicated to the discussion of the problems of regional minorities and their proposals for new states.

The NCNC and the Action Group which had long fought for the right of self-determination throughout the colonial period sought to limit the full application of the principle of self-determination to the regions they controlled. The Action Group, which had a foothold in the Western region, supported the creation of a Mid-West state but wanted specific limits placed on its boundaries. Similarly, Azikiwe, leader of the NCNC who had been the foremost proponent of the principle of self-determination and minority rights, objected to the creation of more states in the NCNC-dominated Eastern region. He argued that the “situation in the Eastern Region is exceptional”149 and that the “East can no longer stand dismemberment as a sacrifice either for administrative convenience or national unity.”150 It has been suggested that Azikiwe objected particularly to the leadership of the Calabar-Ogoja Rivers State movement because they constituted the most visible threat to his political dominance in the Eastern region.151

149 West Africa, March 8, 1958, 231.

150 Daily Times, October 29, 1957.

Whatever the reason for this objection, this trend marked the emergence of what Oseghae has described as the era of "majoritarian nationalism" in the country. More significantly for our purpose, it provides yet another example of the complexities and contradictions that characterized the rights discourse in Nigeria during this period. The rhetoric of the right to self-determination, which was extensively deployed by the leading nationalists to challenge the colonial state, was cast aside by them when they feared that others might use it to challenge their own power and influence. Herein lies another paradox of the rights discourse in Nigeria: that it could be used by actors to challenge the status quo at certain times and rejected by these same actors when it was deployed by others under different circumstances.

7.12 The Willink Minority Commission

To address the demands for state creation by minority groups, the 1957 constitutional conference set up a commission of inquiry to ascertain the facts about the fears of minority groups and to propose means of allaying those. The commission was also expected to advise on constitutional safeguards that could be provided for aggrieved minority groups. If no effective safeguards were possible, the commission was further mandated to recommend the creation of more states to assuage the anxieties of the minority groups. The Minority Commission was headed by Sir Henry Willink, a former minister of the British cabinet. It held hearings throughout Nigeria between 1957 to 1958 and received memoranda from minority groups, state movements, anti-state movements and individuals. In all the regions, the Commission was told that

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ethnic minorities were being excluded from the corridors of power and denied their entitlements by the dominant groups.\textsuperscript{154}

In its report submitted in 1958, the commission identified two main grounds for the fears of suppression and political marginalization among minority ethnic groups in the country. First, the use of physical force by the major political parties to intimidate smaller political groups constituted "a grave threat to inter-ethnic harmony." Second, was the tendency of regional governments, secure in their majority, to disregard the wishes and interests of the minorities. But in spite of these observations, the commission rejected the idea of creating more states as that would "create more problems as great as it sought to cure."\textsuperscript{155} It suggested instead, that a "Bill of Rights" be included in the independence constitution.

This recommendation by the Willink Minority Commission has often been touted as the origin of constitutional rights in Nigeria. This may not be entirely correct. The recommendation of the Willink commission did not mark the first time that a bill of rights was recommended for inclusion in the constitution. At the 1953 constitutional conference held in London, the Action Group and the NCNC in a joint memorandum, proposed a comprehensive bill of fundamental rights for the constitution.\textsuperscript{156} The Northern Elements Progressive Union (NEPU) also submitted a

\textsuperscript{154} For instance, leaders of minority groups in the Midwest region alleged discrimination in the allocation of pipe borne water, roads, educational institutions and government hospitals even though the Willink Commission found this to be untrue. For a fuller discussion on the findings of the Commission see R.T. Akinyele, "States Creation in Nigeria: The Willink Report in Retrospect," \textit{African Studies Review}, 39, 2 (1994), 71-94.


Hereinafter, \textit{Minorities Commission Report}.

\textsuperscript{156} NA1 B10, \textit{Record of Proceedings of the Nigerian Constitutional Conference held in London in July and August 1953}. Hereinafter, \textit{Record of Constitutional Conference
similar proposal recommending a bill of rights for the constitution.\textsuperscript{157} The Colonial Secretary, Oliver Lyttleton who presided over the conference, objected to these proposals on two grounds. First, he argued that fundamental rights could only be exercised provided they did not affect the fundamental rights of other people. Any list of rights would therefore be "so hedged around with reservations that it would be meaningless." Second, he argued that he had never known of any similar declaration to be incorporated in a British constitution. Although there was such a declaration in the Indian and Sudan constitutions, it had not made for greater freedom in those countries. In contrast, the Dominion of Canada, which had no such constitutional provisions for fundamental rights, had a much better record of protecting human rights.\textsuperscript{158} In the event, the proposals for a constitutional bill of rights were jettisoned.

The recommendation of the Willink Minority commission four years later was however more comprehensive than the bill of rights proposed by NEPU, the Action Group and the NCNC. It included the right to life and liberty; the right to freedom of movement and peaceful assembly and the right to protection against retrospective legislation. Other recommendations of the commission towards allaying the fears of minority groups included the establishment of a strong police force that would not be subject to any regional control; equal sharing of financial responsibilities between the

\textsuperscript{157} Record of Constitutional Conference 1953 (Appendix NC (53) 36, "Declaration of Fundamental Rights: Memorandum of the Northern Elements Progressive Union").

\textsuperscript{158} NA1 B10, Record of Proceedings of the Nigerian Constitutional Conference held in London in July and August 1953.
regional and federal governments, and the setting up of a council to monitor the
economic and social development in minority areas.\textsuperscript{159}

The commission, however, did not pretend to believe that the inclusion of a
bill of rights in the constitution would completely solve the problem of the minorities
in respect of their fears of oppression but stated that the bill should be inserted
nevertheless because "their presence defines beliefs widespread among democratic
countries and provides a standard to which appeal may be made by those whose rights
are infringed."\textsuperscript{160} It acknowledged that a government determined to abandon
democratic courses will find ways of avoiding them, but added that they are "of great
value in preventing a steady deterioration in standards of freedom and the unobtrusive
encroachment of a government on individual rights."\textsuperscript{161} At a subsequent constitutional
conference in 1958, representatives of the various political parties agreed that the
fundamental rights recommended by the Minorities Commission be incorporated into
the 1960 independence constitution. The conference also specifically directed that the
constitution should contain human rights guarantees on the model of the European
Convention on Human Rights.\textsuperscript{162}

But while there was agreement over the inclusion of a bill of rights in the
constitution, there remained fundamental differences over other recommendations of
the Minorities Commission. For one, the Commission's recommendation against the

\textsuperscript{159} Minorities Commission Report, 70-97. Also see Eghosa Oseghae, "Human Rights
and Ethnic Conflict Management: The Case of Nigeria," Journal of Peace Research,
33, 2, 1996.

\textsuperscript{160} Minorities Commission Report, 97.

\textsuperscript{161} Minorities Commission Report, 97.

\textsuperscript{162} D.I.O Ewezukwa, "Nigeria: Constitutional Developments," in Albert Blaustein and
Gisbert Flanz (ed.) Constitutions of the Countries of the World (New York: Oceana
creation of more states was criticized by some sections of the Nigerian political class. The Action Group wanted the problem of the minorities settled before independence by creating more states. The NPC and the NCNC on the other hand were more receptive to the Commission’s recommendations against the creation of more states. The question of states creation and minority rights became so contentious and divisive among the political elite that the British Secretary of State for Colonies warned that if it remained unresolved, it would delay British plans to grant the country independence in 1960.\textsuperscript{163} When it became apparent that the disagreement threatened to delay the granting of independence, the Action Group compromised its position and agreed to the proposal of the Colonial Secretary that the creation of new states be shelved and instead, provisions for the establishment of new states in the future be inserted in the constitution. Thus, the contentious issue of minority rights was conveniently swept under the carpet to expedite independence.

In retrospect, it is unfortunate that the minority question was not resolved before independence because this meant that Nigeria entered her era of independence with a constitution that did not satisfactorily address the expressed fears and grievances of diverse groups of people. This fact, coupled with the failures of the emergent political leadership class at independence remained the central issues at stake in the debates over political and civil rights in the immediate post-colonial era.

7.13 Independence and “Fundamental Human Rights”

Following the recommendation of the Minority Commission, the 1960 constitution contained elaborate provisions guaranteeing to every Nigerian, certain basic human

\textsuperscript{163} G. O Olusanya, “Constitutional Developments in Nigeria,” 542-543.
rights and fundamental freedoms. The provisions of chapter three of the constitution titled "Fundamental Rights" were partly based on the UDHR and the European Convention for the Protection of Human Rights and Fundamental Freedoms which, at the time, was perhaps the most comprehensive legal provision for human rights in the world. 164 The basic rights guaranteed in the constitution included the right to life; freedom from inhuman treatment; freedom from slavery and forced labour; the right to personal liberty; the right to fair hearing; freedom of conscience and religion, freedom of expression; freedom of peaceful assembly and association; freedom of movement and residence; freedom from discrimination; and freedom from deprivation of property without compensation and the right to family life which we have examined in detail in the previous chapter. 165 These provisions were retained when Nigeria adopted a revised republican constitution in 1963. 166

Although most Nigerians welcomed the inclusion of a bill of rights into the constitution, some politicians criticized its theoretical and practical limitations. Obafemi Awolowo, the leader of the Action Group, criticized the bill of rights on the two main grounds. First, the bill was only a statement of civil and political rights. It did not make sufficient provision for social and economic rights such as the right to education and the right to work, which he thought the state should also protect.


166 The human rights provisions of the Republican Constitution provided the basis for subsequent constitutional guarantees of human rights in Nigeria. There has been no significant textual difference between the original human rights provisions in the 1960 independence constitution and subsequent constitutions.
Secondly, all the rights provided for were "so limited [by provisos] as to make them nugatory for all practical purposes."\textsuperscript{167} For instance, while the constitution guaranteed the right to "dignity of the human person" and "freedom from torture, inhuman or degrading treatment" it exempted from these guarantees, any punishment that was lawful and customary in any part of Nigeria as at 1 November 1959. This proviso implied that customary practices such as trials by ordeal and haddai\textsuperscript{168} which otherwise would have been considered violations of the constitutional right to human dignity, were not unconstitutional because they had been "lawful and customary" before November 1, 1959. This proviso also effectively legitimized such practices as punishment in stocks, which was quite prevalent in the colonial era and which many African and colonial officials found abhorrent.\textsuperscript{169}

Awolowo also objected to the proviso placed on the guarantee of "freedom from discrimination." The constitution prohibited discrimination of any person on grounds of his or her ethnic group, place of origin, religious or political opinion. However, in its definition of "discrimination" it exempted any law that imposed restrictions on certain persons "having regard to [their] special circumstances" and which was "reasonably justifiable in a democratic society."\textsuperscript{170} This rather vague clause meant, in the interpretation of legal experts and the courts, that institutionalized

\textsuperscript{167} Obafemi Awolowo, \textit{The People’s Republic} (Ibadan: Oxford University Press, 168), 275.

\textsuperscript{168} This was the public flogging of the naked body of an alleged offender. It was a customary form of punishment meted out by the colonial Native Courts, particularly in Northern Nigeria.

\textsuperscript{169} Some of the objections to this form of punishment by both Nigerians and colonial officials are examined in chapter four.

discrimination against certain persons such as women (with regard to property rights) and children born out of wedlock (with regard to inheritance rights) under prevailing customary law, did not fall within the scope of the constitutional guarantees of "freedom from discrimination" since they could be regarded as discrimination based on the "special circumstances" of these persons.\footnote{171}

These qualifications or "claw back clauses" (to use the appropriate legal term) in a bill that was supposed to guarantee the "fundamental human rights" of all Nigerians, say a lot about the political outlook of this era. It was a period when Nigerian politicians, eager to consolidate their political bases in preparation for taking over power from the colonial government, were preoccupied with advancing ethnic, gender and class interests. Under such circumstances, instituting a regime of constitutional rights that guaranteed the equal and unqualified rights of all Nigerians was not considered politically expedient. In fact, in certain quarters, such absolute rights were perceived as a threat to strongly held cultural and religious beliefs. For instance, the NPC, the main political party in the predominantly Moslem Northern region, vehemently opposed the extension of voting rights to women in that region when universal adult suffrage was first introduced in other parts of the country in 1954. The party objected on the grounds that women's franchise would compromise the religious and moral values of the North.\footnote{172} It held that women would be given franchise in "God's time."\footnote{173} The NCNC and the AG which had insisted on universal

\footnote{171}{B.O Nwabueze, The Presidential Constitution of Nigeria (London: C. Hurst, 1982), 458.}

\footnote{172}{West African Pilot, 15 February 1953, 2.}

adult suffrage throughout the colonial period compromised their position to accommodate the NPC in order to “ensure consensus for a time-table for independence.”\textsuperscript{174} This typifies the kinds of class-centred compromises made by Nigerian political elites in fashioning the bill of rights adopted at independence.

Such political compromises undermined the spirit behind the bill of rights. The Nigerian constitutional lawyer, B.O. Nwabueze, has argued that the content of constitutional guarantees of rights depend not only upon the range of the rights guaranteed, but also upon the scope and sweep of the qualifications made to them.\textsuperscript{175} It is obvious that rights cannot be guaranteed in absolute terms if for no other reason than to protect the rights of other persons. The contention of critics of the bill of rights however, was that qualifications made to the guaranteed rights went too far. More so, the qualifications were the result of class-centred political compromises rather than the exigencies of protecting the rights of others. This is a valid critique. Compared with the rights outlined in the NCNC’s Freedom Charter introduced twelve years earlier, the bill of rights in the independence constitution left much to be desired. While the guarantee of “freedom from discrimination” in the independence constitution had several qualifications intended to exclude children born out of wedlock, the \textit{Freedom Charter} stated unequivocally: “All children, whether born in or out of wedlock, shall enjoy the same social protection.”\textsuperscript{176}

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\textsuperscript{174} Johnson-Odim and Mba, \textit{For Women and the Nation}, 111.

\textsuperscript{175} B. O. Nwabueze, \textit{A Constitutional History of Nigeria} (Essex & New York: Longman, 1982), 117.

\textsuperscript{176} Ita, \textit{Freedom Charter}, 5.
7.14 Beyond Rights Talk: The Challenge of Enforcement

Apart from the limitations of the language of the bill of rights, there was also the more practical problem of enforcing the bill after independence. In recommending the inclusion of a bill of rights into the independence constitution, the Minority Commission recognized that such a bill could not provide absolutely guarantee against violations of individual rights and liberties either by the state or other individuals. It stated:

That constitutional guarantees are notoriously ineffective is no reason for not trying.... No knowledgeable person has ever suggested that constitutional safeguards provide in themselves complete and indefensible security. But they do make the way of the transgressor, of the tyrant, more difficult.\(^{177}\)

True to this assumption, the provisions of the constitution did not always protect individuals from violations of their fundamental rights, particularly those perpetrated by the state. For one, many colonial laws and policies criticized by the nationalists as oppressive and undemocratic were either retained or revised and re-introduced by the government soon after independence. Some of these laws included the *Official Secret Act* of 1962 and the *Sedition Offences Act* of 1963, which became a convenient tool with which the government sought to suppress the press, smother political opposition and stifle public dissent.

The first major test of the bill of rights came soon after independence in 1961. A prominent politician and professor, Chike Obi, was charged with sedition for publishing a pamphlet in which he criticized the corruption and intolerance of the ruling government of Abubakar Tafawa Balewa. The offending publication was a booklet titled *The People: Facts You Must Know*. Although the government described the booklet as a seditious document intended to incite the people, it was, in fact, no

\(^{177}\) *Minorities Commission Report*, 70-97.
more than a tirade against the government.\textsuperscript{178} For this, Obi was arrested, tried and convicted for sedition. He subsequently appealed his conviction on the grounds that his fundamental rights to freedom of expression in the Nigerian constitution had been violated. Obi's appeal, which was closely followed by the public and the press, was considered a test case of the capability of the judicial arm of government to enforce guaranteed constitutional rights. At issue was the proper interpretation of the section of the constitution that guaranteed freedom of expression \textit{vis a vis} the related proviso which stated: "Nothing in this section shall invalidate any law that is reasonably justified in a democratic society."\textsuperscript{179} In the event, the court dismissed Obi's appeal on the grounds that his conviction under the sedition law "was reasonably justifiable in a democratic society."\textsuperscript{180}

The case vindicated the fears expressed in many quarters that the extensive qualifications placed on the bill of rights made it practically ineffective. It also represented a change in the pattern of political rights discourse in the country. The use of rights talk had shifted from the nationalists, who had extensively deployed it in the colonial era, to a new post-colonial anti-government opposition movement. The irony here is that having attained power at independence, nationalist politicians who had used rights talk to challenge the colonial state, found themselves at the receiving end

\textsuperscript{178} Obi wrote: "Down with enemies of the people, exploiters of the weak and oppressors of the poor... The days of those who have enriched themselves at the expense of the poor are numbered. The common man in Nigeria can today no longer be fooled by sweet talk at election time only to be exploited and treated like dirt after the booty office had been shared among the politicians." See \textit{DPP v. Chike Obi} (1961) 1 \textit{All Nigeria Law Report} (ANLR), 186.

\textsuperscript{179} Section 23 (2) of the \textit{Constitution of Nigeria}, 1960 (Lagos: Government Printer, 1961).

\textsuperscript{180} \textit{DPP v. Chike Obi} (1961), 186.
of the same rights-based opposition which they had mounted against the colonial state. Here, we see how rights discourses were used to further specific class interests and agendas under different political situations. The promising adaptation of rights ideas by Nigerian elites in their opposition to the colonial state would seem to have fallen apart soon after independence. Rights talk, once wielded heavily and effectively to oppose and challenge colonial domination was thrust aside by nationalists when they attained power. The new bearers of rights talk were opposition groups and anti-government critics like Chike Obi for whom it now had more relevance. This, once again, underscores my argument that the rights discourse was, above anything else, an instrument for furthering state, class, ethnic, and gender interests.

Another major test of the bill of rights came in 1962 when a political crisis engulfed parts of the country, raising the most serious human rights concerns since independence. The crisis was provoked by bitter rivalry among the major regional political parties and their struggle for supremacy at the centre. In the Western region, a minority government, in spite of public protestations, sat tight in power sustaining its hold by widespread rigging of elections, the intimidation of political opponents and the harassment of the press and the judiciary. The result was a complete break down in law and order to which the federal government responded by declaring a state of emergency. But far from restoring calm and order, the imposition of a state of emergency led to further repression and widespread human rights abuses by state security agents.\(^\text{181}\) Under these emergency conditions, coercive and repressive legislation were introduced and used to sustain political control. Laws like the Emergency Powers (General) Regulations, the Emergency Powers (Requisition)

Regulations and the Emergency Powers (Protected Places) Regulations of 1962, gave the police and other security agents unlimited powers to summarily arrest and detain persons who were considered threats to public order and security.\footnote{Bonny Ibhwoh, \textit{Human Rights Organisations in Nigeria: An Assessment of the Nigerian Human Rights NGO Community} (Copenhagen, The Danish Centre for Human Rights-Evaluation and Reviews of Partnership Programmes Series, 2001), 16.}

It was under this situation of political and social tension that the armed forces took over the government of the country in the first military intervention in January 1966. In spite of its initial pledge to guarantee fundamental rights, the authoritarian character of the military regime even further eroded fundamental rights and liberties guaranteed in the independence constitution. Soon after the military regime of General Aguiyi Ironsi took over power, it suspended certain sections of the constitution including the bill of rights. The \textit{Constitution (Suspension and Modification) Decree} of 1966 effectively ended democratic constitutional rule in the country and vested power solely in a body of military officers known as the Supreme Military Council. Apart from the outright suspension of the bill of rights in the constitution, the legal and policy framework of military rule imposed significant restrictions on other guarantees of human rights under the legal system. These restrictions on legal rights set the tone for the authoritarianism and repression that came to characterize two decades of military dictatorship in Nigeria. A consequence of this has been the emergence of a vibrant human rights movement in the country dominated by non-governmental organisations. One of the central points of the thesis is that this nascent movement has its roots in complex and long-standing traditions of rights discourses, which all seem to have been obscured by the current preoccupation with post-UDHR traditions of “human rights.”
7.15 Conclusion

This chapter has demonstrated that discussions about civil and political rights in Nigeria were complex, and sometimes contradictory. Political rights discourses took place not only within the context of the post-war nationalist movement, but also in relation to earlier political developments both domestic and international. The outbreak of the First World War in 1914 ushered in an era in which Nigerians increasingly began to articulate their rights and liberties as full “citizens of empire.” British wartime propaganda became an important part of the early nationalist narrative as Nigerian intellectuals demanded that the same ideals of liberty be extended to the workings of colonial administration. As in the realms of economic and social life, the language of rights deployed to justify the war against Germany also became a language of choice for politically challenging and negotiating with the colonial state. In some sense therefore, the First World War marked the internationalization of the rights discourse in Nigeria. The narrative of freedom, liberty and justice, which emerged from the war, provided new standards against which Nigerians could judge the colonial administration.

The Atlantic race discourse, pan-Africanist idealism and the Second World War also shaped rights discourse within the nationalist movement. The Atlantic Charter and the UDHR were particularly important landmarks in the evolution of the discourse of political rights in Nigeria. If the First World War prompted Nigerians to assert their rights as “citizens of Empire,” the Second World War prompted them to assert their rights as “citizens of the world.” Prime Minister Winston Churchill’s statement in the course of the war that the “right to self-determination” envisioned in the Atlantic Charter did not apply to colonial peoples, became a major rallying point for the nationalist cause as did the UDHR.
The Nigerian intelligentsia enthusiastically welcomed the UDHR mainly because it provided yet another justification for their nationalist aspirations. However, the UDHR did not have as much immediate impact on the rights discourse as some scholars have suggested. For most Nigerians, still under colonial domination, it did not mark a radical breakthrough in their state of affairs. Like other colonized peoples who were not involved in either the drafting or adoption of the supposedly “universal” declaration, they held out only cautious hope that it would have any meaningful impact on them. Rather than the UDHR, I would argue that the most significant factor in the rights discourse in Nigeria during the post-war period was the politics of ethnicity, regionalism and class interest that characterized the process of decolonisation. The fear raised by minority ethnic groups about their possible marginalization in an independent Nigeria prompted the inclusion of a bill of rights in the independence constitution. The UDHR was important in shaping the human rights movement but it neither marked the “origins” of the human rights discourse in Nigeria nor did it fundamentally transform it afterwards. It was thus more a significant episode rather than an epochal turning point in the long history of rights discourses in Nigeria.
CHAPTER EIGHT

CONCLUSION

"The historian's job," writes R. D. Pearce, "is to simplify and complicate -- to simplify the complicated and to complicate the simple in an unending process."\(^1\) This thesis has been inspired by the need to both simplify and complicate the history of the rights discourse in Nigeria -- to discern broad patterns in the discussions about rights and liberties in Nigeria since the 1900s while at the same time exploring the intricacies, nuances and contradictions in these discussions. Underlining this has been the need to put the contemporary human rights discourse in historical context by looking at longer-standing debates about rights in Nigeria. Understanding these earlier traditions of rights discourses is central to understanding current debates about human rights in the country as elsewhere in Africa.\(^2\) This study indicates that the discourse of rights and liberties is an important part of the history of colonial and immediate post-colonial Nigeria. It demonstrates how various groups within the society -- colonial officials, missionaries, elites and ordinary Nigerians -- employed the language of rights and entitlements to serve varied social, economic and political ends.

Early missionary and colonial encounters with Africans in Western Nigeria were underlined by important debates over rights and liberties. Colonial incursion and expansion in the 1900s prompted discussions over "native" treaty rights and British "rights of intervention." While local rulers sought to maintain their influence and autonomy by emphasizing their rights under existing treaty agreements with Britain,

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\(^2\) In particular, it helps us to better understand and place in historical context, the current debate over universalism and cultural relativism which remains central to the human rights discourse in Africa.
British colonial authorities justified their intervention in local politics in the name of protecting the rights and freedoms of "native" subjects under British jurisdiction.

Also at the beginning of the twentieth century, there were extensive discussions about native rights within the context of the anti-slavery movement. Although slavery had been officially abolished by Britain, its legacies had not been completely wiped out in many parts of Western Nigeria. Missionaries and humanitarians employed the language of rights and liberties in their continued campaigns against slavery and pawnship. While the missionaries appealed to a notion of "native rights" based largely on conversion to Christianity, the humanitarians focused on a broader and more inclusive notion of rights founded on British liberal ideals and the colonial legal system.

But even the colonial legal system was itself an arena in which Europeans and African engaged in wide-ranging debates over rights and liberties. The libertarian traditions of English common law and the system of justice extended to the colony, professed a broad concern for private rights and individual freedom of action. In practice however, imperial political and economic imperatives were more pragmatic considerations in the process of colonial administration. If the colonial state fell so dismally short of its own liberal agenda, why did the rhetoric of rights, justice and liberty remain so appealing to colonial officials? My argument is that the ostensible extension of English standards of law, legal rights and justice to the colony and the official rhetoric that kept them on the agenda was a powerful device for rationalizing and legitimizing empire.

In this sense, British colonialism in Nigeria as perhaps elsewhere in Africa was a double gesture. On one hand it justified itself in terms of difference and inequality: the greater enlightenment of the colonizer legitimized his right to rule and
to civilize. On the other hand, that legitimacy was founded, ostensibly, on a commitment to the eventual erasure of difference in the name of a common humanity. But if this difference and inequality had actually been removed, the basis of overrule would have disappeared. It was not. Instead, as Jean and John Comaroff point out, colonialism promised universal rights but kept the ruled in a state of subjection. If the discourse of radical individualism and modern personhood bore the promise of colonialism, the discourse on the subjection of the colonized “native” bore the *realpolitik.* However, the paradox of legal rights talk was not limited to the colonial state. African engagement in the discourse on law and rights was underlined by similar paradoxes. Educated African elites opposed colonial laws on the basis that they circumscribed the political rights of traditional rulers, yet, they objected to other colonial laws intended to strengthen these traditional institutions by expanding their power over the educated elites. It would seem that for the elites, rights talk was acceptable only to the extent that it did not circumscribe their own political interests.

The question of rights also resonated in discussions over economic and social issues. Two issues at the heart of the colonial state’s attempt to exercise greater control over economic resources and regulate social life were land and marriage. As with colonial law, it was a process characterized by contradictions. While colonial rule opened with ideas about the evolutionary superiority of Western concepts of individual land and property rights, it closed with a general atmosphere of suspicion of these rights and an emphasis, instead, on “customary” communal rights to land. Fearful that uncontrolled expansion of private property rights would undermine chiefly powers and its system of indirect rule, the colonial state restricted individual

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ownership and emphasized communal ownership in land under the control of chiefly authorities. This became the basis of the colonial and post-colonial policy of state "trusteeship" of land. However, this process of state appropriation of land in the name of trusteeship did not go unchallenged. Africans also used the rhetoric of rights in the press and in petitions to colonial courts and officials to challenge colonial trusteeship policies and articulate their entitlements to land.

This thesis discovered that the discourses of land rights developed along two broad lines – legitimizing and oppositional rights discourses. While the former focussed on justifying and legitimizing colonial trusteeship policies, the latter centred on opposing colonial land policies and emphasizing instead, African rights to ownership and control over their land. In drawing this conclusion, I have been careful not to lapse into the old manichean "colonizer versus colonized" paradigm of African historiography. The limitations of this model have been too well documented to bear restating here. I have also been attentive to the contentious debate over the place of structure and agency in colonial historiography. Does the broad structural framework of "legitimizing and oppositional rights discourses" obscure the historical agency of Europeans and Africans who do not fall neatly into these categories?

Mindful of these concerns, I have emphasized that the paradigms of "legitimizing" and "oppositional" rights discourses need not be seen solely as representing rigid, racially defined polar categories ideologically walled off from the other. Salient nuances and complexities underlined these categories. However, based on the historical evidence, I find this paradigm a useful framework for understanding and explaining the nature of rights discourses over land. Almost all Europeans involved in the land rights discourse (including humanitarians like E.D Morel, who were sympathetic to the African cause) advocated colonial state trusteeship as the best
way of protecting individual rights and access to land. In contrast, the overwhelming majority of Africans (including traditional chiefs who had much to gain from a trusteeship system based on the notion of communal ownership of land) opposed colonial trusteeship policies and advocated instead, individual rights of ownership.⁴ While we can speculate on whether this clear dichotomy was simply a coincidence or a reflection of entrenched political and economic interests, what is clearly evident is that Europeans and Africans saw the issue of lands rights mainly from different and opposing perspectives. Thus, while I have been generally cognisant of the agency of historical actors throughout this thesis, there is a compelling empirical basis for using the legitimizing and oppositional frameworks in explaining the discourse over land rights.

Similar patterns are evident in colonial debates about marriage and divorce. The colonial period opened with official concern about liberating women from the constraints of customary marital practices. By the end of the first decade of colonial rule however, the colonial state had become more concerned with the “breakdown of public morality,” and restoring “traditional” social and moral values. The pursuit of the latter meant abandoning, or at least de-emphasizing, earlier ideas about liberating the “native” woman. But unlike land rights discourses, there was no clear divergence in the positions of the colonial state and its Africans subjects. Many African women welcomed initial colonial liberal divorce laws and policies, and exploited them to escape male control in patriarchal societies. On the other hand, chiefly authorities and upper class men vehemently opposed these policies blaming them for the breakdown of public morality. Their opposition and pressure partly accounted for the eventual

⁴ See for example, the arguments of Samuel Ojo, the Bada of Shaki, discussed in subsection 5.5 “‘Customary’ Communal Rights” in Chapter five.
reversal of colonial policy on "native" marriage and divorce. One of the most significant findings of this study with regards to the debates over marriage and divorce are the complex and creative ways in which ordinary Nigerians, both men and women, used the language of rights in divorce petitions to articulate their interests and social aspirations within a changing society.

The same can the said of the discussions about political rights. We have seen how the outbreak of the First World War in 1914 ushered an era in which Nigerians increasingly began to articulate their political aspirations in terms of their rights as full citizens of Empire. British wartime propaganda, which presented the war against Germany as a fight for liberty and freedom, became an important part of the early nationalist narrative. Nigerian intellectuals demanded that these same ideals of justice and freedom be extended to them. As in the realms of economic and social life, the language of rights became a language of choice for politically challenging and negotiating with the colonial state. Similarly, the Second World War and the rhetoric of universal rights that underlined allied wartime propaganda provided new standards of "universal rights" to which the Nigerian intelligentsia appealed in their demands for political reforms. The Atlantic Charter and the United Nations Universal Declaration of Human Rights (UDHR) reinforced the language of "universal rights." The universalist ideals of the UDHR provided further impetus for the nationalist movement and a model for the regime of fundamental human rights that was incorporated into the independence constitution in 1960.

This thesis demonstrates that the rhetoric of rights was more than merely an instrument of colonial hegemony or a means of legitimizing the status quo. It was also a means of challenging, negotiating and ultimately, ending it. Nigerian intellectuals drew on the language of rights that underlined Atlantic race discourses and wartime
propaganda to articulate their own political demands. They appropriated the rhetoric of rights for varied ends, deploying it to challenge the colonial state. Paradoxically, the rhetoric of rights was a crucial in the fall of Empire as it was in its rise. Rights discourses facilitated domination at one moment and liberation at another.

This thesis has also shown that the use of the rights discourses by African elites was not limited to their engagement with the colonial state. Nigerian elites deployed rights discourses not only to oppose and challenge the colonial state but also for intra-class conflicts and internal struggles for political power. This was particularly so in the postcolonial period. With independence, rights talk began to assume new meanings and significance for the nationalist elite who now constituted the ruling class. It shifted from being mainly a means of challenging the colonial state to becoming a means of validating post-colonial nationalist projects such as promoting “traditional African” family values.

Much time and effort was spent articulating vague ideals like the constitutional right to family life while more important human rights issues, like institutionalized discrimination against women and children born out of wedlock, were overlooked as part of class-centered political compromise. The promising adaptation of rights ideas by Nigerian elites as a means of moderating state power during the colonial period fell apart after independence. Rights talk, once wielded effectively by the elites to challenge colonial power, was thrust aside once they attained power. New subaltern groups like opposition parties, ethnic minority advocates and non-governmental organizations, became the new bearers of rights talk.

In spite of the dominance of the educated elite in the rights discourse, what is also evident from this thesis is that rights talk was not an exclusively elite affair. Ordinary Nigerians were also engaged in debates and discussions about rights. In their
petitions to colonial administrators, ordinary and often illiterate Nigerians, using the services of professional letter writers, deployed the language of rights to express their grievances and demand redress. This is particularly evident in the discussion of the “Idumuashaba Agitation” in chapter three. It shows how the Idumuashaba, a community of ex-slaves, used the language of rights and liberty deployed within British wartime propaganda to demand their full integration into the society. In several petitions to the colonial government between 1912 and 1945, the Idumusahaba people demanded that the government go beyond the legal abolition of slavery to actively enforce their social integration into the society. Their petitions provide unique and revealing insights into how ordinary Africans were engaged in rights discourse. They also demonstrate how the rights-based demands of ordinary people intersected with the exigencies of colonial administration.

The findings of this thesis also make some important contributions to our understanding of colonial society in Africa particularly with regard to interpretations that have been made about the organisation and legacies of the colonial state in Africa. In Citizens and Subjects, Mamdani argues that the colonial state in its mode of governance was bifurcated and that the organisation of colonial power in relation to the ascription of rights and liberties was a “double-sided affair.” Its one side — the state that governed a racially defined citizenry — was bounded by the rule of law and an associated regime of rights. Its other side — the state that ruled over subjects — was a regime of extra economic coercion and administratively-driven justice. Mamdani contends that within this framework, the language of civil rights was a specific language which the colonial state employed in its dealings with urban based “citizens” as opposed to the language of “custom and traditions” which it employed in its
dealings with rural based “subjects.” I have already outlined the limitations of this argument in its relevance to the rights discourse in Nigeria. It suffices to state here that the findings of my research indicate that in western Nigeria, the categories of “citizen” and “subject” were less clearly defined and not as central to explaining the rights discourse as Mamdani suggests. As we have seen in the course of this thesis, the organisation of political power in the colonial state in Nigeria and the discourse of rights that underlined it cannot simply be characterized as bifurcated. It was much more fluid. For one, there was no consistency in colonial rights discourse. It changed constantly depending on the orientations of the leadership of each colonial regime. While the rigid and authoritarian Governor Lugard appealed to “native customs and traditions” to justify the exclusion of the educated elites under his policy of indirect rule, the reformist Governor Richard engaged the educated elites in the colonial government and upheld the rights to which he thought they were entitled as British “subjects.”

Secondly, the colonial state did not always employ an exclusive language of civil rights in its dealings with urban-based “citizens.” In fact, for much of the colonial period, the state was disdainful of the educated elite who dominated urban press and politics and excluded them from the colonial administration. Although these urban based elites used their access to the press to demand their right to political participation, early colonial governors like Lugard and Clifford believed that they did not represent ordinary Africans and so had no role in the colonial government.

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Similarly, the colonial state did not exclusively employ the language of "custom and traditions" in its dealings with rural-based "subjects." Although the language of "custom and traditions" was deployed extensively to justify and legitimize the indirect rule system, the chiefly authorities who headed the Native Administrations were not seen as "subjects" less entitled to civil rights than urban-based "citizens." In fact, I would argue that the reverse was the case. Because of the strategic alliance between the colonial government and rural-based chiefly authorities who ran the Native Administration, the state was sometimes more inclined to protect the rights and liberties of these "tribal" leaders than they were to protect those of the urban-based educated elites for whom they had little regard. For instance, in chapter three we saw the interesting case of the Owa (king) and chiefs of Ijesha who petitioned the Acting Governor over the high-handed acts of the local British Resident Captain Ambrose, whom they accused of going beyond his jurisdiction as adviser and "assuming a position inimical to native authority." The Ijesha chiefs complained that Captain Ambrose had "become a menace to the liberty of the natives" and sought the intervention of the Acting Governor. Cautious not to alienate a crucial ally in the colonial indirect rule system, the governor promptly intervened, urging Captain Ambrose in a subsequent memorandum to show "more sensitivity" to the wishes and Owa and his chiefs. The evidence from Western Nigeria does not indicate a strict dichotomy between "citizen" and "subject" either in the rights discourses deployed by the colonial state or in its actual ascription of rights to rural and urban-based Africans.

7 The Lagos Standard, 19 April 1905. (Petition of the Owa and Chiefs of Ijesha to His Excellency Acting Governor Moseley dated 20 July 1904)

8 The Lagos Standard, 16 May 1905. (Reply by the Acting Governor to the Petition by Owa and his Chiefs on the Ijesha Question).
At the beginning of this thesis, I indicated that discourses of rights and liberties in Nigeria as elsewhere in colonial Africa were so widespread and diverse that it is impractical, if not impossible, to thoroughly examine all their many facets in one study. This thesis merely scratches the surface of what may well be the tip of a huge iceberg of future historical inquiry. This thesis has examined in some detail how British colonial traditions and other external ideas like the Atlantic race discourse and European wartime propaganda influenced discussions about rights in Nigeria. There are however two important aspects of the rights discourse that this thesis has not fully engaged for reasons of space and scope. The first is the pre-colonial dimension of the rights discourse. How were notions of rights and liberty understood and articulated in non-literate pre-colonial African societies? How did these ideas intersect with later European notions of law and rights? Examining pre-colonial traditions of rights discourses in their oral and scripted forms is crucial to a full understanding of the rights movement in Africa.

Another equally important aspect of the rights discourse that this thesis has been unable to accommodate is the influence of rights discourses produced in the colony, on the metropole. How did debates about rights and liberties in Nigeria and elsewhere in colonial Africa affect the rights discourse in Britain? In what ways did the impassioned debates about “native rights” in British newspapers and among liberal and conservative politicians in Britain shape British self-image as the epitome of enlightened imperial rule and the “beacon of liberty” to colonized peoples? Examining these questions is important because it draws attention not only to the place of Europe in Africa but also to the reciprocal place of Africa in shaping developments in Europe during the colonial epoch. As recent studies have shown colonialism was as much involved in the making of the metropole and the identities
and ideologies of colonizers, as it was in remaking peripheries and colonial subjects. The story of how the rights discourse in Nigeria resonated in the metropole and spread the ideology of the colonizers is a story that needs to be told. Apart from its significance for imperial history, such studies will bring fresh insights to human rights scholarship. It will mark a departure from the hackneyed trend of emphasizing the influences of human rights discourses as produced in the global North on the South. In this case, the emphasis will be on the counter influences of human rights discourses in the South on the North and the contributions of non-western societies to the development of the contemporary human rights corpus. This will be the direction of my future research.

9 For example, Shula Marks has argued that daily life in Britain, from diet to industrial discipline, from sexual mores to notions of governance was “permeated by experiences of empire.” Ana Davin has also shown how the imperial project created fears of race degeneration in Britain leading to eugenic policies and changing attitudes towards the role of women in British public life. See Shula Marks, “History, the Nation and Empire: Sniping from the Periphery,” History Workshop Journal, 29, 1990, 115 and Ana Davin, “Imperialism and Womanhood” in Frederick Cooper and Ann Stoler (eds.) Tensions of Empire: Colonial Cultures in a Bourgeois World (Berkeley: University of California Press, 1997), 131-35.
APPENDIX

Appendix I: Petition by Nicholas T. Nwaukpele and others to the Senior Resident of Ogwahi-Uku dated 3 March 1937

C/o TRANSPORT DEPARTMENT,
UNITED AFRICA COMPANY Ltd.,
NIGER HOUSE,
LAGOS. 3rd March, 1937.

THE HONOURABLE
THE SENIOR RESIDENT,
(Thro' THE DISTRICT OFFICER,
OGWASHI-UKU),
BENIN PROVINCE.

Sir,

We the undersigned, representing the sons and daughters of the original inhabitants of that division of Issele-Uku town designated and known as IDUMU-ASABA do hereby, on behalf of ourselves and every other member of the said quarter resident and abroad, humbly and respectfully crave through you for the intervention of Government to rid us of the opprobrious epithet "Oshu" (meaning slave) by which we are referred to and indicated wherever we may be in Nigeria by those members of the three other quarters in Issele-Uku who are regarded as the Ruling (or Royal) Class. In addition to this degrading and revolting appellation there is the restriction we bear, imposed by the Obi of some two centuries ago - and which is observed most scrupulously - namely, the prohibition of intermarriage between people of our quarter and those of any other quarter of Issele-Uku.

Perhaps it is proper, as it is the truth, to mention that Idumu-Asaba has been the quarter exclusively for the settlement of war captives, bond-servants, and all persons who, lawfully or unlawfully, became the property of the Obi or of his people. Notwithstanding their predicament those unfortunate people have behaved loyally to their masters, serving faithfully in whatever capacity was allotted to them; some turned out to be redoubtable warriors proving themselves die-hard defenders of Issele-Uku on occasions of invasion. They have nearly all died out however, leaving but a scanty few.
few, and us their offsprings; and we know no other home save
the place of our birth - where we are treated most disdain-
fully as outcasts; and even that condition is aggravated by
our exclusion from the exercise of civic rights as well as
from the enjoyment of our native privileges and local social
equality.

In order to free themselves and us from this incubus our
ancestors, sometime in the year 1904 or 1905, paid to the Obi
(Egbuse) on demand the sum of £12. 10. 0d in cash and 18 bul-
locks costing £90; but the Obi refused, or failed to grant
the liberty after receiving the agreed ransom. The matter
remained in suspense to the time of his death in 1909 or 1910.

The question was re-opened by our Elders and the request
for the Right of full citizenship repeated to Obi Esemene I. in
1912: and although the fulfilment of condition stipulated
by his predecessor and father was disclosed to him yet he im-
posed and received a fresh ransom to the sum of £200 to move
him to acquiesce. This amount was raised by the sale of every
article of value we possessed and we were thereby reduced to
a state of absolute poverty. Like the first, this second pay-
ment proved of no avail, whilst an appeal to the Native Court
in 1913 for redress resulted in inglorious fiasco because the
District Officer who presided delivered judgment in favour of
the Obi, alleging Native Law and Custom. The Obi (Osemene I.),
died in 1915 leaving us in status quo ante. It would seem
ridiculous to suggest that such atrocity is condoned in a Brit-
ish territory or countenanced by its Administrative Officer;
our narrative is never-the-less true, and our record of it ac-
curate in all detail.

It is no exaggeration when we state that our plight be-
came more deplorable after the action referred to in the pre-
ceding paragraph and the misconceived judgment of the District
Officer,
-5-

Officer; in so much that many of our people left Issele-Uku on voluntary exile to Ani Nwalo, a distance of about 11 miles; several others died of broken heart, or from their own hands by committing suicide. The influence of the Obi having gained additional powers by this time he exercised sway over those in exile at Ani Nwalo by levying on them a toll of 500 yams annually, and which they paid up to 1917 when, on protest to the then District Officer of Ogwashi-Uku, the levy was lifted.

In connection with this question of our claim to freedom several letters of appeal have been addressed, in vain, to the Obi (Esene II.) since 1935, urging for the privilege to be extended to us. On the 6th of December 1956, a Political Officer from Ogwashi-Uku held an Inquiry at Issele-Uku into the state of slavery, report of which appeared to have filtered through. Mr. Iwegbu who is one of us affected, and then on the spot, was called to the Inquiry where he made certain statements. On the 26th of January 1957, the same Political Officer revisiting Issele-Uku informed Mr. Iwegbu that the Obi could not compel the people of the town to give their daughters to us as wives and that we should find wives of ourselves. By this rather curt finding we are inclined to think that the District Officer was misled or misinformed as to the true conditions obtaining, which are already narrated in the foregoing paragraphs. To clarify this particular point we would emphasize that there is a ban definitely placed by the Obi of earliest period — existing to this time in perpetuity — which none but an Obi could remove effectively because of the requisite performance of certain rites, highly important and held to be indispensable, being the most potent and convincing to the native mind in such circumstances.

We are constrained to state that, left to himself, the Obi will never entertain our request for freedom and for the full privilege of exercising civic rights as, for instance, when some of those people who had moved to Ani Nwalo yielded
yielded to the persuasions of the Obi and returned to Idumu-Asaba they were hoodwinked by a mock ceremony which the Obi performed with them; and the pledge then given and received, by slaughtering a goat, has been observed more in the breach and we have been the wiser thereby.

Our desire, which we fervently pray may be conceded, is for the authority of His Majesty's Government to secure and establish for us our freedom and rights as a free people unencumbered by limitations: that the use of the derogative expression "ombu" in allusion to any one of us in public or private may be prohibited: that the enforced taking of an oath of servitude—administered at Isr Indichie (jjuju place), to every offspring of Idumu-Asaba—be declared unlawful, and banned: that the Headman of our quarter (Idumu-Asaba) may be accord a seat in the Isses-Uku Native Court as a Sub-Chief: to and for all such reforms and privileges which the improved conditions would entitle us.

Realizing the import of it all we venture/mention with all deference what, in our view, would appear an effective method of introducing these desirable reforms viz., by oral announcements made publicly at a mass meeting of all the inhabitants of the various quarters, and all communities comprising Isses-Uku, the Obi and all Sub-Chiefs being present, with European Representatives of Government protected by a platoon of policemen.

We respectfully tender sincere apologies for any slips we have made in this representation of the untenable condition we are in, likely to incur displeasure; to be in such bad plight in these days of enlightenment and general progress, we trust, will be conceded as sufficient to impel the adoption and use of all legitimate measures and weapons—though they may seem abhorrent or prove distasteful—in the bid for liberty, for right, the essence and birthrights of unalloyed freedom.

There
There is but a handful of us to-day of not more than 100 individuals — men, women, and children — comprising the population of Idemu-Asaba; all assessed persons among us are regular tax payers; we are law-abiding, industrious, and with ambition innate in the minds of good citizens everywhere in the wide world. We need, and we seek the full protection of Government as a unit of the Protected Subjects of His Britannic Majesty King George VI in the Colony and Protectorate of Nigeria — a rich gem in the Crown of Imperial Britain, on whose soil (or possession) no slave breathes.

A copy of this Appeal is being forwarded to His Honour the Chief Commissioner, Enugu, hoping the action will facilitate reference.

We have the honour to be,
Appendix II: Reply by the Resident of Benin Province to Mr. N. T. Nwaukpele and three others dated 20 October 1937


Resident's Office,
Benin Province,
Benin City;
20 October, 1937.

Gentlemen,

I have the honour to acknowledge the receipt of your petition dated 3rd March, 1937. Your petition contains four requests which I summarise as follows:

1. The recognition of the people of Idumu-Asebe as free people, and the removal of all disabilities.

2. The prohibition of the application of the expression “Oshu” to inhabitants of Idumu-Asebe.

3. The abolition of the ooth administered at Isu Indichie to the people of Idumu-Asebe.

4. The handing of Idumu-Asebe to be given a seat in the Issala-Uku Native Court as a “sub-chief”.

2. With regard to your first request, I am informed that all previous disabilities have been removed except that of inter-marriage with people of the other quarters of Issala-Uku; that such inter-marriage is not forbidden under any penalty, but that the inhabitants of the other seven quarters are unwilling to contract marriages with the people of Idumu-Asebe. You plead for the removal of the social stigma attaching to the people of Idumu-Asebe and for the enjoyment of local social equality. I must point out, however, that social equality cannot be attained by an order by Government, nor can Government compel
2.

compel men and women to enter into contracts of marriage. Government will not countenance an involuntary state of slavery, and I am convinced that in fact such a condition does not exist at Idumau-Asahe nowadays. The spread of education will, I feel sure, in course of time remove the conservatism of the other quarters of Issacle-Uku. I am informed that the people of Idumau-Asahe have no difficulty in contracting marriages outside of Issacle-Uku, and, of course, there is nothing to prevent any person of Idumau-Asahe from travelling and settling elsewhere.

3. As to your second request, I consider that if the term "Oshu" is applied to a person of Idumau-Asahe, that person could obtain satisfaction by means of an action in the Native Court.

4. With regard to the oath to be taken at Igw Indiehie, I am informed that the oath is customarily taken by all people, irrespective of from what Iduma they come, who live with, or have close connection with, the Obi's household, and that it is not an oath of servitude but a promise not to harm the Obi.

5. You ask that the headman of Idumau-Asahe may be given a seat in the Native Court as a "sub-chief". I am not clear as to what is meant by a sub-chief, but the headman of Idumau-Asahe is recognised as such, and he is a member of the Issacle-Uku Native Court.

6. Finally, I would say that you may be assured of the full protection of Government and that you need have no fear of oppression. I am informed that the Obi has conferred some titles in Idumau-Asahe, and so it would seem that the people of Idumau-Asahe enjoy civic rights, and have a voice in the administration of village affairs.
I have the honour to be,

Gentlemen,

Your obedient Servant,

(Sgd) N. C. Denton

Acting Resident,
Benin Province.

Mr. N. Z. Newkpo and three others,
G/O Transport Department,
The United Africa Company Ltd.,
Niger House,
Lagos.

No. B.P. 203/352/36
Benin City: September, 1937

Copy to: -
The
Appendix III: Petition by the Paul Nwani on behalf of the Idumuasha Family Union to the Resident of Benin Province dated 9 February 1945.

From Idumuasha Family Union,  
C/o Paul C. Ezani,  
General Manager's Office,  
Nigerian Railway,  
Obute Ketta.  
9th February, 1945.

His Honour, The Resident,  
Benin Province, Benin-City,  
Thro' The District Officer,  
EGOSHI-UKU.

Sir,

As the members of Idumuasha Family Union, Lagos, on behalf of ourselves and our relatives both at Isase-Uku and abroad, most humbly and respectfully desire once again to approach you on a matter which is of vital importance to our existence. Idumuasha elements, owing to ancient customs and traditions, have been subjected to serious trials, privations and civil handicaps by His Highness Chi Csemene II and his relatives viz., the people of Umeze-Isale Family at Isase-Uku. Isale tradition destined that over 350 sons and daughters of Idumuasha with their progeny should perpetually be slaves notwithstanding our protestations under the British banner. We are deprived of social and civil freedom because our forefathers were either war-natives or the chi's slaves. Thus in submitting this petition we earnestly entreat that the obi be urged to give us our complete freedom - freedom to live as others; freedom to speak; and freedom to mix with the other sections of Isale. We urge that the obi of Isale and his relatives be forced to put a stop to all principles and practices which have hitherto marred or hindered our rights or citizens of Isale. We trust that His Honour will take steps after careful and necessary investigations and help us from these difficulties.

We would first of all refer His Honour to our petitions on this matter dated 20th March 1937 and 29th November, 1937 respectively; and to His Honour's replies thereto vize. Po.P.P. 003/253/255/257/ 26 of the 29th October, 1937, and No.P.P. 003/253/251/2 of the 26 of February 1938 respectively. We must however express our indebtedness to His Majesty's Government and in particular to the District Officer then at Egoshi-Uku Cant. A.P. Pullen whose ingenuity and labour relieved us of much of the afflictions and privations which we suffered prior to 1.37. Whilst the sufferings were considerable it does not follow that we enjoy equal rights as the other sections of Isale even up till this day and as the incidence which we are about here to relate will clarify.

We are fully aware of the fact that our empire is engaged in titanic war against Hitlerism. We on our side share greatly in the front fighting to suppress oppression. Consequently, we would not wish to divert the attention of His Honour from matters relating to the immediate winning of the war. It is only inevitable that we embark on this measure. Our sufferings and experiences under Chi Csemene II, justify our action - for the world peace would mean nothing to our gallant sons who today give up their lives that humanity might survive in peace, whilst some who may survive, return to find themselves and their future generations still being regarded as slaves and viciously ostracized in the land of their fathers. Consequently, peace under our present state has no significance for us.

In the petitions directed to His Honour mentioned above, we pointed out above other things that we were deprived from marrying from the other quarters at Isale and people of other villages do not marry our daughters. At one time, this led us to marry from the neighbouring District. But this does not solve our problem. People of our two villages are keenly cultivate, after making inquiries about us and realizing that should their daughters marry our sons, the children from such marriage would be regarded as slaves - deprived of all rights, consequently they reluctantly give their daughters to us. In many cases we fail. This places our position very uncomfortable.
Since 1897 we have been warned with grave difficulty to marry our children from each of the following quarters of Ibehe, idie, emezi, Ikpa, Ihiam and Ikpe respectively, to married or single persons of their relatives or cousins. Our children are regarded as outcasts by their relatives and our children from which quarter, are regarded as slaves, for realizing that if we succeed in marrying any of these, time would soon come when the degradation that we suffer will be ashamed out. But recently Umuez-Eisele elements in Lagos united on the instruction of Obi Osemene II of Isele-Uku have created a precedent - and it is unlikely we shall ever succeed to marry again from our quarters at Isele-Uku unless the people who contribute to the incidence are penalized for the malice of their action which we describe here in full:

One of our people, in person of Dr. Benedict Iwuluno, of Firebrigade Police, Lagos, visited home (Isele-Uku) on leave in the month of October. There he met a girl, Catherine Ebusiibo, daughter of Mr. Ebusiibo of Obi Obi-Nne (one of the quarters of Umuez-Isele Family). Mr. Ebusiibo is a carpenter and he lives and works at Kaduna. Mr. Iwuluno, hearing that this girl was sent home that she might seek for a husband, desired to marry her and on obtaining her consent approached her uncle and guardian, Mr. Anuakw Ekaoma of Obi Obi. Ekaoma at first refused, Later, after much pleading Ekaoma consented. Mr. Iwuluno learnt that His Highness Obi of Isele with Ekaoma, Okasfor Ebusiibo and his wife all of Umuez-Isele vouched that Mr. Iwuluno would not marry her as the prospective husband is of Idumawasaba descent. This induced Mr. Iwuluno to marry Ekaoma and his wife, and the men. The Obi charged Mr. Iwuluno a sum of 17, and he paid 25, then promising to pay up the balance later. Each of Ekaoma, Okasfor Ebusiibo and his wife asked for 1 each. 15/- was given to each of them.

We would remind His Honour that neither the Obi nor the other men, have the right to bride-price on behalf of Miss Ebusiibo, they being only distant relatives to her. They received it making us a mockery.

After the removal of this apparent barrier Mr. Iwuluno paid the customary bride-price on behalf of his wife. Then Catherine was accordingly ceremoniously conducted to her husband Mr. Iwuluno. Both of them lived peacefully at Isele-Uku for two weeks, then they returned to Lagos. Here in Lagos, Umuez-Isele Family Union exists. This body is mainly responsible for the many political wrangles so commonly peculiar under Obi Osemene II of Isele-Uku.

They advise police and urge him to enforce them, thus it appears that Obi Osemene II owns his consent just to avoid the clutches of the law. After the departure of Mr. Iwuluno, the Obi of Isele wrote a letter to Umuez-Isele Family Union, instructing them never to allow Mr. Iwuluno to marry Catherine Ebusiibo. This Union like their master at Isele-Uku, is a worshipper of antiquity; they executed to the very letter, the orders of their master. Prominent among the members of Umuez-Isele Family Union are the following:

(1) Mr. Peter Eboha: the President of the Union. He lives at No. 30 Kololi Road, Yaba Estate. He is a journeyman at the Loco. Jork's Department of the Nigerian Railway. Mr. Eboha, during the struggle that we are about to relate, snubbing Mr. Iwuluno several times called him 'Osha' or slave. He further stated that Umuez-Isele and Idumawasaba had never enter-married before.

(11) Mr. Joseph Ose: the Secretary of the Union. He lives at 30 Lofe Street, Yaba Estate. He is a journeyman at the Loco. Department of the Nigerian Railway.
(iii) Mr. John Okonkwo Kordi, a professional book, he lives at No.18 Kolony Street, Lagos. He wields an uncommon influence on the Obi of Isiala and on Umueze-Isiala Family Union, Lagos. He shares greatly in the cause which deprives Kr. Iwelumo of his wife.

(iv) Mr. Michael Akueguw, a young Sub Inspector of Police of the Nigerian Police Force. Being an official of public recognition, he succeeded to device means whereby Kr. Iwelumo was deprived of his wife.

(v) Mr. Michael Nwaise: He lives at 92 Chambrose Street, Lagos. It was in his compound that the meeting that took the decision which gave rise to this cataclysm was held.

(vi) Others include Mr. Peter Ebitie, of 25 Oshele Road, Yaba Estate. Mr. Ebitie is a carpenter in the Nigerian Railway.

(vii) Mr. Samuel Nwabie: A linesman of the Posts and Telegraphs Department, Lagos. He lives at 151 Chambrose Street.

(viii) Kr. Jacob Nwosoloko, who lives at 153 Chambrose Street, Lagos.

These are some of the men who even in the 20th century have continued with Obi Osime II to undermine our natural rights and freedom. On receiving orders from Obi Osime II, Umueze-Isiala Family Union sent for Kr. Ebusiebo (Catherine's) father who came all the way from Kaduna. When this man arrived he lodged with Mr. John Okonkwo Kordi, the great Aristotel of Umueze-Isiala Family Union, Lagos. On Sunday the 3rd of December, Kr. Ebusiebo, in company of Kesser Jacob Nwosoloko, Peter Ebitie, Samuel Nwabie etc., arrived at the residence of Kr. Iwelumo. Kr. Iwelumokwuordi introduced Kr. Ebusiebo, adding that they had come to take Catherine Ebusiebo from Kr. Iwelumo. Kr. Joseph Usu then read a letter—a mandate from Obi of Isiala in which he urged them to take the wife from Kr. Iwelumo. Kr. Iwelumo then entreated them not to use force. The more he entreated the more they tried to take the lady by force. The girl resisted strongly — clinging to her husband. Then fierce struggle ensued. It ended in the crowd including Umueze-Isiala Union delegates, Kr. Iwelumo with his wife rushed to No. 92 Chambrose Street at the residence of Kr. K. I. Nwaise where the meeting of Umueze-Isiala Family Union was holding. Kessors Ebusiebo, John Kordi, Michael Nwaise and Inspector Akueguwu were here. They then attempt to take the girl away from Kr. Iwelumo, another great struggle started. Then Inspector Akueguwu made for the police office whereas a police man came to the scene. All were rushed to the police station at Tinubu Square.

Through out the course of this event, Catherine declared before her father, before the Union and at the Police Station that Kr. Iwelumo was her husband. In spite of the attempts to dissuade her and to make her refuse her husband whom they called "Slave" she declared that other than Kr. Iwelumo, she would not marry. She bluntly refused inspite of threats to go back to her father.

When Inspector Akueguwu who was watching the girl cautiously noticed that she was resolute, he ordered the Sergeant at the station not to take down full statements of the disputant parties i.e. Umueze-Isiala and Kr. Iwelumo with his wife. He ordered the crowd out. He began to snub Kr. Iwelumo and induced his relatives Kessors Ebitie, Nwabie etc., etc., to fight Kr. Iwelumo in public. While this was in progress, they snatched Kiss Catherine and took her away immediately; and on their succeeding, Kr. Ebusiebo and his daughter Catherine returned to Kaduna.

/Immediately.
Immediately after this incidence, Idumumabha Family Union reported the action of Umeze-Isele Family Union to His Highness Obi Osemene II, requesting him to make a definite statement about the matter. Then a letter was addressed to Umeze-Isele Family Union – there this Union denoted their attitude towards Idumumahba elements whom they spite and discriminate against. On the Obi’s failure to reply to the first letter a second letter was dispatched. Here too we stressed on the necessity for his making a statement in this matter. Up till this moment no reply to the letters was received from the Obi. Umeze Isele Family Union, Lagos replied, and the following extract which we reproduce in good faith reveals their attitude on this matter. Here it goes:

"We are now in Christian era, it is true, but we adhere to the quotation of Reverend Delano that the ways of our ancestors cannot be the ways of the future, but the future must not be built without foundations belonging to the past."

We strongly resent the action of Obi Osemene II and his Family to the Members of Umeze-Isele Union, Lagos on this matter. We hate riot. We would never embark on any hostile measure that would reflect seriously on our Government – this being war time. But we would make it clear that prejudice and spite such as this, are what cause riot and tribal wars. We leave His Honour to take up this matter and deal with it in accordance to the gravity of the malice involved.

The incidence which we here report have grave aspects than we are able to explain. It exposed us to public derision and disgrace. Moreover, it has created a prevalence to all the other sections of the town who have now had a cause for refusing to give us their daughters in marriage or to take them back from us if we happen to win their love. This is why we resent the action of Obi Osemene II who encouraged his people to put us into such a public shame. His silence to our letters evidently proved his approval of the action of his people here in Lagos. This was a great blow to our pride as citizens of Isele and as free people of the Empire.

Umeze-Isele elements have always assumed that they are far superior and better by birth than the people of Idumumabha; hence they feel indignant that an Idumumabha man should marry an Umeze-Isele daughter. We can no more bear to remain a family of slaves. We may add that our people have in the past been severely urged for their freedom; but as many times as the matter was brought up, the Obi with this people of Umeze-Isele has turned down our projects. We therefore feel that nothing would end it except His Highness the Obi and the people of Umeze-Isele be subjected to penalties commensurate to the gravity of the malice involved. We urge for our freedom. We demand for redress on the treatment which were meted to us by the people of Umeze-Isele. We therefore request that for our redress and in order to stamp out this prejudice and the many sufferings we bear from the Obi with Umeze-Isele, we recommend the following actions:

(1) The Obi of Isele, Obi Osemene II, with the members of Umeze-Isele Family Union be urged to return Miss Catherine Aigbusiebo to her husband Mr. Benedict Iwelumo.

(11) That His Highness Obi Osemene II with Kr. Ikendi and Chief Okafor Agbune be requested to refund to Kr. Iwelumo, the amounts of £5 and £1.10s. respectively, which they received from him. The £1.10s is the total sum of 12/- which was paid to each of Okafor Agbune and Ikendi.

/(iii) That.
(iii) That Obo Osomene II, and Ila-Isele elements in
Lapoa who participate in the events that led to the
announcing of Ila Catherine Abunobho from her
husband, be given severe punishment. The names
mentioned to the police of their offence were men
include Kesara, Peter Eraka, Joseph Onu, John Kordi,
Michael Akuogwu, Peter Obite, Jacob Ezoogolo and
Alfred Obanya.

(iv) That the Obo of Isele be urged to eliminate all
such constitutions, policies or any other factors
in his administration which have hindered
Idumuashaba elements from enjoying their full
rights and liberties at Isele Eku and in the circle of other
Iselees abroad.

We respectfully tender an unreserved apology for any short-
comings on our part especially as we may have made here in our
attempt to portray our difficulties. We implore you to overlook
any impressions or expressions here which may cause your displeas-
sure. We trust you will fully appreciate the embarrassments which
we are exposed to in the land where our lot is that of object
slavery.

We hope that His Honour will use all the means in his power
to exterminate slavery from Isele-Eku so that we shall begin to
enjoy life and liberty in the land of our birth. We pledge our
loyalty and entire fidelity to the Empire and to His Majesty the
King. We shall esteem it a great favour if His Honour will give
this matter his immediate attention and an early reply is a desir-
deratum.

A copy of this petition has been forwarded to His Honour
The Chief Commissioner Western Provinces, Ibadan.

We have the honour to be,
Sir,
Your obedient Servants,
Appendix IV: Reply by the Acting Resident of Benin Province to the petition by Paul Nwani on behalf of the Idumuashaba Family Union dated 23 June 1945.

23rd June, 1945

Gentlemen,

I have the honour to refer to your petition dated the 4th of June, 1945, and to say that you know that slavery does not exist under British rule. If any one even calls you a slave you may at once take action in your Courts against him for "Defamation of Character", and recover damages.

2. You say the Obi took away Mr. Iwelumo's wife. Mr. Iwelumo should take immediate action for her return, or for his dowry. The District Officer will be pleased to review the case if Mr. Iwelumo is not satisfied with the Court's decision. If he wins his case he should ask for the costs mentioned in the summary of your petition. If the Obi or any other person violates the law you have your usual legal remedies in the Courts. Any general complaints against the Obi, if brought to the notice of the District Officer, will be investigated by him.

I have the honour to be,
Sir,
Your obedient servant.

(Sgd) L. L. Cantle
Acting Resident,
Benin Province.

The Honorary Secretary,
Idumuashaba Family Union,
Lagos.
C/o Paul O. Nwani,
General Manager's Office,
Nigerian Railway,
Ebuta Hatta.

Copy to:
The District Officer,
Asaba Division,
Ogwaashi-Uku.

For information with reference to your letter No. ANA/A/35R/18 of the 13th of June, 1945.

2. Will you please warn the Obi that if complaints of oppression are substantiated against him, or if he continues autocratic practices he will be removed from membership of his Council and Court.
### Appendix V: Statistics of Police Arrests for some Public Offences in Nigeria 1920 – 1941

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<tr>
<th>YEAR</th>
<th>Ordeal/witchcraft</th>
<th>Vagrancy</th>
<th>Unlawful Assembly</th>
<th>Slave Dealing</th>
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Ijebu Prof. 1/ C.34: Native Courts.
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<td>Adewoye, Omoniyi. (Prof.)</td>
<td>12/06/01</td>
<td>Ibadan</td>
<td>Professor of African History and former vice chancellor of the University of Ibadan. A pioneer Nigerian legal historian of the Ibadan school and author of <em>The Judicial System in Southern Nigeria</em> (1973)</td>
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<td>Akinbode, Josiah. (Chief)</td>
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<td>Traditional chief, nationalist activist and retired politician.</td>
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<td>Agbakoba, Olisa.</td>
<td>4/3/96</td>
<td>Lagos</td>
<td>Senior Advocate of Nigeria, co-founder of the Civil Liberties Organisation, Nigeria’s first human rights organization and currently Senior Counsel, Human Rights Law Services (HURILAWS), Lagos. This interview was originally conducted as part of a project on <em>The History of Human Rights in Nigeria</em> undertaken under the auspices of the Constitutional Rights Project.</td>
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<td>Lagos</td>
<td>Project Coordinator, Legal Research Resource Development Centre (LRRDC), Lagos.</td>
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<td>Alo, Tunde.</td>
<td>16/06/01</td>
<td>Ibadan</td>
<td>Retired civil servant and nationalist politician.</td>
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<tr>
<td>Asiwaju, A. I.</td>
<td>15/06/01</td>
<td>Ibadan</td>
<td>Professor of History at the University of Lagos. Pioneer Nigerian historian of the Ibadan school and author of <em>Western Yorubaland under European Rule</em> (1976)</td>
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<td>Awonusi, Iyabo.</td>
<td>13/12/200</td>
<td>Lagos</td>
<td>Administrative Secretary, Centre for Free Speech (CFS), Lagos.</td>
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<tr>
<td>Bello, Bukhari.</td>
<td>9/12/00</td>
<td>Abuja</td>
<td>Executive Secretary, National Human Rights Commission (NHRC), Abuja.</td>
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<td>Coker, Ishola</td>
<td>13/06/01</td>
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<td>Retired newspaper editor and nationalist politician</td>
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<td>Elumadu, Mike</td>
<td>11/06/01-14/06/01</td>
<td>Ibadan</td>
<td>Archivist, National Achieves, Ibadan</td>
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<td>Madugu, Hauwa (Chief Mrs.)</td>
<td>8/17/00</td>
<td>Abuja</td>
<td>Co-ordinator, Grassroots Awareness Forum (GRAF) and National Vice President, National Council of Women Societies, Abuja</td>
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<td>Mamah, Wilfred.</td>
<td>14/12/00</td>
<td>Lagos</td>
<td>Legal Officer, Human Rights Legal Services (HURILAWS), Lagos</td>
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<td>Nwankwo,</td>
<td>8/3/96;</td>
<td>Lagos</td>
<td>Executive Director, Constitutional</td>
</tr>
<tr>
<td>Name of Informant</td>
<td>Date</td>
<td>Place</td>
<td>Remarks</td>
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<tr>
<td>Clement.</td>
<td>14/12/00</td>
<td></td>
<td>Rights Project (CRP) and co-founder of the Civil Liberties Organisation, Nigeria’s first human rights organisation.</td>
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<td>Odutan, Tunde.</td>
<td>18/06/01</td>
<td></td>
<td>Historian and University Lecturer.</td>
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<td>Ogunlewe, Adeseye (Hon.)</td>
<td>8/12/01</td>
<td>Abuja</td>
<td>Senator. Vice Chairman, Senate Committee on Human Rights, National Assembly, Abuja. This interview was originally conducted as part of a study on Human Rights in Nigeria undertaken under the auspices of the Danish Centre for Human Rights.</td>
</tr>
<tr>
<td>Olakunle, Tunde. Lagos.</td>
<td>14/12/00</td>
<td>Lagos</td>
<td>Programme Officer, Centre for Free Speech (CFS), Lagos.</td>
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<td>Omoroghe, F. O.</td>
<td>18/06/01</td>
<td>Benin City</td>
<td>Retired Politician.</td>
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<td>Oroh, Abdul.</td>
<td>15/12/00</td>
<td>Lagos</td>
<td>Executive Director, Civil Liberties Organisation (CLO), Lagos.</td>
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<td>Takpe, Adebayo.</td>
<td>17/12/00</td>
<td>Abeokuta</td>
<td>Retired railway worker.</td>
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<td>Ugowe, M. O.</td>
<td>19/06/01</td>
<td>Benin City</td>
<td>Retired Labour Union Official.</td>
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<td>Usman, Sani.</td>
<td>12/12/00</td>
<td>Abuja</td>
<td>Chief Research Officer, National Human Rights Commission (NHRC), Abuja.</td>
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<tr>
<td>Usuanlele, Uyilawa</td>
<td>15/05/02 – 19/05/02</td>
<td>Benin City</td>
<td>Co-ordinator of the Institute for Benin Studies, Benin City.</td>
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<td>Yusuf, J. O.</td>
<td>11/12/00</td>
<td>Abuja</td>
<td>Retired Civil servant and President of the African Centre for Development Research (ACDR), Abuja.</td>
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<td>Anonymous: Six interviews</td>
<td>11/06/01-16/06/01</td>
<td>Lagos, Ibadan and Abeokuta</td>
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