

A Thesis Submitted for the Degree of PhD at the University of Warwick

Permanent WRAP URL:

<http://wrap.warwick.ac.uk/108216/>

Copyright and reuse:

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it.

Our policy information is available from the repository home page.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk

The Law and Politics of Constitution
Making in Nigeria, 1900-1989: issues,
interests, and compromises.

by
Tahir Mamman

Thesis submitted in Partial Fulfilment
of the Requirement of the Degree of Philosophy
to the School of Law, University of Warwick

June, 1991.

ACKNOWLEDGEMENT.

I wish to acknowledge the profound and considerable help received from my supervisor, Dr L. Lustgarten, whose efforts and care both for my academic work and welfare enhanced the timely completion of this project. His constructive criticisms have been of immense value to the study.

I am also grateful to Y.P.Ghai under whose intellectual tutelage, the original idea for the thesis developed and Jill Cottrell whose encouragement, concern and assistance in reading some of the initial drafts, helped a great deal.

I would like to express my utmost appreciation to Mohammed L. Buba (former registrar, University of Maiduguri) and Professor Mohammed Nur Alkali (the Vice Chancellor) whose untiring efforts, concessions and encouragement enabled me to embark on the PH.D programme in the first place.

In the process of my research, some friends offered enormous material, moral and psychological assistance which indeed facilitated my work considerably. They are Musa B. Kamale, Major Buhari Aliyu, Alhaji Abdullahi Zira, Abba Murtalla, who offered hospitality in Lagos and others too many to write here.

Furthermore, i wish to extend my appreciation to Mrs Abiodun O. Majasan of the Specialized Political Library.

The Presidency, Lagos, Mrs Stella Umar and her colleagues in the National Assembly Library who allowed me almost unbridled access to the resources of the libraries. My thanks goes to Bala Takaya of University of Jos for providing me with virtually all the materials i needed on the Political Bureau, Justice Buba Ardo, Chief Judge of Gongola State, who despite his tight schedules supplied and discussed with me a large proportion of the materials on the Constitution Review Committee and the Constituent Assembly, 1988-1989. Also, i wish to acknowledge the untiring kindness and resourcefulness of M.P. Wright (the Secretary, Graduate Studies of the School of Law) who had to put up with all sorts of requests from me for almost four years and Wiebina Heesterman who was virtually on call to attend to my difficulties with word processing. Similarly, Kate Mulholland contributed significantly with her constant supply of secondary literature and advice.

Finally, the entire work is dedicated to my two children, Rouqayya and Nafisah who during a substantial proportion of the period of the study were kept away from the comfort and security of their father.

List of Abbreviations

AG	Action Group (Party)
CA	Constituent Assembly
CC	Chief Commissioner
CDC	Constitution Drafting Committee
CRC	Constitution Review Committee
NCNC	National Council of Nigeria and the Cameroons
NPN	National Party of Nigeria
NPC	Nigerian Peoples Congress
OAG	Officer Administering the Government (Nigeria)
PB	Political Bureau.

<u>TABLE OF CONTENTS</u>	Page no.
Acknowledgements.. .. .	I
List of abbreviations	III
Table of Contents	IV
Summary	IX
Chapter 1: Introduction and Theoretical Setting	1
1.A. The U.S.A. Consitution, 1787	5
1.A.1 The U.S.S.R Constitutions	7
1.B Origins of Liberal Constitutions and Constitutionalism	10
1.C. Socialist Constitutions, Leadership and Mass Participation	15
1.D. options for a Constitutional Engineer..	22
1.E Repertoire of Strategies	27
1.E.1 Public Oriented Procedures	28
1.E.2 Private Oriented Procedure	34
1.F. Class and Cleavage Structure in Nigeria..	36
1.F.1 Dependency and Underdevelopment	39
1.G. The Pre-Colonial Formation	44
1.G.1 The Northern region	44
1.G.2 The Southern Region	47
1.G.3 Other Minority Groups	52
1.H The Colonial Period, 1861-1951	53
1.H.1 The Political Impact.. ..	54
1.H.2 Structure at the Economic Base	55
1.I The Period 1951-1966	61
1.J Class Structure, 1966-1989	66
1.K Class Formation and Consolidation at the Economic Base	69
1.L. Fusion of Elites	75

CHAPTER 2:	Background to Constitution Making, 1862 - 1967	.. 79
2.A.	The Governors' Constitutions, 1862 - 1946 ..	81
2.A.1.	Background to the Amalgamation of Nigeria	84
2.A.2	The Clifford Constitution, 1922	88
2.A.3	Background to the Richards' Constitution, 1946 ..	92
2.B	The Macpherson Constitution, 1951: Change or Continuity? ..	101
2.B.1	Procedure of the Conferences ..	107
2.B.2	The Drafting Committee ..	112
2.B.3	The General Conference ..	114
2.C.	European Commercial Interests ..	116
2.D.	The Constitutional Process, 1954-1960	124
2.E.	Economic Concessions Exacted in the Negotiations ..	128
2.F.	Constitutional Attempts, 1960-1967 ..	132
CHAPTER 3:	Introduction: The Third Phase of Constitutional Engineering, 1975-1989	138
3.A.	The Constitution Drafting Committee, 1975-1976 ..	145
3.A.1	Appointment and Composition ..	145
3.A.2	Terms of Reference and Procedure ..	148
3.B.	National Goals, Development and Human Rights ..	153
3.B.1	Human Rights/Duties ..	158
3.B.3	National Integration and Federal Character	161
3.B.4	The National Economy and Ideology ..	166
3.B.5	Discussions and Policy on Land ..	170
3.C.	Structures of Government ..	173
CHAPTER 4:	The Constituent Assembly, 1977-1978	186
4.A.	Composition and Economic Background	188
4.B.	Terms of Reference and Procedure ..	191

4.B.1 The Draft and Public debate	..	195
4.C. Debate on the Principles: Major Issues and Cleavages	..	199
4.D. Issues and Cleavages in the Full Committee		207
4.E. Promulgation of the Constitution	..	221
CHAPTER 5: The Political Bureau	..	223
5.A. Appointment and Composition	..	225
5.B. Agenda and Terms of Reference	..	226
5.C. Procedure and Conduct of the Debate		228
5.C.1 Constraints on and Limits of the Debate		231
5.D. Summary of Issues and Government Response		234
5.E. Constitutional System and Structure of Government	.. ..	242
5.F. Special Groups and Interests in the Political Economy	.. ..	253
5.G. Special Issues	.. ..	256
5.H. A New Philosophy of Government: Mass Mobilization and Official Accountability		259
CHAPTER 6: The Constitution Review Committee		266
6.A. Appointment and Socio-Economic Category		267
6.B. Terms of Reference and Procedure	..	267
6.B.1 Policies Explicitly Determined	..	269
6.C. Summary of Substantive Issues	.. ..	274
6.D. Entrenching Institutions and Decrees	..	283
CHAPTER 7: The Constituent Assembly, 1988-1989		285
7.A. Establishment, Composition and Background of Members	.. ..	285
7.B. Powers and Procedure	.. ..	290
7.C. Issues and Cleavage Structure	..	298
7.C.1 State, Religion and Sharia Controversy		315
7.C.2 Welfare State and the 1989 Constitution		324
7.C.3 Military Intervention and the Constitution		328

7.C.4 Party Structures	..	..	..	330
CONCLUSIONS	..	..	..	339
Bibliography	..	..	..	357
Appendices				
A brief Note on Methodology and Sources.				

Abstract.

This thesis is a study of the constitution making processes in Nigeria from the colonial inception to the 1989 Constitution which is scheduled to usher in a putative third republic. Although apparently covering a wide scope, its boundary is limited by its perspective.

Constitution making in any polity is essentially a political process where all the major, relevant and active interests seek to protect and advance themselves. Consequently, the focus of the research is on determining these competing interests, their interactions, compromises, winners and losers, etc. Attempts were made to provide the criteria for class identification in Nigeria to serve as a guide for determining class based action.

The value of the work is threefold. First, it makes a modest but important contribution to an ongoing debate on whether or not Nigeria's post independence constitutional processes in particular were grounded in class interest, in the tradition of Charles Beard's interpretation of the constitution of the U.S.A. Second, it disputes and in large measure seeks to contradict some of the earlier widely held assumptions and assertions regarding the making of some of the constitutions, especially the Macpherson Constitution, 1951. Finally, it attempts to provide a complete and realistic account of the constitutional evolution of Nigeria less the military rule, from its inception as a country up to 1989.

The method of investigation was largely analytical using official records, official reports, communications of key officials, biographical data, etc. Theoretical guidance was significantly drawn from political economy writings in politics, history and law.

Eventually, the analysis revealed the existence and interplay of important interest configurations, reducing class to a subtle rather than an obvious phenomenon in the constitutional process. But overwhelmingly, the entire process was elitist and self serving with the mainstream of the population left in the margin in the composition of the constitutional bodies, the setting of agenda and the institutions and mechanisms established for governing the country.

Finally, it found that there was a great deal of continuity of the values and institutions established for colonial ends with little or no will manifested in the constitutional process to break with the past. Rather what transpired was an expansion of institutions and creation of formulas in the constitution to accommodate a new breed of elites who were able to manipulate potential cleavages in the society to serve personal ends.

**PAGE
MISSING**

IX

1. INTRODUCTION AND THEORETICAL SETTING

In discussing the value of constitutions in "our revolutionary age", Loewenstein observed that "the epidemic of constitution making in the wake of world war II has no parallel in history. Since 1945, some fifty odd nations have equipped themselves with new constitutions."¹ The number of constitutions that have been churned out afresh or refurbished in Africa, Asia and the Pacific attests to the contagious effect of constitution making since the middle of the twentieth century. The reasons for this are manifold. McWhinney² explains that once there is a fundamental change in the existing social and economic base occasioned by popular revolution or certain cataclysmic political event as with the experience of the German and French constitution making, the need for a grundnorm arises. But in states with stable constitutional order, constitution making would involve a voluntary and consensual redefinition of the main political and social premises, as represented by the prevailing political elite.

From this broad framework, several categories of reasons can be distilled: First reason for the making of new constitutions, is the emergence of new countries following the downfall of the old order, for instance,

1. Earl Loewenstein, (1963) "Reflections on the Value of Constitutions in our Revolutionary Age" in H. Eckstein and D.E. Apter, eds, *Comparative Politics: A Reader*. (London, the Free Press of Glencoe) p.149
2. S. McWhinney, (1981) *Constitution-making: Principles, Process, Practice* (University of Toronto Press, Toronto. London. p. 1-16

the collapse of the imperial dynasties of Europe, the Austro-Hungarian and Russian empires. A second wave began in Eastern Europe after the second world war which marked a transition from bourgeois to Soviet system and now, a reform or reversal of the latter has been firmly on the agenda since the late 1989. The latter development has in turn led to the initiation of processes to introduce some measure of multi-party systems in hitherto one party regimes in Africa, inevitably requiring constitutional reforms. A third situation was witnessed during the decolonization period which involved a progressive movement through constitutional means to independence of countries hitherto under colonial rule. These circumstances generally led to the drawing up of new constitutions. They obtained generally in Asia, Africa and the Pacific.³ A final tendency involves only the refurbishment of old constitutions to take account of an existing climate for such change. Examples are the various amendments to the American constitution of 1787, the constitutions of France, Germany, etc, especially the latter in view of the unity of the two Germanies. In these cases constitutional continuity is ensured albeit sometimes tenuously.⁴ Whatever the motives for this spate of constitution making, it overtly represents "the triumph of the ideology of democratic legality."⁵

3. Y.P.Ghai (1988), ed., Law, Politics and Government in the Pacific (Institute of Pacific Studies, University of South Pacific).

4. John Hawgood, (1939) Modern Constitutions Since 1787. (Macmillan & Co Ltd. & St. Martins London pp.16-21.

5. Lowenstein, *ibid.* 149.

Nigeria which became independent in 1960, is one of such countries whose people have manifested profound desire to be regulated by a constitution. Out of a total period of thirty years of independence, the military has been in power for twenty years. But during the period of military rule (except the civil war spell) constitution making has been the kingpin of the political agenda and preoccupation of the nation. During the first transition period (1975-1979) three of the four years were occupied with constitution making while in the second transition schedule (1986-1992), three of the six years are devoted to it. Its importance is further strengthened by the fact that even when there is a putsch, the military suspends only those portions of the constitution which are incompatible with military rule even though they do not derive their authority from the constitution which, however widely formulated, would be a limitation.⁶ But in this case, as with all dictators, where a constitution was resorted to, it is only to serve as a frame to make the existing power arrangements "legally" unchallengeable.⁷ It is not therefore a surprise that when the Nigerian Supreme Court embarked on a judicial frolic in *Lakanmi v. the Attorney General of Western State*,⁸ it was rebuffed by the military. The court had decided that

6. The first legislation in this regard was the Constitution (Suspension and Modification) Decree No. 1 of 1983. It suspended those provisions relating to the executive and parliament and asserted the powers and supremacy of the military. On the relation between a decree and the constitution, see Akande, O. (1989) "Reflections on some Recent Constitutional Issues in Nigerian Law Journal, 102.

7. Lowenstein, op. cit. 95

8. 1971 University of Ife Law Report. The case is discussed in A. Orojo, (1971), "The Search for a grundnorm in Nigeria" in 20 International and Comparative Law Quarterly 117.

a military decree was subject to the rules of the constitution.

However, the predominance of military rule has not damped but rather fuelled the burning desire for a constitutional order in Nigeria which is reflected by the series of constitution making efforts since 1966.

The purpose of this thesis therefore is to study the processes of constitution making in Nigeria. Emphasis is on the period of intensive and sustained constitutional activity, 1951-1960 and 1975-1989. The political economy approach is adopted because constitutions, in spite of their normative appearance are anything but a neutral framework for political activity.⁹ Specifically, this approach will enable us to concentrate on the actors because "it is valuable to identify the actors who shape decision making during crucial periods of regime transition, since this facilitates assessment of policy changes and new political structures as well as likely systemic outcomes"¹⁰.

By this means, two crucial matters are intended to be clarified. First, it will be argued that constitutions are not just a set of abstract principles, but have a historical and ideological reality based on the experiences of its makers. Again by considering the actors and their situation in the socio-economic

9. V. Ghai (1972) "Constitutions and the Political Order in East Africa" in 21 International and Comparative Law Quarterly 403.

10. P. Roeha, (1989) "Competitive Transition" in 27 Journal of Modern African Studies, 3:401-430 at 402.

structure as an important component, an insight will be obtained as to the particular interests the constitution is intended to serve. The concept of constitutions as being based on abstract principles is predicated on the assumption that it flows from the genius of a group who knew the general will- von Savigny's *volkgeist* (the distinctive legal genius of a people in the society) and that such intelligent philosophers are then in a detached and selfless fashion able to distil and put such diverse interests in a workable document.¹¹ A demonstration in brief, of the historical and economic forces behind the making of some major constitutions and the origins of western liberal constitutions will enlighten us more on this. The constitutions considered are selected because they represent the major models or contain unique features as to provide useful contrasts.

1.A.THE U.S.A CONSTITUTION, 1787.

It was J.Allen Smith who first noted that the U.S.A Constitution of 1787 " was the outcome of an organized movement on the part of a class to surround themselves with legal and constitutional guarantees which would check the tendency toward democratic legislation".¹² This conclusion received greater elaboration and specificity from Charles A. Beard. Using biographical economic data in respect of the participants, he concluded that "the

11. H.A.Radejo, (1989) " The Economic Ideology of the Bahamian Constitution " Paper presented at a National Seminar on the New Constitution and Transition to Civil Rule held on the 14th of July, 1989, Lagos.

12. J.A.Smith (1907), quoted in Calvin C. Jillson (1988) *Constitution Making: Conflict and Consensus in the Federal Convention of 1787* (Agathon Press, Inc. N.Y.) p.1.

members of the Philadelphia Convention which drafted the constitution were, with a few exceptions, immediately, directly and personally interested in, and derived economic advantages from the establishment of the new system." Specifically, it was, he said a victory of "personality" over "reality".¹³

Subsequent writings criticized him for economic reductionism but some nonetheless offered evidence demonstrating that the leaders of both the Federalists and Anti-Federalists shared the same class background.¹⁴

However, C. Jillson¹⁵, in a revisionist interpretation sought to show that economic analysis does not tell the whole story and that there were shifting, sometimes crosscutting cleavages. What position was taken depended on whether the question pertained to a "higher" or lower level of the constitutions. In the former, principles applied, whereas in the latter, cleavages were determined according to the perceived effect of a proposition on specific interests whether geographic, economic or some other localized matters.

For our purposes, none of the strands of interpretation contradicts the basic thesis that the constitution is anchored on a historical and ideological underpinning. If the predominant factor was abstract principles rather than economic considerations, the former are western

13. C.A. Beard, (1913) *An Economic Interpretation of the American Constitutions* p.324.

14. R.E. Thomas (1952); Forrest Macdonald (1958), cited in Jillson, op cit.

15. C.C. Jillson, op. cit. Caps 1 & 10.

liberal values itself rooted in specific liberal capitalist ideology, as will be shown below.¹⁶

1.A.1 THE USSR CONSTITUTIONS.

On the other hand, constitutions and their making in the Soviet Union are more categorical. Beginning with the 1918 constitution, all its constitutions are intended to provide a constitutional formula for the social and economic structure unleashed since the revolution in 1917.¹⁷ Subsequent developments were directed at "preserving the continuity of the ideas and principles of the first 1918 Soviet Constitution, the 1924 USSR Constitution and the 1936 USSR constitution, formalize the principles of the USSR's social system and policy, establish the rights, liberties and duties of citizens and the principles of organization and aims of the socialist state of all the people, and proclaim them in this constitution."¹⁸

The same can be said of the Chinese constitutions of 1978 and 1984. Its constitutional evolution since the cultural revolution has been the rationalization of the basic ideology evolved by Chair Mao Tse Tung and the Communist party. This is categorically declared in the preamble to the 1978 constitution.¹⁹

16. Lundberg, P., (1980) *Cracks in the Constitution* (Lyle Stuart Inc. Secaucus, N.J.) cap. four, discusses the intellectual disposition of the participants and their economic status.

17. Hawgood, J.A. op.cit. 393-414.

18. Preamble to the 1977 Soviet Constitution. See Appendix in McWhinney, op cit.

19. Constitution of the Peoples' Republic of China ,as Appendix in ibid.

However, of particular significance to Nigeria is the constitutional history of Yugoslavia. First, because the two countries share the diversity of nations, nationalities, regions and religion. Secondly, their constitutional experiences all claim to seek unity and equality within that diversity and democratize the political process.²⁰ But unlike Nigeria, as will be shown, constitution making in Yugoslavia, particularly since the 1963 constitution, moved away from providing a political plan only to become a social document. Concrete structures were established to realize the latter.²¹

The former and subsequent reforms were to constitutionalize the principles of self-management which enabled workers to manage resources, products and the conditions of their labour. The main actors behind these changes were President Josip Tito and Edward Kardelj, the leading self management theoretician.²² In this way the constitution secured greater autonomy (at the cultural level for its diversity) secured unity of elites and relative overall integration of the populace at the more basic economic level. It also drastically minimized the role of state. But the workability of the system seemed to depend on the charisma of President Tito as since his

20. Djordjevic, (1988) "The Creation of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia" in Goldwin, R.A., and Kaufman, A., eds *Constitution Makers on Constitution Making, THE EXPERIENCE OF EIGHT NATIONS* (American Enterprise Inst. for Public Policy Research, Washington, DC) p.197. ; Lapenna J., (1972) "Main Features of the Yugoslav Constitution, 1946-1971" 21 *International and Comparative Law Quarterly* 209. On Nigeria, see Adebunwa, R.O. (1985) *Nigeria's Presidential Constitution* caps 1 & 2; Adebunwa, (1982) *The Presidential Constitution of Nigeria*, cap. 2

21. Paic, M., (1988) "Commentary" in Goldwin & Kaufman op. cit. pp.210-221; Djordjevic, *ibid* pp.186-190.

22. *ibid*.

death, the political system manifested the fragility of institutions and previous schemes worsened by the crisis in hitherto communist regimes.

However, the approach to constitution making in Nigeria is akin to the reaction of the Venezuelan dominant elite class in the 1960s. The latter, faced with the indignities of right wing absolutism both of the military and civilians signed a pact in 1958-the Pact of Punto Fijo.²³ The parties to the pact were exiled leaders of the liberal centrist parties, some of whom "were schooled in a middle class, democratic system".²⁴ The pact and the resultant constitution of 1961 sought to establish:(a) mutual respect, understanding and cooperation among the dominant groups.(b) establish democracy through coalition and (c) equitable representation "of all the sectors of society interested in the stability of the republic " and omitted all sectors not interested in their kind of stability. The latter is an allusion to those with views and positions both of the left and right, considered extreme.²⁵ This seems to have been the essence of the constitutional process in Nigeria as we shall see throughout this work.

The making and ideological foundations of most constitutions of African countries at independence and after, came heavily under the influence of one or the

23. Henriquez,G.P.(1988) "The Making of the Venezuelan Constitution" in Goldwin A. Bauznan op. cit. pp.353-378; Brewer-Carias,A.R., "Commentary" in *ibid*.pp.379-396.

24. Brewer-Carias, op. cit.p.392.

25. *ibid* p.381.

other of the main liberal or socialist constitutions.²⁶. This is mainly due to the colonial legacy and its hold on post colonial institutions.²⁷.

However the Egyptian constitution of 1956, which embraced the basic tenets of socialism bolstered in 1971 by Anwar Sadat, came under strains in the 1980s because it did not take into account the religion and way of life of its people. Consequently, it had to be amended to provide for Islam as one of its ideological pillars.²⁸

1.B.Origins of Liberal Constitutions and Constitutionalism.

Constitutions, as a system of formalized rules for the creation and regulation of power and institutions, are recent constructs.²⁹. The states that preceded came mostly under monarchs which needed no formalization of power. However as capitalism developed, it needed serfs to be converted into wage earners, and to expand and nationalize power and markets. To achieve that, the bourgeoisie had to cooperate with monarchy against feudalism. Correspondingly, the monarch's arbitrary and discretionary powers had to be restrained to secure property rights. General rules therefore became

26. de Smith, S.A. (1964) *The New Commonwealth and its Constitutions* (Stevens, London); Whebuers, B.O., (1971) *Constitutionalism in the Emergent States*.

27. Chel, *Constitutions and Political Order...*, op. cit. ; Crowder, M., (1987) "Whose Dream was it Anyway? Twenty- Five Years of African Independence" in 86 *African Affairs* 7; O'Connell, J., (1967) "The Inevitability of Instability" in 5 *The Journal of Modern African Studies* 1:181

28. Saleh, I., (1988) "The Writing of the 1971 Egyptian Constitution" in Goldwin & Kaufman, op. cit. p.288 ; AL-Shaair, T., "Commentary" in ibid. 331.

29. Lowenstein, op. cit. 194

convenient which also curtailed discrimination and retroactivity of legislation, etc.¹⁰

Although the struggle was begun in Britain in the 17th century, no written constitution resulted. Rather, power shifted pragmatically to the contending classes which culminated in the Reform Acts of 1832 and 1867 which introduced universal franchise for men.¹¹

The desire for a written constitution was reached for practical reasons in the colonies of America and the European key state of France under the inspiration of Rousseau's social contract. But demand for written constitutions reached its apogee in Europe in the 18th-19th centuries at same time as capitalism attained a high water mark in Europe. In view of the latter, the search for a formula to tame political power and provide for a system of mutual guarantee for the social forces became urgent.¹² Therefore, the successive development of the constitutional system marked the successful assertion of claim of the industrial and commercial bourgeoisie over the monarchy and finally over labour. The constitution only rationalized and legalized the shift and balance of power.¹³

10. Chai, F.P. (1989) Challenges of Religion, Pluralism and Nationhood: A Working Paper for the Asian Regional Institute of the American Council of Learned Societies Comparative Constitutionalism Project held in collaboration with the Law and Society Trust, Sri Lanka, Feb. 1989, Chiangmai, Thailand.

11. Masovitz, J.L. (1981) "Military Origins of Third World Dictatorships and Democracy" in 37 Third World Quarterly.

12. Loewenstein, op.cit. 186; Vile, M.J.C. (1967) Constitutionalism and the Separation of Powers (Clarendon Oxford) caps. 1 & 2.

13. Loewenstein, *ibid.*, 194; Vile, *ibid.*

In its struggle to secularize power, the bourgeoisie used the instrument of franchise. But it was an internal franchise confined to a relatively self contained and homogeneous society. What took place was liberalization without democracy.³⁴ Representative ideology served as a facade to cover the monopoly of political power by the propertied class. It was the growth of a large and organized working class in the advanced capitalist countries which fostered the hope and possibility of working class victory through the ballot in the tradition of Kaustky's advocacy of parliamentary road to socialism.³⁵

However the constitutions did register some core values necessary to sustain and perpetuate capitalism. Broadly, these are such concepts as liberty, equality, predictability and sanctity of property rights and transactions, franchise, nationalization of power, etc. They are now embodied into an ideology as the rule of law or constitutionalism. But as Vile noted, these values contain potential seeds for conflict as well as not being self - executing.³⁶ Hence, the search for and debates about the institutional structures and procedures necessary to rationalize and realize them has preoccupied constitutional lawyers, politicians, philosophers, etc.

34. Przeworski, A. (1988) "Democracy as a Contingent Outcome of Conflict " in Elster, J. and Slagstad, R., eds Constitutionalism and Democracy (Cambridge. London) p. 61

35. The attitude to state and democracy was the subject of a long running battle between Kaustky and Lenin, two pillars of Marxism. See, Kaustky, (1964) The Dictatorship of the Proletariat (University of Michigan Press, First published in 1918); Lenin, V.I., (1964) The Proletariat Revolution and the Renegade Kaustky, Collected Works, Vol.28 (London. Lawrence and Wishart).

36. Vile op. cit. p.1

Consequently, the various forms of constitutions—that is, presidential, parliamentary and convention, offsprings of the same parent— the monarchy—³⁷ are results of the search. These institutions and values are in varying forms, standard components of modern liberal constitutions.

However, although constitutionalism in its origin (and overall use) had little to do with democracy, popular political freedoms or social justice, it has over the years widened its scope to encapsulate them, even if it is for legitimating and ideological purposes.³⁸ Several reasons account for this. First, while constitutionalism hides the real location of power, overt behavior inconsistent with it can delegitimize power and government. Official excess is restrained thereby, incidentally securing limited formal rights and freedoms to the citizens.³⁹ Second, the broadening of franchise has provided an opportunity for mass based parties to accede to power and share in the economic and political proceeds of it. Where they are unable to form governments, through pressure groups and other forms of lobbying available in liberal societies, they can influence the policy choice of the government in power. Third, it provides the masses and sympathetic intellectuals with a forum to put alternative ideologies and programmes on the agenda. For

37. Verney, D.V., *The Analysis of Political Systems*. (Routledge and Kegan Paul Ltd., London) caps. II-IV .

38. Ghai, *Constitutionalism*..op.cit.p.5; Loevenstein, op.cit.199.

39. Ghai, *ibid* p.5

these and other reasons, constitutionalism commands a wide attraction.

But while constitutional experts churned out constitutions, it became clear that liberal constitutions providing framework for laissez-faire economics, provided neither bread nor the modicum of economic security the great majority yearn for. Also, it was plain that crucial political decisions were not taken within the parameters of the constitution⁴⁰. At another important level, the social dislocation caused by the world wars, the depression of the thirties and the low ranking of politicians by the public led to social discontents.⁴¹

Responses were made at two levels: (a) through constitutional adjustments which gave it greater content to accommodate socio-economic provisions. Examples are the short-lived Spanish constitution of 1931, the Republic of Ireland 1937 as amended in 1972, Denmark constitution of 1953, the Cyprus constitution of 1960.⁴² The latter provides that "every person has the right to a decent existence and to social security".⁴³ The French constitution of 1958 mandates legislation to be made in this regard.⁴⁴ A host of other constitutions contain similar provisions and needless to say all the constitutions of the East European countries contained

40. Lowenstein *op. cit.* p. 200.

41. Hawgood, *op. cit.* 453.

42. *Ibid*

43. *ibid*.

44. *ibid*.

provisions on social and economic rights and duties of its citizens.

On the other hand, the reaction of the U.S.A. and some West European countries was to hedge the implementation of laissez-faire through the New Deal (U.S.A.) and sponsoring of elaborate government social agencies and comprehensive social legislation ⁴⁵. This led to the acceptance of the view that government has a responsibility for the maintenance of a standard of life for its people and the resultant widespread resort to state planning. Incidentally, it renewed the legitimacy of constitutions and constitutionalism since all developments were done either through or claimed to be within the parameters of the constitution. Declared one of the authors of the New Deal "what we have done is to rediscover the constitution, to revitalize the powers it was intended to create...We are turning our back on the policeman doctrine of government and recapturing the vision of government equipped to fight and overcome the forces of economic disintegration..."⁴⁶.

1.C.Socialist Constitutions, Leadership and Mass Participation.

It is to be noted that although the revolutions and subsequent constitutions of the East European countries before 1989, the USSR and China rejected bourgeois hegemony and constitution, they were not unconcerned with

⁴⁵. Hawgood, op. cit.csp.XXVIIII.

⁴⁶. Quoted in ,ibid.p. 458.

establishing leadership for the masses due to specific historical reasons.⁴⁷

The primary basic law to be observed in any country adopting Marxism-Leninism was, guidance of the working masses by the working classes.⁴⁸ To the Soviet leadership, what operated as a convention since 1918 became one of the cornerstone of the constitution of 1936.⁴⁹ It was expounded in precise terms in a manual which declared, "As for socialist democracy it is not directionless democracy, but directed democracy, that is, democracy directed by the party and the state to further the development of socialism and building of communism".⁵⁰

A similar approach was adopted by China as expressed by Mao Tse Tung in 1957. After stating his support for freedom, declared that "But this freedom is freedom with leadership, and this democracy is democracy under centralized guidance, not anarchy".⁵¹ Yugoslavia introduced a slight variation to the formula for establishing leadership. It is stated in the preamble to

47. First lesson was drawn from the failure of the Paris Commune of 1871 due to what was viewed as lack of strong leadership by a Marxist revolutionary party and representation of the peasantry. Second lesson was drawn from the Soviet experience of 1905 when the strike could not be channelled into a political movement and was easily put down by the Tsar because the workers and educated men sharing their interests then did not envisage the governance of the state. They acted only as organs of resistance.

48. Meyer, A.G. (1970) "Historical Development of the Communist Theory of the Leadership" in Partell, R.B. ed. Political Leadership in Eastern Europe and the Soviet Union (Butterworths, London) cap. 2; Lewis, J.W. (1963) Leadership in Communist China (Greenwood, Connecticut) cap. iii

49. Art. 126

50. Fundamentals of Marxism 599 (English translation, 2nd edn. 1964).

51. Mao Tse Tung, (1964) On the Correct Handling of Contradictions Among the People & (English translation 6th edn.)

the 1963 constitution thus: "Under the conditions of socialist democracy and social government, the League of Communists, with its guiding ideological and political work, is the prime mover of the political activity necessary to protect and promote the achievements of the Socialist Revolution".⁵²

Broadly, the mechanics of establishing elite leadership followed a similar pattern. Briefly,⁵³ they were threefold: first, through adherence to the ideology and principles of Marxism-Leninism. Second, the ideology and goals were espoused by the party which a fortiori provided a special kind of leadership since it alone or as the dominant party ruled. Moreover, membership of the Communist party in the USSR in the early stages was restricted to militants who had to go through a screening process and a probation period. Thus while its membership had by 1968 topped thirteen million, it was only eight percent of the adult voters. Finally, to the elite concept of parties, was added, iron discipline particularly under Lenin's "democratic centralism".

Some important salient features must be stressed here. First, both bourgeois and socialist constitutions sanctioned class hegemony but of a different kind. Second, both were based on specific economic and political ideologies. Third both were equally concerned

⁵². Art. VI (Preamble) Constitution of the Socialist Federal Republic of Yugoslavia, 1961.

⁵³. See Fn. 48.

with establishing leadership of the elites. Fourth, their approach to involving the masses is different.

Furthermore, implicit in liberal constitutions is a faith in and reliance on institutions as instruments for resolving societal contradictions. For this purpose, the former are presented as autonomous and neutral. Consequently, the masses are involved through the instruments of franchise and other composite rights like freedoms of speech, association, referendum etc, to which we shall return below. On the other hand, socialist constitutions reject such mechanics as a facade but not the rights. Indeed, liberty and equality are claimed as socialist values.⁵⁴ In place of the former, frameworks were provided which in concept are people centered although practices may differ. The structures seek to involve the masses up to the highest level and also check bureaucratic excesses.

As alluded to, form varied, but not widely. In the USSR, since the revolution, the instruments of state and party comprised, initially only workers, but widened soon to include peasants, soldiers and sympathetic intellectuals and given a constitutional form in 1918.⁵⁵ The Soviet combined in broad terms the functions of a parliament in the liberal sense and reserved the right of supervision over executive departments. It could also

⁵⁴ Harenin, O. (1981) "Reason and Empiricism in African Politics" in Barongo, Y., ed. Political Science in Africa, A Critical Review (Zed Press. London) p. 229.

⁵⁵ Art. 65, cap. XIII, Constitution of the R.S.F.S.R., July, 1918-danied the bourgeois the vote.

demand reports from the judiciary through its "executive committee".⁵⁶

Mass participation as a guiding principle was practised at three levels: first, until 1921, the term of the local Soviet itself hierarchically linked to the Supreme Soviet was initially set at three months, the purpose of which was to educate almost every villager and city dweller in the ways of public administration.⁵⁷ Although the term was subsequently increased to 2 1/2 years, the practice of rotation had by that year involved over millions of people.⁵⁸ Second, masses were also involved in containing incipient bureaucracy. The "standing committees" of the Soviet included deputies and outsiders so much that one out of every six or seven adults in the USSR had the experience.⁵⁹ Finally, unpaid volunteers were injected into the assembly and administrative departments. The reasons for mass involvement on this scale is explicated by the fact that the ultimate intended outcome is the withering away of state. But even if that is problematic, an important effect is the sense and opportunity of sharing it gives and the political awareness it engenders.

The Peoples Committees of Yugoslavia set up between 1941-1945 and given constitutional framework in 1946 had a

56. Arts. 101 & 108 Constitution of the USSR, 1936.

57. Art. 57, Const. of the B.S.P.S.R., 1918.

58. Derbyshire, I. (1987), *Politics in the Soviet Union: From Brezhnev to Gorbachev* (Chambers Ltd (U.K.) ed. one); Prindgett, V.N. (1979) *Political Participation in the USSR* (Princeton, N.Jersey) 41-70.

59. *Ibid.*

broader base than the soviet ⁴⁰.It comprised workers, peasants, worker oriented intellectuals and the middle class and bourgeoisie sharing their cause.A system of rotation was also introduced which included deputies and outsiders with varying terms.Rotation was not confined to the rank and file.In 1963,a constitutional requirement of rotation of office was introduced for the leaders except President Tito and was personal to him.Finally, a system of popular control of administration was introduced through town meetings and assembly of all voters of the village.The town meetings nominated candidates for elections, after which it observes and could recall erring deputies.

China, after experimenting with varying forms, settled for the "Communes" system in 1958. The function of the latter involves economic administration and local government.⁴¹ The institution most noted for mass participation was the "street level" organization. It provided forum for street dwellers to participate in government.They performed several functions: to monitor activities of local officials in the discharge of their duties, to minimize extreme bureaucracy, assist in mass education and indoctrination,search for necessities in times of scarcity, general social control and routine administrative tasks. Again, they were to police the requirements of simplicity expected of officials who were

40. Sokol, Sello (1980) "Introduction" in Simmons,W.B.(ed.) The Constitutions of the Communist World, (Sijthoff and Noordhoff, The Netherlands; Maryland, U.S.A.) 423.

41. These forms of participation are critically examined by Townsend, J.B.(1969) Political Participation in Communist China (Berkeley).

enjoined to live the ordinary lives of the masses without much privilege attached to the office ⁶⁴. Consequently , the Chinese system of public control looked up the ladder as well as down to the common man ⁶². But whether these were really effected in practice is another matter beyond our scope.

The various options of public involvement provide starting point for a constitution maker, depending on his ideological predilection. Liberal systems place faith on franchise and provide structures mainly based on it. Whereas socialist constitutions prefer to guide democracy through restricted franchise but create forums and enabling structures that are people oriented. But in making the constitutions, the masses are generally not involved. In fact the former merely register decisions already made in the political and economic spheres intended or claimed to enhance their welfare. However, the collapse of communist regimes in the 1990s in Eastern Europe is evidence of the erosion of these earlier schemes consequent on the ascendancy of bureaucracy and paternalism in administration.

On the other hand, in their making, liberal constitutions seek to involve the people. But on the whole, decisions on crucial matters such as the mode of organizing the economy, structure of power, etc are hardly discussed in the process.

⁶². Friedgut, op. cit.

1.D.Options for a Constitutional Engineer.

Against the preceding discussion, two obvious models and a less obvious and problematic⁶³ one offer themselves as starting point for a Nigerian constitution maker. One of the first is represented as a principal model by the United States Presidential Constitution, the British Parliamentary System, the hybrid 1958 Fifth French Constitution and the Bonn Constitution of 1949.⁶⁴ Their common denominator is the espousal and constitutionalization of liberal values.

On the other hand is the model represented by the Soviet Constitution of 1977, the Chinese Constitution of 1978 and the Yugoslav constitution of 1971. They are embedded in the ideological context of Marxism-Communism. The third option is one based on the principles and ideology of religion. For instance, the Saudi Arabian constitution of 1926 together with the decree of 1953,⁶⁵ Pakistan of 1973, Iran 1979 etc. Finally, it is not beyond a Nigerian constitution maker to look for something novel as was urged on them at one stage.⁶⁶

63. It is problematic at two levels: Although there are countries which claim governments based on Islamic principles, the specific rules of the constitution are not clearcut as secular constitutions. Islam is based on two sources, the Koran and Sunna (practices and sayings of Prophet Mohammed, p.u.b.). The second problem will be objections from non-Muslims.

64. McWhinney, op. cit. p.6.

65. Madani, M.O.(1970) The Relationship between Saudi Arabian Domestic Law and International Law: A Study of the Oil Agreements with Foreign Companies. A dissertation submitted to the Faculty of Law of the George Washington University in partial satisfaction of the requirements for the degree of the Doctor of Juridical science.

66. Address by General I.B. Babangida on the Inauguration of the Constitution Review Committee at Abuja, 7th Sept.,1987, Report of the Constitution Review Committee containing the Reviewed Constitution, Vol.1, p.xix.

The approach of a Nigerian constitution maker will mainly be determined by three crucial factors: a) his ideological predilection and those controlling the process. B) the perception and presentation of the problems to be solved by the participants. C) the social, political and economic environment.

a) Ideological Beliefs and Choice of Instruments:

Participants in the constitutional process within the Nigerian context include those in government who appoint membership of the various institutions involved in it. The Government's position and opinion have been crucial and decisive in some matters as we will see. Participants will normally be selected according to criteria that will tend to reflect the values and thinking of the government. This is because given a distribution of economic, organizational and ideological resources, strategies and institutions determine the prior probabilities that particular interests will be realized and in a particular manner.⁶⁷ This fact, governments are often aware of.

It is to be noted that the amendment provisions of the partly suspended constitutions of Nigeria have not been one of those saved by the military. Therefore, the latter not being guided by the constitution regarding amendment, has the discretion to adopt any procedure it feels will best serve its preferences. Thus while giving assurances that he had not decided on their successors, President

⁶⁷. Przeworski, A. op.cit.p.66.

Babangida said that "We have only decided on those who will not".⁶⁸ Of course constitution making is part of the transition and will largely determine the successors.

b). Perception and Presentation of the problems.

The participants' view of the difficulties bedeviling constitutionalism in Nigeria is crucial in determining the choice of strategies and persons. In the 1950s and 1960s as Graf noted, the structural-functional and modernization theories held sway and prescriptions were made accordingly.⁶⁹ They locate the problem in structural imbalance, ethnicity and of recent, religious diversity.⁷⁰ This view as later revivied, suggests that constitutionalism can be stabilized through constitutional engineering "to check, balance and decentralize political power as extensively and innovatively as possible".⁷¹ And that "the economically disfunctional consequences of state control over the economy " can be dispensed with through privatisation, other incentives and minimum government in general.⁷² The

68. Speech by President I.B. Babangida, at the 10th Graduation Ceremony of the National Institute for Policy and Strategic Studies, Abuja, 1989. p.17.

69. Graf, W. (1989) "Issues and Substance in the Prescription of Liberal-Democratic Forms for Nigeria's Third Republic" in 88 African Affairs 350 pp.90. For a short account of these theories, see Claude Ake, (1973) "Explaining Political Instability in New States" in 11 The Journal of Modern African Studies 31-47. For a seminal work on ethnic theories, see Morosini, D.L., (1985) Ethnic Groups in Conflict (Berkeley, Univ. of California Press.) The most recent revival of structural-functionalism see: Diamond, L., Linz, J. and Lipset, S.M. eds (1988) Democracy in Developing Countries; Almond, G., (1987) "The Development of Political Development" in Weiner M. and Huntington S.P. eds Understanding Political Development (Little, Brown, Boston.)

70. Diamond, L., (1988) Class, Ethnicity and Democracy in Nigeria, The Failure of the First Republic. (Macmillan Press, London.).; Asiwaju, A.A. (1988) "Nigeria: the Quest for a Stable Polity. Another Comment" in 87 African Affairs 348-441. cf. Mutshamanga, S.M. (1990) "Nigeria: fragments of a democracy" in 12 Third World Quarterly 1:87.

71. Diamond, L. (1987) "Issues in the Constitutional Design of A Third Nigerian Republic" in 86 African Affairs, 209 at 210.

72. Diamond, "Nigeria" in Volume Two: Africa, Lipset, Linz, et al op. cit. p. 83

idea is to remove those conditions which Eker identified as "necessary" for the existence of corruption.⁷³ The constitution thus acts both as "prophylaxis and panacea".⁷⁴ In this case, the problem is understood and presented as a technical one requiring technicians. Appointees to the constitutional bodies are therefore likely to be professionals sharing similar beliefs, attitudes and sentiments with the appointors.

On the other hand, one school of thought analyses the problem in class terms. The problem is located in the inability of the dominant class to establish hegemony over the social order in the Gramscian sense⁷⁵. Therefore, the motive for constitution making in Nigeria has been to establish the same.⁷⁶ However, the latter view argues that such approach has "failed to settle crucial underlying problems of economic dependence, political culture and mass based collective mobilization".⁷⁷ Therefore constitution making is not merely a mechanical work, but the overhauling of the entire political economy requiring

73. Eker, V. (1981) "On the Origins of Corruption: Irregular Incentives in Nigeria" in 19 The Journal of Modern African Studies 1:173.

74. Kirk-Greene, A.H.M. (1989) The Nigerian Constitution as Prophylaxis and Panacea. Paper presented at a Conference on the 1982 Nigerian Constitution, University of Birmingham, 2nd June.

75. Falola, F. and Ibovbere, J. eds (1985) The Rise and Fall of Nigeria's Second Republic, 1979-84. (Zed Books Ltd. London) p. 238-263. Gramsci identified two levels of hegemony. First, the ability of a social class to establish material, moral and intellectual dominance exercised through state institutions in a civil society. Second, the establishment of control over the coercive instruments of state. It is the former that constitutes proper hegemony as it is exercised through ideas and beliefs released through institutions. See Williams, Gwyn, (1960) "The concept of hegemony in the thought of Antonio Gramsci" in 21 Journal of the History of Ideas, 587; Gramsci, A. (1980) Prison Notebooks. (M.T. International publishers.)

76. Graf, "Issues..." op.cit.; Koehn, P. (1988) "Competitive Transition to Civilian Rule: Nigeria's First and Second Experiments" in 27 The Journal of Modern African Studies, 1:401.

77. Koehn, op. cit. p. 428; Osoba, G. and Usman, T.B. (1978) A General Report on the Work of the Constitution Drafting Committee, A Minority Submission.

the contribution of all sectors of the population especially the largely oppressed masses. It is clear that whoever is in charge of the process will be better placed for their world view to prevail.

c). Social, Political and Economic Environment:

In systems with broad consensus and settled socio-political environment the constitutions created neither the stability nor the consensus. Also they did not determine the substantive question of who gets what, when and how. However, they bolster the conditions and serve as an overt procedural frame for contests for power.

But in the new nations of Africa, Asia and the Pacific, the constitution carried a heavier burden.⁷⁸ At independence, it constituted the nation, and served as surrogate since no political institutionalization had yet taken place.⁷⁹ At independence as well, constitutions inherited and legitimated administrative and socio-economic structures established by the colonial power to serve colonial ends.⁸⁰ Again, it legitimated and reinforced the local emerging elites who succeeded the colonialists most of whom continued with local structures and external linkages established by the latter. Consequently, a constitution makers' options are constrained as he has to take into account this external

78. Osei, M. (1979) "Politics Without Parties: Reflections on the Union Government Proposals in Ghana" in *African Studies Review*, 22:89; Ghai, L., *Politics...* op.cit. pp.350-369.

79. Ekele, M. (1963) "Constitutional Engineering and Problem of Viable Representative Government" in Ekele, M. and Apter, D.E. eds, op.cit. 102.

80. Ghai, L., *Politics...* op.cit. p.351.

linkage anchored in international and domestic laws and political economy. Internally as well, in Nigeria, constitution making has been followed by other parallel political (Second Republic),⁸¹ and economic (putative Third Republic) processes. It means on those matters considered and decided upon by the government the powers of the constitution makers are effectively curtailed, if not removed as we will see below.

In the light of this broad analysis regarding choice, we now highlight the options available to a constitution maker in Nigeria. The preceding discussion highlighted the variables that will affect the range of choice and strategies available to a Nigerian constitution maker. This section will consider the repertoire of instruments that may be used in making constitutions.

1.E. Repertoire of Strategies for Constitution Making

Different instruments may be chosen depending on whether the aim is to draw a new constitution or merely refurbish an existing, functional one. The Nigerian situation seems to be anomalous because the constitution is partly in existence whereas the procedure adopted is for all intents and purposes for a new one. The anomaly may be explicated on basically three grounds: First, constitutions in military regimes have only nominal validity.⁸² Second, those portions of the constitution regarding amendment and review are not in force. Finally,

⁸¹ Koehn, "Competitive Transition..." op.cit. 406

⁸² Loewenstein, op. cit.

the procedure seeks to legitimise the process itself as well as the subsequent civilian regime.

The following, divided into two broad categories depending on whether it is public or private oriented are some of the major range of repertoires used.

1.E.1 PUBLIC ORIENTED PROCEDURES

A public oriented approach provides the forum and facilitates public involvement in varying degrees

a) Conventions/Constituent Assemblies.

The nomenclature differs from place to place and even within the same country, at different times. But they perform essentially similar functions but with varying jurisdictions or terms of reference ⁸³. A convention or constituent assembly is a body set up under local legislation or resolution, whose membership is usually elected directly by popular vote with mandate to make or legitimate a constitution. It may also be wholly nominated or a combination of election and nomination. ⁸⁴

Some constituent assemblies are constituted by the simple act of the legislature converting itself into a constitutional assembly. Examples are the Bonn constitution of 1949, the earlier Weimar constitution of 1919, Cook Islands 1968 etc. ⁸⁵ The Conventions or Assemblies have been widely used in the Pacific,

⁸³. For instance, the Nigeria Constituent Assemblies of 1977 and 1988 had jurisdictional differences as we will see below.

⁸⁴. This has been the procedure in Nigeria since 1975.

⁸⁵. For Bonn 1949 and Weimar 1919, see McWhinney, op. cit. p. 35. Ghai, Law, Politics, op. cit. p. 12 for Cook Islands.

Anglophone-African countries, Germany and France.⁸⁶ They have differed in the range and kind of public involvement as will be seen below. Some have also relied on experts or consultants for guidance especially in the Pacific. McWhinney makes the point that a major assumption for establishing a C.A. is the channelling of an existing societal consensus for a fundamental change in the areas of political, social and economic environment into a constitutional formula. Where these great desires are non-existent, the work of the C.A. is less easy as it has to generate or create one.⁸⁷

b). EXPERT COMMISSION.

A government desirous of change may also avail itself of an expert commission. Commissions are more open to government influence with regards to the outcome of its work. This is achieved through the appointment of people whose views approximate those of government or circumscribed terms of reference. Moreover the final exercise of constituent power lies in the political decision maker. In Nigeria, the Political Bureau as we will see below, set up in 1986 with wide ranging terms of reference is the closest to the use of expert commission for constitutional review. Nevertheless the governments' rejection of a large part of its recommendations testifies to the exercise of residual power by the appointor. The British government have

⁸⁶. For the Pacific, *ibid.* For Anglo-phone African Countries, see Philip Reyntjens, *Off the Moresbach ? op. cit.* pp. 18-22. For Germany and France, see McWhinney, *op. cit.* pp. 27-40.

⁸⁷. *ibid.* 33-34.

usually used commissions for review of constitutions both at home and the colonies. Hence, the Willink Commission was appointed in 1958 to look into the fears of minorities prior to independence in Nigeria.⁸⁸

c) PARLIAMENTARY ENACTMENT.

Parliaments have been used as principal or sole arenas for constitutional change whether on matters of specific or general nature. Thus, it is almost axiomatic for constitutions to contain enabling provisions for parliaments in case changes are desired in the polity. The French Government-by-Assembly is the most noted. Usually certain extraordinary majorities are required sometimes coupled with reference to the people for referendum or plebiscite. For example, the 1919 Weimar Constitution, the 1979 and 1989 constitutions of Nigeria where new states have to be created.⁸⁹

The use of parliaments to effect changes is a mark of belief in democracy. It makes incremental changes to build on constitutional values without resort to radical restructuring. However, as with the former, some constitutions provide for a procedure where changes may be effected through executive initiative and appeal directly to the people over the head of parliament. President de Gaulle and the earlier two Napoleons used this method most effectively.⁹⁰ In Nigeria,

88. Cmd. 505

89. ss. 8 & 9, Cap. iv of 1979; 9 & 10 of 1989 Constitutions.

90. McWhinney op. cit.

military decrees introducing changes combine both elements of parliamentary and executive action but without the public involvement which the former entails.

d). POPULAR INITIATIVE.

This provides the most direct opportunity for the masses to effect constitutional changes without the intermediary of the legislature or executive. It is a scheme where a specified number of citizens may initiate a change followed by a certain procedure. It was first introduced in the Swiss Constitution of 1891.⁹¹ Under the latter, a proposal for constitutional change may be introduced by a petition of 50,000 voters. The proposal may involve partial or a wholesale revision entailing a new charter.⁹² But for the proposal to sail through, it requires a referendum approval.

The Weimar constitution also toyed with the idea where a petition could be introduced by one tenth of the qualified voters subject to referendum. Outside Europe, it found refuge in some Pacific states where it is made constitutionally self executing. In Palau and Marshall Islands, 25% of the voters can initiate proposals. While the constitutions of the Federated States of Micronesia and Palau require to be submitted to the voters at least once every 10-15 years respectively, the question "shall there be a convention to revise or amend the

91. Ibid p. 26

92. Arts. 120-121.

constitution?"⁹³ Similarly, in the Marshall Islands, the legislature has to make a report at least every 10 years advising on the need to amend the constitution or to hold a referendum on the issue of convening a constitutional convention⁹⁴. Initiative formula have not found a place in any Nigerian Constitution. Finally, tied up to popular initiative as a system which entails direct public involvement at the highest level are referendum and plebiscite.

e). PLEBISCITE AND REFERENDUM.

Referendum and plebiscite are devices which apparently embody the entire aspects of democracy, that is, voting; debating; initiation of subjects of debates. But they fall short of pure democracy because they do not involve initiation of subjects and votes.⁹⁵

Referendum has been defined as " a poll in which every elector may vote, not preceded by a debate in which every elector may speak, on an issue".⁹⁶ The differences between it and plebiscite are not clear cut. Rather, referendum is treated as a generic word embodying both. Referendum has been used for several purposes but we are only concerned with its use to ratify, revise and amend constitutions.⁹⁷ These means of public involvement demonstrate the

⁹³. Arts. XIV(2); XIV(a) respectively.

⁹⁴. Art. XII, s. 6

⁹⁵. Alderson, L. (1975) TRA OR MAT? referenda in the United Kingdom (Cassell, London) p. 7

⁹⁶. Ibid. p. 7.

⁹⁷. One of its most frequent use has been for self determination. See broadly on this, Goodhart, P. (NP) (1971) Referendum. (Tom Stacy Ltd. London.) Chps. 2 & 3

assertion of popular sovereignty. Constitutions made through conventions or C.A.s, provide indirect demonstration, but will be the more secure if it receives the direct approval of the electorate in a referendum.

The French, Australia and the U.S.A. have used it in decolonisation processes in the Pacific,⁹⁸ but rarely the British. It has not been used in constitution making in Nigeria but was used in Benin 1964 & 1968, Upper Volta 1970 & 1977 and once in Madagascar, Mali, Zaire, to approve constitutions.⁹⁹ It has been most extensively used in the Pacific especially Palau, where an attempt to undermine a constitution approved in a referendum was rejected by the people in a further referendum, restoring the previous constitution.¹⁰⁰

Referendum, when used in approving a constitution tend as well to set a precedent for policy making elsewhere.¹⁰¹ For instance, in Western Samoa, a referendum is required for amendment of the constitution which seeks to authorise alienation of customary land; provisions which deal with languages in Vanuatu; the adoption of the Compact of Free Association with the U.S.A. by the Federated States of Micronesia and Palau.¹⁰² In the Weimar constitution, differences within and between the

98. Ghai, *Law, Politics...* op. cit. p.18

99. Philip Heyntjens, *op.cit.* p.23.

100. Ghai, *Law, Politics...* op.cit. p. 21

101. Wolfers (1983), cited in *ibid.*

102. Ghai, *Law, Politics...* op.cit. p.23.

different arms of government in specific cases were to be resolved by reference to the people.¹⁰³

One important use of referendum for controlling executive and parliamentary excesses may be noted because of its significance for Nigeria. In France, a referendum is required for any Bill which although not in conflict with the constitution, seeks to organise the public authorities, etc,hence would affect the working of institutions.¹⁰⁴ More pertinently, the 1919 Luxembourg constitution provided that the electorate may be invited to make known its views in a referendum in certain cases and specified conditions.

This provision may be used in Nigeria to consider whether certain category of people ought to be banned or disqualified from politics,the number of parties, impeachment of executives etc.In effect the referendum together with initiative and recall may be used beyond the executive and the legislature to provide for a further system of checks and balances. This is more so in Nigeria where leaders have not been guided by the interests of the people in general.This is of course in addition to a closer look at some of the schemes used in the early stages in USSR and China.

1.E.2 PRIVATE ORIENTED PROCEDURE.

The preceding procedures involve the public in varying degrees.There are however instruments which tend to

¹⁰³. Arts.73 & 76 respectively.

¹⁰⁴. Alderson, op.cit. p. 120.

exclude them in practice, if not in intention. In those, the preparation of a draft is conducted in private and if documents exist, they are restricted to a small group. Popular reaction is not invited if not discouraged. The first contact with the public is referendum, if at all.¹⁰⁵ The British approach to constitution making during decolonisation, typifies this procedure except the process that led to the Macpherson constitution of 1951, as will be seen below. In the former, constitutional proposals were discussed at conferences in London, where the leaders were cocooned. There was little opportunity for local leaders to consult with their supporters which was thought to be good as it relieved such leaders of pressure. Moreover conference proceedings were treated as confidential. That means in the case of rural Nigerians they were doubly removed since their leaders were urban dwellers with poor communication and other means of contact.

Again, some post independence constitutional processes hardly differed from the British practice. For instance, in Benin, the draft constitution privately done was approved by the government in 1964; by the military in Burundi; and by a joint session of the government and party Central Committee in Rwanda.¹⁰⁶ A similar private procedure was attempted during the crisis period of 1966-67 in Nigeria. All those involved were hand picked "leaders of

¹⁰⁵ Reynolds, *op. cit.* p. 41.

¹⁰⁶ *Ibid* p. 27.

thought" (a euphemism for traditional rulers and the affluent) from the then three regions as will be seen below.

The preceding analysis and discussion highlight the important point that the making of constitutions and the resultant structures reflect the underlying political and socio- economic formation of a country. A definitely chosen formation requires a specific institutional power structure. Consequently, a specific society requires a certain constitution. Therefore, the making of constitutions is a definite arena in which class and other interests will come to the fore reflecting the structure of the society.¹⁰⁷ This is because constitutions are maps of power which provide the framework for policy making, serve as instrument to consolidate, overthrow or modify existing distribution of power and influence. In particular, written constitution are expected to reflect the beliefs, values and interests of those who participated or controlled the process. Therefore, in order to have a proper insight into the constitutional process in Nigeria and the resultant structures the socio-economic formation of Nigerian society at bottom needs to be unravelled.

1.1 CLASS AND CLEAVAGE STRUCTURE IN NIGERIA.

Writing in 1973, Post and Vickers rejected as unsuitable, a class analysis of the Nigerian political and socio-

107. Marensio, G. "Class Structure and Democracy in Nigeria" in Oyedunni, S.B. (ed).
Democratic Experiment in Nigeria: Interpretative Essays. (Omega Publishers, Benin)
p. 88

economic structure because "insufficient work has been done to make a full class analysis possible". They concluded that "tribal" instead of class consciousness determined Nigeria's history, at this juncture.¹⁰⁸ It may be that for a variety of reasons to be considered shortly, class conflict is yet to begin in earnest in Nigeria. But that is a question different from one that pertains to the existence and consolidation of class in the country. To be sure, the problematic nature of the criteria in the determination of class is not a feature peculiar to Nigeria. Rather it is a major obstacle encountered by orthodox Marxist social theorists who conceive of class resting entirely on economic foundations.

In its most simple form, Marxist theory posits that classes in society are determined by the mode of production. That classes emerge when people occupying similar positions in the economic structure (a class- in- itself) become conscious of their common interest (a class for-itself).¹⁰⁹ The dominant class in a polity is that class "whose members own and control the means of economic production".¹¹⁰ When defined in this form, several reasons are advanced for the unsuitability of class analysis to Africa. First, is the dependency theory which posits that the African economy is structurally

108. Post, R. and Vickers, M. (1973) *Structure and Conflict in Nigeria, 1960-1966*. (Madison, the University of Wisconsin Press) 6.

109. For a critical examination of the definition of Marxism and its variants, see Hindess, Barry (1987) *Politics and Class Analysis* (Basil Blackwell Ltd. N.Y.)

110. Sklar, R. L. (1979) "The Nature of Class Domination in Africa" in *The Journal of Modern African Studies* 4:531.

embedded and dependent on the international economic system. Therefore, there are no indigenous bourgeoisie(owners of the means of production), but rather a comprador class subserving the foreign class who in fact constitute the dominant class.¹¹¹

Tied to the above is the view that capitalism in Nigeria is underdeveloped. Consequently, the tiny bourgeoisie that exists is inconsequential, lacks class consciousness and cohesiveness and is sectoralized along primordial cleavages. Correspondingly, the pockets of proletarians (producers of surplus value through wage labour) that exist if any, suffer an even worse fate than the bourgeoisie in terms of local differentiation, lack of class consciousness, organization etc.¹¹²

Finally, it is asserted that historical materialism as developed by Marx has no or little relevance to Africa because Marx was a European who developed his ideas within the European framework, knew nothing about Africa, its distinctive values, culture and society.¹¹³ It is not the province of this thesis to dwell extensively on the issues raised here as they are beyond its scope. However, since the methodology adopted is basically

111. For a critical discussion of this view, see Amir, Samir, (1974) *Unequal Development* as translated by Brian Pearce (N.Y.)

112. Discussions on this area are massive and wide ranging. My choice is however restricted to few critical materials. See, Graf, W.D. (1988) *The Nigerian State: Political Economy, State, Class and Political System in the Post-Colonial Era*. (James Currey Ltd. London); Markovitz, I.L. (1977) *Power and Class in Africa: An Introduction to Change and Conflict in African Politics*. (Prentice-Hall, Englewood Cliffs, N.Jersey); Gutkind, P.C.W. and Nwagwu, P. eds (1977) *African Social Studies, A Radical Reader* (Monthly Review Press, N.Y. & London); Ake, C. (1985) *Political Economy of Nigeria* (Longman, London).

113. Usman, Y.W. (1983) *Karl Marx and the Analysis of the Politics of Contemporary Africa*. Unpublished paper presented to the Centenary Conference on Marx and Africa, Ahmadu Bello University, Zaria in March

materialist, the issues will be considered in brief, sufficient to link up with the framework of the thesis.

1.F.1 Dependency and underdevelopment.

The first two issues taken together have been controverted by a large body of evidence accumulated over the years. Since independence, political leaders, business and other interests have frustrated attempts and demands of the industrialized countries which would have resulted in total subservience.¹¹⁴ This has been possible, if not inevitable because independence conferred on the states territorial powers and necessarily relative powers over the economy and coercive instruments. More so, the wish and desire of the local class to reverse and attenuate discriminatory colonial practices in economic opportunities can not be underestimated. The instruments used have ranged from Nigerianization, indigenisation, nationalization to privatization, as will be shown. These have fostered industrial growth, albeit on a limited scale.¹¹⁵

Such capitalist industrialisation has been initiated and directed in Nigeria by a combination of bureaucrats, military elites, traditional rulers and other professional elements who have common attachment to private property, economic privilege and social

114. Basfir, M. (1983) "Relating Class to State in Africa" in XI The Journal of Commonwealth and Comparative Politics 1, 1; Shiar, R. S. (1988) "Postimperialism, A Class Analysis of Multinational Corporate Expansion" in 9 Comparative Politics 1.

115. The process of industrialisation of third world countries has been documented in detail by Warren, S. (1973), "Imperialism and Capitalist Industrialization" in 61 New Left Review 1. Especially on Nigeria see, Porreast, V. "State Capital, and Class Formation in Nigeria" in Luback, P. N. (ed.) The African Bourgeoisie: Capitalist Development in Nigeria, Kenya and the Ivory Coast. pp. 307-345.

stratification.¹¹⁶ It is these groups of people who before and during colonial times constituted the petty bourgeoisie. Because of increased economic opportunities, high urbanization, education and communication they have blossomed to the bourgeois status.¹¹⁷

They have over the years swollen in number and become more aware of their class position as we will see later. However, the argument is not to deny that the fundamental economic dependence has been altered. Rather the assertion is that the above measures have resulted in "the tightening of nexus"¹¹⁸ between the foreign and local class in such a way that a kind of mutual security and dependence now exists. Therefore the "doctrine of domicile".¹¹⁹ seems to better reflect the reality of the relationship between them.

The doctrine posits that multinational corporations can no longer treat host nations as transmission belts, but rather as partly autonomous actors with powers to impose constraints on external interests. In the circumstance the doctrine obliges compliance with local rules requiring them to ensure corporate good citizenship, observe directions on income maximization, obedience to

116. Warren, *op.cit.* 42-43.

117. *Ibid.*

118. Collins, P. (1974) "The Political Economy of Indigenisation: the case of the Nigerian Enterprises Promotion Decree" in *African Review*, 493; Graf, W. (1983) "African Elite Theories and Nigerian Elite Consolidation: A Political Economy Analysis" in Barongo, T. (ed.) *Political Science in Africa: A Critical Review* (Sage Press, London) 189.

119. Shklar, "Postimperialism.." *op.cit.* pp. 84-85; Kasfir, "Relating class.." *op.cit.* p. 11

local laws and government policies. It is bargain of a sort.

The discussion so far has sought to justify the relevance to Nigeria of class analysis based on economic foundations. However, a revisionist tendency in Marxist literature envisages a much wider basis of class determination. Ossowski has argued that the orthodox criteria for class determination do not by themselves reflect the class structure in modern industrial countries.¹²⁰ According to him bureaucratic socialism and corporate capitalism have engendered structures which imply the existence of two more determinants, that is, control over the means of compulsion and consumption.¹²¹

These political factors are in fact more relevant in non or less industrialized societies where economic criteria for class analysis is thought to be more problematic. To be sure, Mosca had, earlier on, presaged the generation of a dominant class on the basis of a political criterion.¹²² He saw the state as constituting a pivotal locus in the process of class formation and domination. The state is constituted by a tiny minority- the political class- existing in every society. He noted in respect of the then emerging countries of Eastern Europe but now having greater validity to most third world countries that "rapid restocking of the ruling

120. Ossowski, O. (1963) *Class Structure in the Social Consciousness*, translated by Sheila Paterson (N.Y.) pp. 33 and 157.

121. *Ibid.* 185-6.

122. Mosca, G. (1936) *The Ruling Class*, translated by Hannah D. Kahn (Toronto, London, N.Y.)

classes is a frequent and very striking phenomenon in countries that have been recently colonized". And foreseeing a period of social upheaval (or coups?) "there comes a period of renovation... during which individual energies have free play and certain individuals, more passionate, more energetic, more intrepid or more shrewd than others force their ways from the bottom of the social ladder to the topmost rungs". Those who ultimately gain access " will begin to acquire a group spirit.They will become more and more exclusive and learn better and better the art of monopolizing to their advantage the qualities and capacities that are essential to acquiring power and holding it".¹²³

It is because of the centrality of power to class formation in Africa, as will be seen ,that Sklar proposed that "class relations at bottom are determined by relations of power, not production".¹²⁴ This must be qualified as Kasfir did to the degree that a new commercial ¹²⁵ and industrial class is forming independent of the state.

The argument in connection with the foreignness of Marx and his ideas oversimplifies the principles of historical materialism.It is not a dogma whose validity lies on faith in Marx and his writings.¹²⁶ Rather, it is a theory

123. Ibid.50-69.

124. Sklar, (1979) "Nature of Class..." op.cit.537

125. Kasfir, op.cit.13

126. See fn.113.

of the practical experience of man as he progresses in the society. Marx developed it out of the specific historical struggle of the people at the time using a criterion whose basic premises, like those of natural science has universal appeal and application.¹²⁷ Finally, lack of consciousness has also been a reason for denying the existence of classes in Africa. Consciousness is the "theoretical link in Marxism between determined conditions and determined response."¹²⁸ It means a class is not a class until it becomes aware of its interests pitted against the interests of others and organized consciously and purposely to enhance those interests by attempting to overthrow the system of which it forms a part if that system is against its interests. A failure to become aware of that interest within the totality of social life manifests "false consciousness".¹²⁹

Robin Cohen regards the concept as part of a whole "set of now largely sterile aphorisms".¹³⁰ Wallerstein rightly noted that while consciousness is not an essential factor, it nonetheless automatically comes to the fore when objective conditions are right. "An objective class status is only a reality insofar as it becomes a subjective reality for some group or groups and if it 'objectively' exists, it inevitably will be felt

127. Ibid, pp.5-7; Toyo, Bakor, (1983) "Non-Ethnocentric Flaws in Competing Non-Marxist Paradigms of Development" in Barongo op.cit. pp.156-174 at 172.

128. Ollman, W. (1972) "Toward Consciousness, Next time: Marx and the Working Class" in Politics and Society, 1 p.2.

129. Marenin, "Essence..." op. cit. pp.211-238.

130. Cohen, W. "Marxism and Africa: old, New and Projected" cited by Marenin in Barongo, op.cit. p.214.

subjectively".¹³¹ The rate of class formation may not be the same and neither is complete class solidarity necessary in all situations which involve class formation or conflict.¹³² It is important to note that what obtains in Africa less South Africa is mainly not class conflict but rather formation and consolidation at the bourgeois level through the processes analyzed by Sklar; Diamond; and Graf.¹³³

Having considered the relevance and applicability of materialist approach to Nigeria, we now trace the structure and development of classes. Generally, the development of social classes reflects the changing mode of production. Each epoch in the constitutional, political and economic development of Nigeria registered a shifting pattern of class structure but only at the dominant class level.

1.G.PRE-COLONIAL FORMATION.

Precolonial conquest did not create the social structure in contemporary Nigeria from nothing. Rather it carried with it forward the earlier socio-economic formations.¹³⁴

1.G.1 The Northern Region.

The dominance of the Hausa-Fulani cultural group in the North, in terms of number, politics, economics and

131. Mallerstein, I. (1975) "Class Formation in the Capitalist World System" in *V Politics and Society* 3, 370.

132. Ibid.

133. Sklar, "Nature of Class..." op.cit 531-552; Diamond, L. (1987) "Class Formation in the Swollen African State" in 25 *The Journal of Modern African Studies* 4:567; Graf, *The Nigerian State...* op.cit. Caps. I, 4 & 5.

134. Banton, R.W. (1986) *The Development of Capitalism in Northern Nigeria* (James Currey Ltd. London) p.1

organization has made historians focus more on their social formation. The pre-Jihad (holy war of liberation) structure was mainly a village community. It was politically non centralized and agrarian in economy.¹³⁵ The main positions of authority beyond the household and lineage heads were structured on occupations, for instance, head of the farmers, hunters, etc but involved little governing. However by the 15th century, as urbanization and division of labour developed, authorities emerged to head such bigger towns. Such authorities were in the order of things taken up by erstwhile heads of lineages. Between 15th -16th centuries a number of the urban commoners had begun to adopt Islam which they used as a legal framework for their non agricultural activities.¹³⁶

The reaction of the ruling group was to attempt to blend the earlier customs with the newly introduced and adopted religion and law resulting in a syncretic practice. The idea was to maintain the allegiance of the communities belonging to both groups. But this practice led to a rift between the rulers and the increasingly critical literate Muslim scholars. Moreover to maintain its position, the former had increased taxation, resorted to the seizure of commoners' property and practised slavery. Consequently, these rapacious acts of the rulers alienated a large part of its constituency which made it easier to mobilize the

135. Ibid.

136. Ibid

people under the leadership of a literate Fulani scholar-Shehu Usman Dan Fodio. The Hausa rulers were finally overthrown in 1804.¹³⁷

The war which latterly established Fulani hegemony although justified in religious terms was in fact primarily concerned "with the relation of ruler to ruled, and royalty to commoner".¹³⁸ At the initial post conquest period, leadership was conferred on the leadership of the jihad or those who earned respect through piety or military gallantry. This was however short-lived, as due to internal dissensions, the need to maintain control in the confederate political structure (the Emirates), led to the predominance of kin members and associates in political appointments.¹³⁹ Moreover, the prior state apparatus of tax and tribute system, was only partly reformed and therefore provided opportunities for abuse.

Consequently, instead of transforming the corrupt Hausa system, the jihad shortly afterwards coopted and strengthened the institution through accommodating "state machines, institutions and structures which had been used by their predecessors to oppress the society".¹⁴⁰ Prior to colonial rule therefore, the basic line of cleavage remained royalty and commoner, office holder and peasants. The basic issues around which class conflict

137. Mahadi, A. (1985) "The Jihad and its Role in strengthening the Sarautu System in Hausaland in the 19th Century. The Case of Kano" in Ade Ajayi, J.P. and Ikara, B. eds. *Evolution of Political Culture in Nigeria*. (University Press Ltd. Ibadan) pp119-120.

138. Shenton, op. cit. p. 5; Mahadi, op. cit. pp. 120-121.

139. Shenton, op. cit. p. 5

140. Mahadi, op. cit. p. 124.

could have centered were taxation and land tenure. But conflict was contained and mediated by the caliphate institution where petitions or grievances related to support for or opposition to the caliphate itself engendered by succession disputes.¹⁴¹

Finally, it is to be noted that, Islam which provided the ideological and legal basis for the jihad now served as the reason for the sustenance of the caliphate which had already lost its *raison d'être*. It was this formation that colonialism foisted itself upon, and adopted almost wholesale.¹⁴²

1.G.2 THE SOUTHERN REGION.

The Yorubas.

The west of Nigeria is mainly inhabited by the Yorubas while the central part houses the erstwhile powerful Benin Kingdom. Initially, the basic unit of organization among the Yorubas was villages comprising groups of kinsmen.¹⁴³ In origin, they trace their descent to one mythical Oduduwa who is said to have lived in Ile Ife, after which there were dispersions in consequence of migrations, wars and conquests. However, through aggregations of kinsmen, large towns are known to have been formed and the resultant emergence of political organizations¹⁴⁴. They are said to be the most urbanized

141. Shenton, *op.cit.* p. 8

142. For a resume of the reasons for the adoption, see Uhab.C.W. (1985) "Continuity and Change" in Ajayi and Ikara, *op.cit.* 137.

143. Lloyd, P.C. (1962) *Yoruba Land Law* (Oxford Univ. Press, London.) P. 30.

144. Roberts, B. (1969) *Kingdoms of the Yoruba*. (Methuen, London) pp. 9-14.

people in tropical Africa.¹⁴⁵ Each major settlement had a ruler called "Oba" along with a coterie of other subordinate chiefs, officials and priests who together provided spiritual and secular leadership.

The Oba is usually considered a sacred or divine king, the elaborate rites accompanying his coronation being testimony to this belief. He represented and personified the town, as well as reincarnating his ancestors, the mythical Oduduwa. However, in spite of the apparently enormous potential powers of the Oba, he was constrained by a council of chiefs and court officials whom he had to consult by tradition.¹⁴⁶ The chiefs were usually recruited from two groups. The first group are the leaders of the descent groups which made up the town or kingdom. They are hereditary. The second, are the leaders of occupational groups, such as those in charge of wars or public works.¹⁴⁷

The Oba in Council therefore constituted the ruling class in the pre-colonial period. It was maintained through a variety of taxation: tributes, war booty, judicial fines (the Council being the highest court) and contributions from chiefs who were expected to give half of what they received.¹⁴⁸ Moreover, the Oba maintained a large number of slaves and subsequently servants most of whom worked

145. *ibid* p. 9

146. *ibid* p. 111

147. Lloyd, *op.cit.* 39-40.

148. *ibid*, 40-45.

on royal farms to augment palace income itself invested in trade and commerce. It was the Obas who monopolized the latter as they supplied the Hausas and later, the Europeans with slaves and other goods. The Yorubas are generally agrarian, cultivating individual holdings in family lands. But due to urbanization, complex specialization had developed, the variety and complexity of skill manifested through works in wood, stone and iron carving, sculpture cast, etc.¹⁴⁹

In land matters the Oba stood as a trustee. He allocated and revoked titles, received tribute or rent, etc and generally administered the lands.¹⁵⁰ Although the Oba juridically acted in representative capacity and could not treat the land as personal property, but as Elias observed, " chiefs have all too often confused the two by claiming community lands as if they were beneficial owners thereof".¹⁵¹ However, their juridical representativeness was an ideological cloak covering the monopoly of land by the Obas. That is why they seemed to be the most aggrieved when land ownership was reverted to the state in 1977

In the pre colonial period, there was a clearly defined social formation. The oba and his council constituted the ruling class justifying their hegemony through the ideology of the mythical Oduduwa. This dominant political

149. Crowder, M. (1966) *The Story of Nigeria*. (Faber and Faber Ltd. London.) Cap. IV.

150. Elias, T.O. (1971) *Nigerian Land Law*. (Sweet & Maxwell. London) pp. 72-102.

151. *ibid.*

position was reinforced by the monopoly on trade and commerce, control over land and its use and a variety of other taxes. Any potential class conflict was mediated by fear or veneration of the sacred institution. Hence, the wars that ravaged Yoruba kingdoms arose mainly from succession disputes.

On the lower rung were the farmers, craftsmen, slaves and others engaged in non agricultural occupations. Finally, it is important to note that unlike the Hausa-Fulanis, and other cultural groupings in the North, the Yorubas had an early contact with Europeans through trade, the significance of which we will see below.

The IBO.

In the Eastern part of Nigeria, the Ibos constitute the dominant cultural group. There are a number of other minority groupings situated in the delta area. Compared to the Yoruba kingdoms and Hausa-Fulani emirates, the Ibos have a less complex and less stratified social formation. "The Ibos make no Kings" proclaims an Ibo proverb.¹⁵² Up to the 19th century, no group had achieved centralized authority. Political organization was characterized by an "excess of democracy".¹⁵³ But unity and interaction was established at the levels of culture and commerce. The former was achieved through diverse

¹⁵². Dike Ozuwa, E. (1956) Trade and Politics in the Niger Delta, 1830-1885: An Introduction to the Economic and Political History of Nigeria. (Oxford: Clarendon Press) p. 24

¹⁵³. *Ibid*, p. 17.

forms of socialization such as inter- clan festivals, inter marriages, many communal markets, etc.

Apart from these forms of interaction, their largest unit of government was the village group. At the same time the Aro Chukwu oracle provided them with a sort of political and religious unity, although it was more an instrument for regulating trade, as will shortly be considered .

The complexity of Ibo social formation lies at the economic level. The greatest factor that conditioned them in this regard is the so called land hunger¹⁵⁴ That means, pressed against limited and part productive land resources, they had to look for non agricultural vocation and outside their geo-cultural boundaries. This led to their dispersal all over Nigeria and abroad. The surplus of population and scarce land contributed to them having produced the greatest number of men for slavery during the slave trade era.¹⁵⁵ Second, it led to the development of specialization of skill labour among the various clans. For instance, some became the middlemen of the interior trade and others, mercenaries smiths and doctors, spies and diplomats.¹⁵⁶ These highly developed networks of commerce and industry needed regulation and central political authority.

This political vacuum was taken up by a segment, the Aros exploiting the fear and veneration of the people for the

154. Dike, *op. cit.* p. 20

155. *Ibid.* p. 20; Crowder, *op. cit.* 80-81.

156. Dike, *op. cit.* pp. 20-29

cult. The Oracle was claimed to reside in the Aro territory, to which pilgrimage was made from all over Ibo land. The Aros claimed to mediate between man and God through this cult. Pursuant to this role they established colonies or "free cities" along all the trading routes of the interior with adjudicatory structures to settle disputes and through it became the middle men in the interior between Europeans and local merchants.¹⁵⁷ Save therefore for the dominance of the Aros in trade and commerce and the provision of authority mainly to regulate the former, the social structure was not hierarchical.

It must also be noted that they had an early contact with Europeans through Christian missionaries, commerce and education and the consequent imbibing of values that accompany them.

1.G.3 Other Minority Groups.

Existing alongside the large cultural groups are other minority groupings. In the North, the Tiv and the Kanuri are the major ones. Before colonial rule, the socio-political structure of the Tiv was egalitarian, if not "anarchic".¹⁵⁸ They lacked institutional authorities until the British created one, the office of Tor Tiv.¹⁵⁹

157. *Ibid.*, pp. 16-19.

158. Mohannan, L. and Mohannan, P. (1952) *The Tiv of Central Nigeria* (London) pp. 31-37.

159. Mohannan, P. (1958) "Extra-Processual Events in Political Institutions" in 40 *American Anthropologist* 1:6

On the other hand, the Kanuri people had a social formation akin to the emirate structure. It is based on a well known ancient kingdom, hierarchical in structure and hereditary in succession.¹⁶⁰ In the central part of Southern Nigeria lies the Benin kingdom. Like the Yorubas, its people, the Binis, had a developed, complex administration of title holders and palace officials. Its monarchy was less constitutional than the Yorubas.¹⁶¹

In the Delta areas of the East are located other clusters of minorities- the Ibibio, Anang, Efik etc. Most of them like the Ibos were loosely organized along what anthropologists call segmentary lineage systems. They also had an early contact with Europeans through trade along the coast.

1. E. COLONIAL PERIOD, 1861-1951.

European contact with and influence on the territory now comprising Nigeria began between 1500-1800. It was by way of trade along the coast rather than political administration.¹⁶² In the North, first contact was with the Royal Niger Company.¹⁶³ Consequently the incorporation of Nigeria into the international capitalist order did not just begin by flag hoisting. However, what concerns us here is its impact on existing social formation. For

160. Tseyayo, J. I. "The Emirate System and the Reaction to Pagan Status in Northern Nigeria" in Williams, G. (ed). *Nigeria: Economy and Society* (New Collins, London) pp. 83-88.

161. Hyder, A. P. C. (1969) *Benin and the Europeans, 1485-1897*, especially chapter one.

162. Hopkins, A. G. (1973) *An Economic History of West Africa*. (Longman, London.) Cap. 3; Mundare, R. G. (1973) *An Economic History of Nigeria, 1860-1960*. (Methuen & Co. Ltd. London) Cap. 2

163. Ibid.

clarity of analysis, it will be discussed at two levels: the political and economic.

1.8.1 POLITICAL IMPACT.

The final conquest of the Sokoto Caliphate in 1903 and the prior relinquishing of authority by the rulers in the South through a series of treaties meant the wholesale introduction of a new master on top¹⁶⁴ the existing socio-political structure. Strategic considerations determined the fate of the latter. Since the aim of colonialism was to regularize trade at minimum cost, it simply coopted the structure on the ground through the "indirect rule"¹⁶⁵ system but inevitably as the superior partner.

However, its impact varied with the respective group's pre-colonial structure and the area's relative importance to the colonial economy.¹⁶⁶ In the emirates, in terms of the colonial purposes, it was effective and functional since the existing structure was already hierarchical and functional. In Yoruba areas where traditional rulers were constitutional monarchs, it bloated their powers by reversing the prior system of limited accountability. The situation with the Ibos was even more conspicuous. Although they made no kings, colonial government created a whole new ruling class of "warrant chiefs". To provide an effective link with the people, the chiefs relied on the coercive powers of the colonial administrators since

¹⁶⁴ Hopkins, *op.cit.* Cap. 4

¹⁶⁵ Graf, *The Nigerian State...* *op.cit.* p. 8

they lacked popular base and legitimacy.¹⁶⁶ But the restructured class pattern was more perverse at the economic level, not surprisingly since that was the *raison d'être* of colonialism.

1.B.2 STRUCTURE AT THE ECONOMIC BASE.

We have seen that the factors of production, land and labour were under the control and monopoly of the ertswihle ruling class. This position was increasingly undermined in several ways. First, in the North, Lugard had earlier on sought to transform the society by converting the local ruling hierachy into a landlord class and slaves and other servants as wage labourers.¹⁶⁷ Apart from seeking to wholly privatise land, the release of slaves was meant to reduce the cost of administration which entailed maintaining them with their masters.

However, this proposal was not followed. Rather, the succeeding authority nationalized land on the ground that the rent which would have accrued to the landlord went to the state as tax.¹⁶⁸ Furthermore, acquisition of land by colonial firms was restricted. This policy had profound effects, which were¹⁶⁹: (a). It blocked the development of an indigenous capital through land- its accoutrement. b). It undermined the means by which the old ruling class related to the popular class, hence its authority. But

¹⁶⁶. Ibid, pp.8-9

¹⁶⁷. Shenton, *op.cit.* Cap.3

¹⁶⁸. Ibid, p.30

¹⁶⁹. Ibid. 45-46.

this was rectified by converting and maintaining the former as state functionaries.c).The agricultural producers, instead of becoming the agricultural proletariat (work on the land for wages without ownership) which Lugard envisaged, became peasants (continued to effectively use the land they occupied as owners).

However, while the transition from local merchants to agricultural capital was blocked, the expansion of the former was not. Few Kano based local merchants became agents of foreign firms. The position of the peasants altered only in the sense that they had to produce more cash in place of subsistence crops to meet colonial tax requirements.¹⁷⁰ But with regards to their position in the social formation, it was unchanged.

In the South on the other hand, private interests in land was introduced through a series of English Laws governing realty.¹⁷¹ And like the North, acquisition of land by foreigners was restricted. Consequently, traditional rulers were the immediate beneficiaries. Some other factors however affected their position which were commerce, religion, education and government.¹⁷² Western education begun in the 18th century with the primary purpose of providing clerics. It expanded as government became involved to produce clerks, artisans, etc for

170. *ibid.*, 127-128.

171. For a summary, see, Froehi, P.O. (1965) *Foreign Enterprise in Nigeria, Laws and Policies*. (Oxford Univ. Press) Chap.VII

172. Nduta, O. (1974) "Colonial Education and Nigerian Society" in Williams, G. *Nigeria...op.cit.* pp.91-105

colonial services and requirements of foreign firms for secretarial staff.¹⁷³ But the wages and the apparent prestige it brought to such employees increased its attraction and importance.

Immediate beneficiaries included those close to traditional rulers and those from humble background. As the scope of education expanded, it produced the following consequences: a) The further profound undermining of traditional political authority which depended on traditional economic relations based on control of land, supernatural sanction, etc. The younger generation who received western education depended less economically¹⁷⁴ and spiritually on the older generation. b) Together with commerce, education determined social position and pre-eminence. They also affected the value system, personalities, etc of its beneficiaries contrasting with those who did not. These are values associated with the dominant class in Nigeria today. c) The availability of opportunities in, and the prestige offered by colonial bureaucracy together with discriminatory practices in favour of foreign traders, confined most Nigerians with high education both in the North and South to white collar jobs rather than in business.¹⁷⁵

173. Ibid p.92 (Ekundare, op.cit.p.64)

174. Mduka, op. cit.p.96

175. Akeredolu-Ade, (1976) "Private Foreign Investment and the underdevelopment of indigenous Entrepreneurship in Nigeria" in Williams, G. (ed.) Nigeria - op.cit. pp.106-122; Aiarakebe, J. (1987) Multinationals, the State and Control of Nigeria's Economy. (Princeton).

Thus, as well as making bureaucracy an objective dominant class position, it subsequently became the organ to form the economic base and therefore the source of intra-class squabbles as we will see below.

In the emirates of the North, initially the approach to education was different. First, missionary activities and education were constrained. Second, the purpose of education when introduced was different. It was not to produce "slavish subservience or servile imitation of Europeans" nor mere artisans and clerks, "but rather co-operative African administrators".¹⁷⁶ Islamic education was promoted. The colonial administration established three types of schools. One was for the sons of chiefs, another for the children of MALLAMAI (Muslim scholars) to provide teachers for the first and secretarial staff for government. A third, a craft school was meant to attract "the right class of native artisans".¹⁷⁷

On the first category, the colonial education officer wrote: "The object of this school is to train the sons of chiefs with a view to [making] them physically and mentally better fitted to assist Government in the administration of the country to bring them into closer contact with the Government, to acquire for them a better understanding of the policy pursued by the Government, to acquire for them an elementary knowledge of sanitation and hygiene and above all, to open their eyes to the

¹⁷⁶. Fajana, A. quoted in Mduwa, op.cit. p. 84.

¹⁷⁷. Whitaker, C. S., JR. (1970) *The Politics of Tradition, Continuity and Change in Northern Nigeria, 1846-1986*. (Princeton, N.J. Princeton Univ. Press) p. 341

commercial possibilities of the country".¹⁷⁸ This pattern was followed at the secondary school level through the establishment of the Katsina College in 1922. The purpose of the latter "was to provide as far as possible, all the essentials of a good English public school".¹⁷⁹ Not surprising, Alhaji Sir Ahmadu Bello thought the colonial government "had in mind the special college for princes...in India."¹⁸⁰

The early products were children and relatives of the emirs and other titled men or those whose fathers had the former as patrons or masters.¹⁸¹ Examples of the latter group are Alhaji Makaman Bida, Alhaji Tafawa Balewa, Alhaji Yusuf Maitama Sule. Balewa later became the prime minister of Nigeria, while the rest, after stints in native authority administration like Balewa and their peers were ministers. On the whole, the products provided the first and second generation of civil servants in colonial and subsequent bureaucracy.¹⁸² They also formed the core of the dominant party in the North prior to independence, in the first republic and mainly in the second republic. The schools therefore offered the unprecedented opportunity for leading future officials of the ruling class in the emirates (and a select number of their wards) to socialize, and become conscious of their

178. *Ibid.*

179. *Ibid.*, p. 342.

180. Alhaji Sir Ahmadu Bello, (1962) *My Life*, p. 31.

181. Whitaker, *op. cit.* pp. 336-337.

182. *Ibid.*, pp. 322-323; See Paden, J.M. (1986) *AHMADU BELLO SARDAUNA OF SOKOTO: values and leadership in Nigeria*. (Modder and Stoughton, London.)

common group interests.¹⁸³ This is evidenced in the formation of the Katsina College Old Boys Association (a powerful group today in Nigeria).

Consequently, unlike in the South where the administration had no specific policy on the local ruling class , that of the North was tailor- made to reproduce the same. But in all the regions, less in the North, the class structure widened to include those in bureaucracy and those successful in commerce through middlemanship. The importance of state bureaucracy continued to grow as the sustenance and privileges of the chiefs and beneficiaries of western education depended on it. Thus, its control after colonial rule would become crucial, if not decisive since it was the determinant of everything including the very survival of the traditional establishment.

In the South, the struggle to control the state machinery was the source of tension between the rising educated elements and their traditional rulers. Also between the former and the traditional rulers in the North who continued to be the dominant class. The purpose of constitution making ever since, as we will see throughout this work, has been the rationalization of this tension resulting from struggles over access to and control of bureaucracy rather than considerations for the welfare of the general population. Finally, the criteria for class identification at this stage are traditional rulership.

¹⁸³ Whitaker, op. cit. p. 342

education and wealth.¹⁸⁴ Specifically, the ruling class were : In the first and superior category, a) educated expatriates--administrators, missionaries, military officers and policemen.b) foreign business stratum; in the second category but in a subordinate position, a) localized indirect rulers, b) indigenous subordinate officials serving colonial bureaucracy and multinational firms.¹⁸⁵

1.1 THE PERIOD 1951-1966.

The preceding section examined the impact of colonial rule and western education on the old class structure.In the North attempts were made to preserve and reproduce it, while no such policy obtained in the South. But the traditional order in the latter had not totally lost out to its emerging and educated elements. Whether the system survived and the form it took would depend on the political, constitutional and economic arrangements made in the transition to independence.

The period up to 1922 was one for colonial consolidation.¹⁸⁶ The Clifford constitution introduced in that year spurred the few educated elements to grumble for positions in the colonial government. A petition for reform, sponsored by the West African National Congress,

184. Graf, "African Elite Theories..." op. cit. p.190; Anikpo, M. (1965) "Nigeria's evolving Class Structure" in Aka,C. (ed). The Political Economy of Nigeria.(Longman,London. Lagos) pp.32-52.

185. Graf,(1968) The Nigerian State...op. cit.p.10.; Umeiri, I.(1965) "Class and Power in Post-Independence Nigeria:1960-1975" in Kayode,M.O. and Usman,Y.B.eds The Economic and Social Development Nigeria.(Gaskiya,Saria)

186. Blae,T.O.(1967) Nigeria, The Development of its Laws and Constitution.(Stevens and Sons,London) Caps II & IV.

"a concerted effort of the urban middle class in West Africa who were dissatisfied with the existing system" was rebuffed by the Governor of Nigeria, Sir Hugh Clifford, as "loose and gaseous talk".¹⁸⁷ Reflecting on the category of the petitioners, he said: it came "from a self-educated and self-appointed congregation of educated African middlemen...a handful of men ...born and bred in the British administered towns situated on the seashore ...men whose eyes are fixed...not upon their own tribal obligations and the duties to their natural rulers which immemorial custom should impose upon them, but upon political theories evolved by Europeans to fit..wholly different situations".¹⁸⁸

However, in the gradual progress to independence, the interests of these elements and the traditional rulers had to be reconciled. In fact it subsequently became the preoccupation of decolonization rather than any principles of government or constitution. This was reflected in two contending schools of thought at the time.

One view, held by colonial officials in the North favoured a separate constitutional and political development for each region while an alternative opinion sought to jettison separation and urged developments that

187. Oduwole, O.I. (1963) *The Nigerian Constitution: History and Development*. (Sweet and Maxwell, London). p.15

188. *Ibid*, pp. 15-16

would ultimately secure political unity ¹⁸⁹. The latter view prevailed for reasons to be considered in the next section. It resulted in constitutional arrangements beginning with that of Richard in 1946, of Macpherson in 1951, and culminating in the independence constitution of 1960 aimed at "securing greater participation [and management] by Africans in the discussion of their own affairs".¹⁹⁰ And more importantly, rationalizing the conflicting interests of the contending parties.

It is important to note two factors which had a bearing on the class structure. First, the galloping rise of the beneficiaries of education in the South, had resulted in the introduction of franchise earlier. The latter was introduced in the 1922 Constitution but hedged by inter alia, property requirements with regards to both voters and contestants. It progressively opened up until it became a direct universal adult suffrage in the 1959 elections.¹⁹¹ In the North on the other hand, only universal male adult suffrage was available.¹⁹² Even in the latter, elections continued to be conducted indirect through the Native Authorities, the main administrative arm of the emirates.

In the South, the effect of the franchise was the democratization of the native authorities and further

189. *ibid*, p. 42

190. Being one of the objectives of the Richards Constitution of 1946.

191. *Milas*, *op.cit.* 45-50

192. See notes 186 & 187.

reduction of the residue of powers of the traditional rulers. This was so especially after 1951 when the constitution of that year effectively introduced self government and the consequent ascendancy of the educated elements through the ballot. Moreover, the existence of colonial legislation empowering the governor of a region to depose or suspend any chief "in the interests of peace or order or good government" served as a reminder of that ascendancy.¹⁹³ In fact the deposition of the Alafin (King) of Oyo in 1954 for alleged conspiracy against the regional government and party "created the impression that no chief could stand against the government and survive".¹⁹⁴

The cases of deposition in the North served a different purpose. They were usually done by one of their own to purify the system in its overall interest.¹⁹⁵ Again the 1951 and 1954 constitutions had established firm and strong regional structure and a weak centre. This was complemented by the fact that the North had secured a concession to have 50% of the seats in the Federal House of Representatives. These factors bolstered the power structure in the North since it was institutionally situated to protect itself at the centre against threatened onslaught by western educated men from the South some of whom had openly declared their wish to

193. Shiar, M.L. (1963) *Nigerian Political Parties, Power in an emergent African Nation* (Princeton, N.J.) pp. 235-242.

194. *Ibid.*

195. *Padon, op.cit.* 195 ; *Whitaker, op.cit.* 58-59.

dismantle the emirate.¹⁹⁶ Moreover, its position at the regional level was unassailable having been secured by a party established for that purpose.¹⁹⁷

It was the manoeuvres for position and challenge to this entrenched position of the northern segment of the fractionalized national ruling class that led to the series of crises which brought the first republic down.¹⁹⁸ In the struggle for position and hegemony, diverse strategies, cleavages, and tactics have been used. During the period prior to independence and in the first republic, the most potent cleavage was ethnicity. It was used more in the South ¹⁹⁹ and less by the major politicians in the North who rather employed the ideology of regionalism under the slogan of "Northernization". The latter served both the ideological needs of the emirates as well as the objective desire of Northern politicians to catch up with the south in development.²⁰⁰

The creation of states since the military putach of 1966, from 12 in 1967 to the present 21 seems to have undermined ethnicity as a credible ideology by structurally releasing the minority groups from the real or perceived domination by bigger nationality groups

196. Awolowo, O. (1968) *The People's Republic* (Ibadan, Oxford Univ. Press) p. 273. Awolowo opined that "Education, modernisation... will in time kill this (feudalism) evil. But we would considerably hasten its demise".

197. Whitaker, op. cit. 312-324.

198. Diamond, *Class, Ethnicity..* op. cit.

199. Awolowo, op. cit. Cap. 10; Sandbrook, M. (1974) *Proletariats and African Capitalism: The case of Kenya* (Cambridge) p. 11.

200. Paden, op. cit. 314-343.

especially of the North. There are attempts to replace it with religion as will be considered below. But the point to note is that, the fact of military intervention to resolve intra-class struggles has brought in its train a shift in the pattern of class structure.

1. J CLASS STRUCTURE, 1966 - 1989.

From 1966, the class situation has been described as "a triangular elite alliance"²⁰¹ of the military, civil service and various business groupings, with the military as the dominant partner. Since then, it was the latter who determined and enforced the economic, political and constitutional agenda and also receiving a salary eight times the national average.²⁰² In addition to elevating itself as the *primus inter pares* in the class order, because of its desire for the efficacy of political, economic and technical institutions, the role of bureaucracy was enhanced.²⁰³ Especially since General Gowon's post war policy of reconstructing and reconciling the nation, the hitherto marginalized managerial and professional stratum, became elevated.

Correspondingly, the relative position of the political class formally took a deep dive until between 1979 and 1983 during the brief period of civil rule. It took an even deeper dive following the 1983 coup²⁰⁴ and

201. Turner, F. (1978) "Commercial Capitalism and the 1975 Coup" in Panter-Brick, E. ed. *Soldiers and Oil: the Political Transformation of Nigeria*. (Frank Cass, London) p. 165

202. Graf, The Nigerian State... op. cit. 94.

203. Biessens, H. & Pitso, M. "Soldiers, Politicians and Civil Servants" in Panter-Brick op. cit. 27

204. The coup was part of the intra-class tussle as it was hatched by a combination of the military, industrialists and politicians- Othman, S. (1984) "Class, Crises and

particularly after 1985 when the older generation of politicians have either been banned or disqualified from participating in any way, in Nigeria's future political affairs as will be discussed below. Finally, the ascendancy of the military has also had a major impact on the traditional power structure. The latter has been thought of as impeding the growth of a national economy and political system, requiring the generation of awareness away from primordial family and clan ties, etc.²⁰⁵

Consequently, a major reform was launched in 1976. But it was headed by a title holder, now the Sultan of Sokoto, the most revered traditional ruler in Nigeria. More over, most of the inputs were provided by the traditional rulers who were not expected to commit class suicide.²⁰⁶ However, the reform partly and formally removed them from the formal structures of power by first replacing the Native Authorities with a system of local government constituted through direct elections. Eventually, the various Houses of Chiefs in the regions were abolished.

But the tenacity and duality in the evolution of this power group must be noted. Markovitz ²⁰⁷ urges us to

the Coup: the Demise of Shagari's Regime" in 82 African Affairs 323:441-461. This view seems to be supported by the letter written on behalf of the Committee of Concerned Citizens by Dr. Datti Amodu, "Our Pact with Awo" in Usman, Y.B. (1978); The Manipulation of Religion in Nigeria, 1977-87 (Vanguard, Kaduna.) pp. 134-139.

205. Graf, The Nigerian State...; Panter-Brick, "Introduction" in Panter-Brick, ed. op.cit. pp. 253-254; Gboyega, A.B. & Oyediran, O. "A View from Ibadan" in ibid. 257-269; Aliyu, A.Y. "As Seen in Kaduna" in ibid. pp. 270-287.

206. Ibid.

207. Markovitz, I.L. (1977) Power and Class... op.cit. p. 158

"distinguish the evolution of chiefs along two lines: as a pressure group-one among many others, such as the civil servants- and as ongoing elements of the ruling class- that is, not as one among many equally powerful competing interest groups but as the political ...arbitrators of society. As members of the latter dominant stratum, the chiefs might not exist as chiefs, for ruling might very well necessitate radical changes of appearance and expertise. What matters are not so much the formal instruments of power, but the relative position of dominance vis-a-vis other social strata".

This relative dominance is maintained through the use of some continuing resources, such as: (a) providing linkages between public authorities and the population effectively administered through district and village heads. (b) assistance in tax collection. (c) involvement in land allocation and administration especially in rural areas. (d) as patrons, conferring titles on individuals in public or private sectors.²⁰⁸ For instance, in 1978, 6 of 15 commissioners in Kano State were title holders showing the continued hold of the traditional institution over the social order and the coincidence of their interests.

The strength of their position is evidenced by the fact that the stability or otherwise of a regime in Nigeria seems to depend on the extent to which it coopts or marginalizes the interests of the traditional establishment. A regime that does the former has better chances for stability. For instance, an attempted coup in April 1990 cited as one of the reasons for the coup, the

208. Hawhood, p. (1981) "The place of Traditional Political Authority in African Pluralism" in 31 Civilisations 1:209.

non-appointment to the Sultanate of the son of the last Sultan.²⁰⁹

The preceding discussion has shown the relative shift in the nature of the class system at the political and constitutional levels. It must now be complemented by a brief account of the corresponding development at the economic level to obtain a complete picture.

1.K.CLASS FORMATION AND CONSOLIDATION AT THE ECONOMIC LEVEL.

Between 1951 and 1966, the indigenous dominant class were noted as lacking internally generated wealth.²¹⁰ The merchants could not make substantial economic foothold because colonialism mainly promoted foreign merchants. However, the greater participation of the local elites in government, introduced by the 1951 constitution, marked the beginning of the growth of indigenous capital. For this purpose, the ideology and instruments used were indigenization, nationalization and now privatization.

Specifically, within the period, indigenes were preferentially assisted through award of contracts, tax reliefs and technical advice of varying kinds as well as various forms of collaboration with foreign firms.²¹¹ The main beneficiaries at this stage were the local private sector and the politicians. The source of funds for these schemes was the marketing boards established during the

209. *Financial Times*, Monday April 23, 1990 p.3

210. Graf, *The Nigerian State*, op. cit. pp.17-22.

211. Osoba, S. "The Nigerian Power Elite..." in Guthrie and Waterman, op.cit. 368-382

war to stabilize trade but regionalized in 1954.²¹² The funds enabled the various governments to establish banks, finance and insurance companies, property, etc. But through these and other development agencies, loans were secured and purchases made in private companies which led to the situation where the affairs of these institutions were bound up with the party and leading politicians in power.²¹³

After 1968, funded by an increased revenue from oil, the government became heavily involved in the economy and industrialization to minimize the domination of the economy by foreign firms. Before that, a policy shift in favour of the indigenous class was heralded by the establishment of the Expatriate Quota Allocation Board.²¹⁴ It sought to indigenize the management of foreign owned or controlled enterprises. This was followed by the Companies Act 1968 which required the local incorporation of all foreign companies in business in Nigeria.

However the most profound policy shift and implementation was introduced through the Indigenization Decrees of 1972 and 1977 in pursuance of the policy announced earlier

212. Nixon, R.W. (1970) "The Role of the Marketing Boards in the Political Evolution of Nigeria" in Micher, C.W. and Liedtke, C. eds. *Growth and Development of the Nigerian Economy* (Michigan State Univ.) pp.156-162; Helleiner, G.S. "The Fiscal Role of the Marketing Boards in Nigerian Economic Development" in *ibid.* pp.119-153.

213. *Ibid.*; Report of the Tribunal appointed to inquire into allegations reflecting on the Official Conduct of the Premier of, and certain persons holding ministerial and other public offices in the Eastern Region of Nigeria, London, H.M.S.O. 1957, Cmd 51; Diamond, L. "The Social Foundations of Democracy: The case of Nigeria", Ph.D dissertation, Stanford Univ., 1980, pp.356-382.

214. Helleiner, G. (1973) "The Indigenization of Industry" 7 *Quarterly Journal of Administration* pp.205-215

on.²¹⁵ In the latter the government had declared its plan to acquire strategic industries, participate in and involve Nigerians in industrial development. The indigenization decrees required foreigners to relinquish shares wholly or partly in specified enterprises.²¹⁶ To provide funding for the scheme, several financial institutions were established or strengthened. To complement this scheme the various governments but especially the federal, expanded the public sector. However, our interest in these developments, lies in the beneficiaries of the schemes.

Tom Forrest has shown that except the New Nigeria Development Company (NNDC), most of the parastatals and projects have not balanced their capital base let alone made profits.²¹⁷ The various commissions of inquiry which investigated the assets of quite a number of them corroborate this fact.²¹⁸ What emerged as a general pattern has been the conversion of board membership and distributorship of the institutions as sinecures and sources of patronage. This has been dispensed by those in control of or connected to the state machinery. That is, they have been means for the private accumulation of

215. Federal Republic of Nigeria, Second National development Plan, 1970-1974. (Lagos, 1970) p. 289.

216. Collins, P. (1977) "Public Policy and the Development of Indigenous Capitalism: The Nigerian Experience" in *IV Journal of Commonwealth and Comparative Politics*, 2:127-150.

217. Forrest, "State Capital, Capitalist..." in Lubeck, op.cit.

218. *ibid.*

wealth through contracts, commissions, consultancy and corruption.²¹⁹

With regards to indigenization, its beneficiaries are known to be 11. In public companies, shares were bought by serving and ex-officials through savings but mainly loans secured for that purpose. Some of the loans were got through dubious methods.²²⁰ For instance, a Federal Commissioner was assisted by a company to acquire loans in a commercial bank with which he bought shares in the company. Numerous such cases are mentioned by Mohammed Ismaila and collusion of state officials with foreign firms by Biersteker.²²¹

2. The beneficiaries in Kano State, represent a second category.²²² There, some leading businessmen bought entire private enterprises. For instance, Alhaji S. Dantata—a beneficiary of middlemanship during colonial period, Alhaji I. Wada, etc. Others were state commissioners, members of the traditional ruling families, bureaucrats and those well connected in public or private sector employment. 3. Lagos presents a third group.²²³ The buyers were the foreign companies' major indigenous distributors or competitors. For instance, well known industrialists

219. *Ibid.*

220. Mohammed Ismaila, *The Nigerian Enterprise Decrees (1972 and 1977) and Indigenization in Nigeria*, Ph.D. Thesis submitted to the Univ. of Warwick, 1985, p. 188.

221. *Ibid.* 184-188; Biersteker, T. J. (1981) "Indigenization in Nigeria: Renationalisation or Denationalisation" Sartorius, I. W. (ed.) in *The Political Economy of Nigeria* (Praeger, N.Y.) 185-206.

222. Collins, "Public Policies..." *op.cit.*

223. *Ibid.*

such as the Odutola Group, Chief Fajemirokun, etc. Some well connected ex-politicians and others in public and private sector also benefited.

Mention must be made of the lot of lower level workers. The 1977 Decree sought to remedy the "omission" in the earlier decree. Pursuant to the requirements of egalitarianism, 10% of the shares in a company were to be set aside for its workers, of which at least 50% must go to non-managerial staff.²²⁴ But its implementation was "at best patchy and more usually either slight or non-existent".²²⁵ However, their unawareness and non involvement in the exercise mediated any possibility of strike.

The preceding survey shows that the main beneficiaries were state officials, serving retired or dismissed; traditional rulers, military men, mostly retired or those connected to them and the foreign partners whose position became more entrenched. However, in spite of incentives to boost indigenous capital, the latter is still unproductive, corrupt, parochial and dependent on state for resources.²²⁶ Moreover, there is contradiction between

224. E.II(1)(d) of The 1977 Decree.

225. Ismaila, op.cit.p.241.

226. Marani, O. (1988) "The Nigerian State as Process and Manager" in 20 Comparative Politics 2:215-232 ; Patton, M. Jr. (1988) "Bringing the Ruling Class Back" in 20 Comparative Politics 3:253-264 ; Mar.V. (1981) "On the Origins of Corruption: Irregular Incentives in Nigeria" in 19 Journal of Modern African Studies 1:173-183.

the existence of a Nigerian bourgeoisie and absence of a "clear development of class based politics".²²⁷

This apparent contradiction has been explained in terms of the existence of "drone capitalists" who are able to satisfy their consumerist appetites from oil wealth. These factors prevent them from shifting to productive activities.²²⁸ It is within this context that President Babangida's economic policies must be understood as a class action and consolidation. Its major planks are the privatization and liberalization of the economy.

According to one school of thought ²²⁹, if the state relinquishes control of the economy, it would obviate the existence of a parasitic bourgeois class and facilitate its development outside the state arena. This in turn, will make unnecessary the "over politicisation of social life" and minimize the current high premium on political power.²³⁰ By contrast, another view urges the involvement of the masses as the means of controlling corrupt, fractious bourgeoisie.²³¹

227. Joseph, B.A.(1983) "Class, State and Prerogative Politics in Nigeria" in XXI Journal of Commonwealth and Comparative Politics, 21-38 at 31.

228. *ibid* p.26

229. Diamond (1988) "Nigeria" ..op.cit.; Almond, "the Development of..." in Weiner and Huntington, op.cit.

230. Ake, Political Economy of Nigeria, op.cit.

231. Usman and Osoba, Minority Constitution, op.cit.; Graf, W.(1988) "Issues and Substance in the Prescription of Liberal-Democratic Forms for Nigeria's Third Republic" in 18 African Affairs, 250.; Oel, O. and Onimode, B. eds(1975) Economic Development: The Socialist Alternative. (The Nigerian Academy of Arts, Science and Technology).

It is to be noted as will be seen in succeeding discussions that the nature and direction of the economy has hardly been a subject canvassed in constitution making in Nigeria. Following this tradition, President Babangida introduced economic programmes liberalising the economy. These involve the privatization and commercialization of specified public enterprises ²³². Earlier curbs on foreign investment have also been eased since 1989.²³³ Finally, it is evident that the members of the dominant class fall into five broad categories with varying levels of strength among themselves. They are the political class, top bureaucrats, military officers, traditional rulers, members of the professions and the management class in the private sector.

1.1. Fusion of Elites.

The discussion has focussed on the internal contradictions of the ruling class. But that does not necessarily imply they have kept apart. On the contrary, there has been a "fusion of elites"²³⁴ in the most crucial political, economic and ideology generating institutions and structures. They interact and identify their interests through diverse socializing processes. At the political level, Sklar has shown that the executives of the three major parties in the first republic and occupations of the parliamentarians were an amalgam of professionals,

²³². Decree No. 25-Privatization and Commercialization Decree 1988.

²³³. Financial Times, Jan. 17th, 1989.

²³⁴. Sklar, "Nature of Class..." op.cit. p. 537.

educators and business men,²³⁵ while the traditional rulers mediated and transferred its colonial role to the new partners at the unofficial dimension.²³⁶ A not dissimilar pattern continued in the second republic.²³⁷

At the economic level, the fora for socialization and lobby are manifold. A number of organizations exist representing the interests of businessmen and professionals such as law, medicine, senior bureaucrats, accountancy, etc with opportunity for multiple membership as obtains in and connects them to capitalist systems. Examples are; the Manufacturers Association of Nigeria which was a major force behind the indigenization exercises.²³⁸ Others are, the Nigeria Chamber of Commerce; the Nigeria-America Chamber of Commerce; the West African Chamber of Commerce, etc.

The boardroom of multinationals provide a major forum for the aspiration and interaction of the most influential of them as Appendix A(1-3) illustrates. Appendix A, Table 1 shows former key top government officials taking up directorships/chairmanships in major MNCs after retiring or leaving the bureaucracies. Similarly, Appendix A, Table 2 illustrates the involvement of the nation's major traditional rulers with the MNCs largely as expected due

235. Oklar, *Nigerian Political Parties*, op.cit. 482-486.

236. *ibid.*, cap.X ; Paden, op. cit. pp.178-218

237. Diamond, L. (1983) "Social Change and Political Conflict in Nigeria's Second Republic" in Sartman, I.W. ed. *The Political Economy of Nigeria* (Praeger N.Y.) pp.25-84.

238. Mohammed Jamalla , op.cit.319-320

to the influence they could wield in securing the business in terms of patronage and security. On the other hand, Appendix A Table 3 is an illustration of how the various dominant groups including retired senior military officers converge in the boardroom of MNCs. The directorships are also constituted such as to reflect the diversity of the state or ethnic origins of the contending elites to complement the requirement of federal character in the formal sector as we will see below.

At the ideology generating level, two institutions serve the purpose: the Institute of Management, Badagry, Lagos and especially the Nigerian Institute of Policy and Strategic Studies, Kuru-Jos. President Babangida acknowledged this fact when he rightly noted that the "National Institute has served this country in the unique capacity of being at once ,the intellectual incubator, think tank and health farm. Annually, a group of senior mid-career military and police officers and chief executives in both the public and private sectors come here, live together for almost one year learning together, analysing issues and policies, comparing notes and starting life long friendships". The role of government is to "create the conditions which will permit the development of a truly national elite". And "if its alumni are to succeed in carrying the whole nation with them, they must be able to embrace others who share with them common vision and ideas but who are not privileged

to have attended the institute". Furthermore "in addition to widening the conceptual horizon of the elite, it should assist him to cultivate an international outlook, bearing in mind the fact that the fortunes of our country and those of the wider world have become intertwined".²³⁹

It is therefore quite clear that the Nigerian dominant class are quite conscious of their class position and because of their utility to each other, are determined to remove the contradictions which undermined their political unity. In conclusion, in the analysis of class politics in constitution making in Nigeria, Beard's category of "fluid capital" in the U.S.A. is similar to the upper crust of federal and state public services and the armed forces. Their economic background lies less in share acquisitions (although an important factor as well) than in directorships and the sale of consultancy services.²⁴⁰ This means, these groups may continue to dominate the process, maintain colonially created structures with cosmetic reforms to further reconcile their historically competing interests and evolve a system of accountability which allows only one segment of the dominant groups to oversee the acts of another without linkage to the wider public.

²³⁹ Speech by President Babangida at NIPSS, op.cit.

²⁴⁰ Nimmer, D. Economic Implications of the New Constitution. Conference on the New Nigerian Constitution 3rd June 1989 p.5

CHAPTER TWO.

2. BACKGROUND TO CONSTITUTION MAKING, 1862-1967.

The preceding chapter sought to introduce the criteria for determining as well as identifying the dominant interest groups which existed in Nigeria during colonial rule and at the various phases of constitutional and economic development in the post independence era.

This chapter seeks to highlight the background thinking insofar as it existed and is accessible, to the various constitutions or constitutional attempts within the period 1862-1967. The idea is to provide a link between two separate schools of writings covering the period using official data to which most of them lacked access. The first of the two main strands adopts a historical perspective to discuss the wider question of whether and when Britain had an official policy with regards to decolonization.¹ The second thrust is represented by those who follow the common law tradition of concentrating on the juridical aspect of constitutional and political developments with little regard to the underlying influences.² Similarly, there is a general assumption and assertions by the latter group of writers that the 1951 Constitution was the product of widespread consultation

1. The discussions in this area are vast and bewildering. But the colonial office thoughts are opened up in: Pearce, B.D. (1982) *The Turning Point in Africa, British Colonial Policy 1938-1948*. (Frank Cass, London); Mordman, B.C. (1974) *Prelude to Decolonisation in West Africa: the Development of British Colonial Policy, 1938-1947*. Unpublished Ph.D. thesis, Oxford.; Morris-Jones, W.M. & Fischer, G. eds (1980) *Decolonisation and After, the British and French Experience* (Frank Cass, London).

2. The main writings in this respect are: Odumso, O.I. (1963) *The Nigerian Constitution, History and Development* (Sweet & Maxwell, London); Ezra, E. (1960) *Constitutional Developments in Nigeria* (Cambridge Univ. Press, London); Elias, T.O. (1967) *The Development of Its Laws and Constitution*; Wabusewa, B.O. (1982) *A Constitutional History of Nigeria* (C. Hurst, London).

which began at the grassroots level, thus departing from its predecessors following the declarations of colonial officials to this effect. It is also assumed that the nationalists at the time provided important inputs in shaping the fundamental structures of that and subsequent constitutions leading to independence. In the following discussions, a more realist picture of what transpired would be shown using evidence from official records to which earlier writers had no access. The objective is to show that there was neither a real widespread consultation nor serious inputs from the nationalists on the basic structures of the constitutions from 1951, the period when the principle of consultation was adopted as a policy by the colonialists.

Another objective of this chapter yet again is to show that constitution making within the period covered was in fact mainly for the benefit of one or the other or a combination of the dominant interests, with the majority of Nigerians and the issues that concerned them remaining marginal. References to the people were mainly for legitimating purposes.

The rather large period can be divided into three phases. The first part, 1862-1946, covers the period of colonial consolidation with little or no regard to the possibility of self rule to the colonies. Constitutional developments were the single handed experiments of the governors in the field. The second phase, 1947-1960 involved rapid constitution making following the decision

to decolonise and which necessarily brought in the Colonial Office. The final phase represented the stage when the fragile colonial arrangements were sought to be internalized, albeit vainly.

2.A. THE GOVERNORS' CONSTITUTIONS, 1862-1946.

British administration in Nigeria was established in 1861 by virtue of occupation, a recognised principle of international law following a cession Treaty between Docemo, king of Lagos and his officials on the one hand and British officials on the other. The area covered by the treaty comprised the Port and Island of Lagos.³ Following it, a colonial government was set up under Letters Patent⁴ by virtue of the Foreign Jurisdiction Acts of 1843 and 1890. It appointed a governor, a small advisory Executive Council comprising the main British officials in the field and a legislative council with composition similar to the executive council.⁵

Subsequently, the Settlement of Lagos was converted to a Colony⁶ and as further series of treaties were concluded with the chiefs in the interior, a Colony and Protectorate of Southern Nigeria emerged in 1906.⁷

3. Before this date, it was ruled from Gold Coast by virtue of the Letters Patent of 24th January, 1850.

4. 13th January, 1862.

5. They were the colonial secretary, the senior military officer in charge and any other person whose advice the governor needed-the Royal Instructions to the Governor of 13th March, 1862.

6. Letters Patent, 13th January, 1886.

7. Letters Patent of 13th January, 1906.

Correspondingly, an earlier Royal Charter granted to the National African Company - limited to administer the Northern part of Nigeria was revoked and the British government took over its direct administration with effect from 1 January, 1900.⁸

The principal agencies for British administration were the Governors in Council in the Colonies and High Commissioners in the Protectorates. The theoretical differences in form lie in the legal instrument conferring on them a constitutional basis - an Order in Council for a Protectorate, Letters Patent and Royal Instructions to the Governor in the case of a Colony.⁹ An important implication of the difference is that a Governor in Council was expected to be restrained by the devices embodied in the essentials of the British constitution, for instance, the rule of law, separation of powers, etc. A protectorate, because it was a newer device did not have those warnings and safeguards against absolute rule.¹⁰

However, in the inter war years and generally in practice, the distinction was blurred as initiative and policy rested in the governor and the High Commissioner alike. There were several reasons for this. First, in this period the colonial office had no guiding principles for colonial administration similar to the Durham Report,

8. Northern Nigeria Order in Council, 1899.

9. Nicolson, I.F. (1969) *The Administration of Nigeria, 1900-1960. Men, Methods and Myths* (Clarendon Press, London).

10. Ibid, p.25

1839 by which self government could be devolved on white settlers whenever practicable.¹¹ African policy was the preserve of colonial governments with the secretary of state exercising supervision only. Secondly, having extended the principles of Trusteeship¹² to other African dependencies, the colonial officials became concerned only with administration rather than government and consistent with it strengthened indirect rule¹³. The latter was the British practice by which it ruled through the Native Authorities administered by the traditional rulers.

It was within this atmosphere of absence of articulated official policy that the colonial governors were left to their own devices especially in the inter war period. In keeping with this freedom of initiative, two important policy decisions adopted and concretized regarding the territory now comprising Nigeria formed the nuclei around which its constitutional development continued to spin. These were the adoption of indirect rule with its four pillar structure and the amalgamation of the two regions in 1914 as a country-all accomplished by Lord Lugard who became the Governor-General of the merged territories.¹⁴

11. Through it, the Cape Colony became self governing in 1872, Natal in 1893 and Southern Rhodesia in 1923. See Pearce, op. cit. p. 4

12. Art. 22 of the Covenant of the League of Nations justified the occupation of peoples unsettled by the world war II under the pretext and injunction that the well being of such peoples form a sacred trust of civilization.

13. Pearce, op. cit. p. 7.

14. Indirect rule as a general principle of administration was not invented by Lugard, but its application to Northern Nigeria was. Perham, (1960), LUGARD, the Years of Authority 1898-1945 (Collins, London) p. 142. The four pillars were 1. the Native

2.A.1 BACKGROUND TO THE AMALGAMATION OF NIGERIA.

Until 1 January, 1914,¹⁵ the two major segments of Nigeria were administered separately. However, the return of Lugard changed all that. His initial appointment as the High Commissioner of Northern Nigeria was not a merely fortuitous appointment, but rather a clear sighted placement of a specialist to perform a specific role. It was mainly the result of pressure exerted by the Lancashire Chambers of Commerce between 1890-1910 concerned with the need for emphasis for the development of trade, communications and health in West Africa¹⁶. It was not therefore surprising that upon his return to Nigeria these were the issues which pre-occupied him most.

In a memorandum to the secretary of state,¹⁷ Lugard outlined the reasons for his wish to merge the administrations of the two regions. But it is to be noted that the necessity of merger was not original to Lugard. Before him, Morel¹⁸ had made a case for it. It was however the former who had the power and the opportunity to accomplish it. First, according to Lugard, the policies of the two administrations were divergent. Whereas the North had a native policy implemented through the native chiefs and whose aim was

15. The merger date was agreed upon to allow for departmental restructuring and the consolidation of official instruments, etc- CO 583/5/32311 minute, Lugard to Harcourt of 16/9/1913.

16. Nicolson, op. cit. p. 27.

17. CO 583/5/16460, ENCL. I Lugard to the secretary of state.

18. Morel, E.D. (1911), Nigeria, Its Peoples and Its Problems (Smith, Elder & co, London) pp. 187-193.

primarily administrative, that of the South was commercial and directed essentially to the development of natural resources and trade. Consequently, there were no common laws or Gazettes. Again, the two administrations had no sympathy for one another. For instance, despite direct taxation, the North was starved of funds while the South, without such oppressive taxation had sufficient money to spend on development projects and those "not of paramount urgency". The North could not balance its budget and the British tax payer had to pay for even the barest necessities of administration.

The economic buoyancy of the South was secured through custom and excise duties on imports through the coast, and the exploitation of its natural resources. Finally, the administrations differed in their railway policies resulting in unnecessary, wasteful competition instead of complementing one another.

Having outlined the reasons for the merger, the constitutional and administrative structure he proposed were not significant departures from the previous arrangement. Thus, as an official noted, the great advantage of the scheme was that it was for administrative purposes which "involve little change from the pre-amalgamation arrangements and can modified or developed at any time as circumstances require".¹⁹

19. Minute by Marcourt to Lugard on 2/9/1913..

But the following changes may be noted. First, the existing legislative council with responsibility for the colony and protectorate of Southern Nigeria was confined to Lagos. The original aim was to reduce it to a municipality without doing it formally to avoid public protests ²⁰. A Nigerian Council was proposed to comprise officials and unofficials (those not directly employed in government most of whom were European businessmen in Nigeria and cooperative local notables in chieftaincy, the professions and business) from the colony and protectorate but without any executive, legislative or financial authority. It was a debating society which an official thought should be constituted by a separate instrument to avoid amendments to Orders in Council as he saw a bleak future for it. ²¹

Lugard had earlier on described as "insuperable" the obstacles to creating a legislative council with unofficial representation. These were: In regards to the Europeans, the more important heads of firms resided outside Lagos and in fact doubted if such mere paid agents/clerks could be considered true representatives of commercial interests in Liverpool. Further, due partly to poor transport system, they would suffer loss of time in having to attend meetings.

In relation to the native members, the difficulties were even greater. 1 The emirs could not speak English 2. They

20. CO583/3/144601 Comments by the chief secretary on 21/4/1913

21. CO 583/4/28328, minute by Risley, on 17/9/1913.

could not leave their emirates where they engaged in actual administration to attend meetings.³ The emirs were in acute divergence in religion and social status from the natives of the coast with whom they would mingle.⁴ He doubted the utility of the contributions of the educated natives in view of the Lagos experience where they spent time opposing each other's views in the council.⁵ Finally, "it is a cardinal principle of British colonial policy that the interests of a large native population shall not be subject to the will either of a small European merchant class or of a small minority of educated and Europeanized natives who have nothing in common with them and whose interests are often opposed to theirs".²² For these reasons, the emirs in the North were shielded, educated elements and representatives of commerce, both Europeans and local agents were alienated from the constitutional structure.

The scheme that emerged from Lugard's constitutional engineering was nebulous and regarded as partly temporary. ²³ However, the ambiguity notwithstanding, he evinced concern for unity, hence he recommended the terms "Northern and Southern Provinces (newly introduced in the South) to avoid confusion and hasten the demise of jealousy between the two regions as previous names tended to retain the previous identities".²⁴

22. CO 583/5/16460, ENCL.2, Report by the Governor on 15/5/1913.

23. CO 583/3/16460, comments by the C.B. of 21/6/1913.

24. CO 583/5/36162 of 1/10/1913-Minute, Lugard to Harcourt.

Immediately after the merger, the public debts of both administrations were fused to create a central charge together with their reserve funds and financial year. The railway and harbour projects were pursued with vigour. But on the whole the reform injured the feelings of the European commercial class and the few educated elements in the coast. It was left to the succeeding governor to assuage or inherit and retain such ill-feelings.

2.A.2 THE CLIFFORD CONSTITUTION, 1922.

After Lugard's retirement in 1919, Sir Hugh Clifford succeeded him as the governor. It is generally agreed that during most of the inter war, Britain's policy of indifference to the future constitutional development of the colonies continued and initiative for most of the time resided with the men in the field.

In spite of Sir Hugh Clifford's aristocratic background,²⁵ he was at odds with indirect rule whose motive he noted was the preservation of the traditional society and maintenance of the prestige of the British political officers.²⁶ He also saw the amalgamation as a matter of convenience for Lugard and economy for Britain, which explains the absence of a mechanism for co-ordinating institutions from the centre. At the same time, he held the educated Africans in low esteem, especially the

25. Galley, H.A. (1978) "Sir Hugh Clifford 1866-1941" in Gann, L.M. & Duignan, P. eds *African Proconsuls: European Governors in Africa* (The Free Press, London.) p.209.

26. Clifford in Cooley, J.S. (1980) "Sir Hugh Clifford as Governor of Nigeria: An Evaluation" 79 *African Affairs* pp.531-547 at 539.

concept of the few ruling the mass of the peoples of the interior without the sanction of traditional authority.²⁷

But he desired an institution through which African opinion and information might be sought. Hence, the Lagos Town Council was reorganized on an elective basis. Lugard's Nigerian Council was soon as predicted replaced with a Legislative Council which according to Sir Hugh, was to satisfy legitimate aspirations as well as fulfilling useful and practical purposes.²⁸ Furthermore, a limited franchise was introduced by which Lagos and Calabar were to elect three and one members to the Legislative Council, respectively. But the qualifications for both voters and contestants were so heavily circumscribed that only about three in forty or one in ten adult males could vote in Lagos and Calabar respectively.²⁹ The qualifications ranged from property or gross income of £100 to non conviction for specified offences which generally related to offences against the state ³⁰- a device for keeping in check political agitators who were in any case few at the time. But on the motive of the franchise, Clifford noted that although it offered "the most fundamental extension of responsibility to educated Nigerians before world war

27. Gailley op. cit.

28. Despatch, Clifford to S.S. on 7/2/1922.

29. Elias, F.O., (1967) *Nigeria, the Development of its Laws and Constitution* (Clarendon, Stevens.) p. 48.

30. Ibid. pp. 33-48.

II...It was not done for ideological reasons, but simply to improve the workings of Nigerian Government".³¹

For the same end, the European business community were brought into the constitutional fold through a system of nominations into the Council. In retrospect, he espoused the point in a frank talk to the business community in Lagos. He said: "I regard it as essential that the commercial and banking members of the Legislative Council should be consulted on all matters affecting economic and mercantile interests, and that as far as possible, they should be taken frankly and freely into the confidence of the government concerning all such questions and with regard to its policy and its management of the public finances of the dependency".³²

However, the limited constitutional reforms were crippled by three factors. The Colonial Office in London had serious reservations regarding the criticism of the highly functional indirect rule and would not allow its reform as yet. Second, there was no reason to suggest that the circumstances which led to indirect rule, that is shortage of staff and economy of colonialism had changed. Third, it is doubtful if Clifford actually desired a fundamental restructuring of the system. Rather his concern was to enhance efficiency for colonial ends, as he disclosed to the European business community. Moreover, there was no serious political agitation at

31. Clifford in Galley, op. cit. p. 285.

32. Sir H. Clifford, "Indirect Rule, Land Tenure and the Europeans' Function in West Africa: Frank talk to the Business men of Lagos" in West Africa 11 July, 1925.

this stage to force concessions. The few who complained for positions in the colonial hierarchy were in fact lacking in any serious political base hence Clifford had no qualms in dismissing them as a "self selected and self appointed congregation of African gentle men.." when they clamoured, inter alia, for greater representation in the Legislative Council.¹³ But the scheme he introduced ensured that henceforth, the relationship between nationalism and colonialism would be regulated by constitutional change.¹⁴

Between Clifford's and the next major constitutional experiment-Richards' of 1946, there was a long lull. Two successive governors-Sir Donald Cameron and Sir Bernard Bourdillon governed in the prelude to and during the crises and the dislocations of the second world war, consequently had little opportunity for constitution making. But their views on the great issues, that is, the position of the native authorities and the mode of making concessions to the increasingly vocal educated men, were constantly avowed.

In particular, the views expressed by Bourdillon provide the insights and thoughts behind the Richards' constitution of 1946, echoing the changing local and international climate, the development of colonial policy

13 Coleman, J.W. (1963) *Nigeria, Background to Nationalism* (Univ. of California press, Berkeley) p.191.

14 Pearce begins the period of such regulation from 1925- Pearce, R.D. (1981) "Governors, Nationalists and Constitutions in Nigeria, 1925-51" in *Journal of Imperial History*, pp.289-307.

in general and its translation into action via the constitution in Nigeria.

2.A.3 BACKGROUND TO THE RICHARDS' CONSTITUTION, 1946

Between the years 1938-1943, the idea to decolonise Africa had begun to take shape with increasing elaboration. It is however outside the scope of this work to inquire into the factors that led to the decision.¹⁵ But it set off a deliberate process of decolonization using the constitution as the main mechanism. At the same time, the manner in which the constitution was introduced stoked the already tense relationship existing between the educated Nigerians and imperialism.¹⁶ The significance of the procedure was underpinned by Governor Bourdillon's earlier promise that Nigerians would be consulted on any constitutional proposals put forward.¹⁷

Two central problems were identified as the fundamental obstacles that must be met in the constitutional evolution.¹⁸ First, was the geographic size and the demographic heterogeneity of the country which necessarily required a great deal of constitutional novelty. Second, and more acute was the need to avoid a

15 The factors are examined in: Pearce, op. cit.; Flint, J. (1982) "Planned Decolonisation and its Failure in British Africa" 82 *African Affairs*, 328-412; Cell, J.W. (1980) "On the Eve of Decolonisation: the Colonial Office's Plans for the transfer of Power in Africa, 1947" in *Journal of Imperial and Commonwealth History*, 3:234-257.

16. Flint views the relationship as one of "close harmony and cooperation"- Flint, J.W. (1981) "Governor versus Colonial Office: An Anatomy of the Richards Constitution for Nigeria, 1938-1946" *Historical Papers/Communications, Canadian Historical Association*, pp.125-143.

17 Sir Bernard Bourdillon was the governor of Nigeria between 1939-1945. CO 103/161/10560-Note of discussion with Bourdillon, 2/7/1943.

18 Bourdillon, (1939) *Memorandum on the Future Political Development of Nigeria*. (Gov. Printer, Lagos). CO 803/244/10493, pp 8-6.

bifurcation between the conservative and less educated (in western education) indirect rulers mainly of the North and the so-called detribalized, semi-Europeanized intelligentsia largely based in the South. The shape of constitutional reform henceforth, unlike before would depend on the judgements of the colonial service and the colonial office whose views were at times divergent, if not conflictual, on both the philosophy and method of reform. That is, whether reform was to be mainly through the Native Authorities (N.A.) or to jettison the latter and evolve positive partnership with and promote the educated elements. This set the tone and purpose of constitutional development of Nigeria including the post independence period as we shall see.

Sir Bernard Bourdillon was unequalled in his agitation for reforms that would coopt Africans in government. The overall idea was to anticipate nationalism, direct and control it through reforms such that any changes introduced would be viewed as an act of generosity rather than an inevitable surrender to pressure.³⁹ However his persistence and outright "beg to be allowed to prepare a draft despatch"⁴⁰ did not appeal to Oliver Stanley, the Secretary of State for the Colonies. Bourdillon's position was weakened by the fact that he was about to leave the office, and it was thought that such a despatch should come from the in-coming governor- Arthur Richards.

³⁹ Ibid. (1942) Further Memorandum on the Future Political Development of Nigeria (Lagos).

⁴⁰ CO 583/261/3083, Bourdillon to Stanley, 3/7/1942.

Bourdillon could however write a confidential memorandum embodying his ideas which he did.⁴¹

First, the underlying principle of constitutional development would be guided by "slow growth and gradual development" maintained through indirect rule, fortunately uncomplicated by the absence of alien population.⁴² Secondly, the mechanism would be a royal commission that would tour Nigeria and invite public opinion on the proposals as he promised. Specifically, Bourdillon's proposals were to meet four objectives. The Legislative Council was to be widened to provide a link with the N.A. and through it the educated elements and peasant producers. By this means the N.A. and elective principle would complement each other. Similarly, the North which hitherto was not represented in the central legislature, although the latter provided for its budget, would be brought into its fold. He sought to blur the distinction between official and unofficial members of the legislative council. Unofficial majority was resisted in the past because it negates the principle of good government, that is, power without responsibility. Moreover, the governor could frustrate such unofficial majority through the use of his reserve and discretionary powers to override them.

41. CO 583/261/20560 Stanley to Bourdillon, 10/7/1943.

42. Bourdillon, "Memorandum on the..." op. cit. p.2

To overcome this difficulty, there would be an unofficial majority at the centre but to be elected mainly through Regional Councils, itself constituted by the N.A.s who hold positions of responsibility. Again, since they would be directly affected by a large part of the decisions in which they partook, they were unlikely to form a permanent opposition. The base of the central council was also to be widened by the inclusion of representatives of special interest groups such as transport owners, produce traders, tin miners, etc together with the usual European members representing shipping and commerce.

At the regional level, a Regional Council was to be established which together with the central council would make the views of the mass of people in the provinces more readily available to the government. Its composition would be determined on the basis of a hierarchy of village, district, divisional and provincial councils, (in effect the N.A.s) consistent with Hailey's report of 1941.

Bourdillon's proposals were received in the colonial office with a mixture of scepticism and criticism. First, the procedure he sought, that is the use of royal commission provided no guarantee that the commission would recommend what the government desired.⁴³ In regard to its substance, the main criticism was that it provided little for the educated elements. It widened representation to include the N.A.s who did not ask for

⁴³ Flint, "Governor versus..." op. cit. p.131.

it but denied it to the educated people who did.⁴⁴ As Bourdillon's proposals did not wholly appeal to the colonial office, it became the lot of his successor, Sir Arthur Richards to introduce another bearing to the experiment.

Sir Arthur Richards was appointed governor of Nigeria when there was a flood of activities in the colonial office following the announcement of policy on Africa. After a frosty exchange with A.B.Cohen and Stanley in the colonial office regarding the directions and emphasis of reform, Richards was given the go ahead to prepare constitutional proposals. The latter, when produced, turned out to be modifications of Bourdillon's proposals cast through the lens of Lugard with whom he maintained constant touch to the dislike of the colonial office.⁴⁵

In Richards' scheme, the central council would be composed differently. Each Regional Council would nominate a prescribed number of members: the North, 8 shared equally between a new House of Chiefs and Assembly. The west, 3 ;the east, 4 and Lagos, 2. The governor would nominate a member for the Cameroons, 2 Chiefs for the West and 3 Europeans to produce an unofficial majority, including the Europeans. The hitherto circumscribed franchise for Lagos and Calabar was omitted. Regional Councils were to be constituted

⁴⁴ CO 583/261/30493. Note on Bourdillon's proposals.. by Parkinson, oct. 1943; *ibid.* Memorandum by A.B.Cohen, 14/10/1943.

⁴⁵ Flint, "governor versus..." *op. cit.* p.121.

through nomination by the N.A.s three years after but to be temporarily done by the governor. The North had a second chamber- the House of Chiefs with a final vote on budget and other Bills. In each region there was a tenuous unofficial majority, one above the official.

In view of the new thinking in the colonial office, it was no surprise that most officials received it with bewilderment and cynicism.⁴⁶ The various objections of the colonial office can be crystallized into three but the common theme was "presentation".⁴⁷ At the time of his proposals, it was an election year in Britain, hence, Stanley desired a scheme that would look progressive and acceptable to the British public. Specific areas of difficulty were as follows. First, it was important to concede a complete African unofficial majority, however marginal, in all the legislative houses. Second, at the least, the highly limited franchise must be retained if it was not improved upon. Finally was the problem of meeting Bourdillon's commitment regarding consultation which was not considered. Later, he thought it could be fulfilled through a special meeting with the Emirs in the North, more important chiefs in the West and for the East, to speak informally with the unofficial members in the Legislative Council.⁴⁸

46 Various minutes and memo by Cohen, Malley, etc in CO 582/286/30453.

47 Ibid.

48. Ibid, Notes of a meeting held on 2/11/1944.

On all the issues raised, modest concessions were extracted from him in London. Even so, his draft when presented needed "drastic re-arrangement" and modifications to redirect the philosophy of the reform from its reactionary to a progressive look.⁴⁹ It was also important to make it look even-handed. For instance a longish statement espousing democracy in Islam and by implication, the emirates which claim to be based on it, was replaced with one that one sought to promote the unity of Nigeria; provide adequately within that unity for the diverse elements which make up the country; and to secure greater participation by Africans in the discussion of their own affairs.⁵⁰ This work, refined substantially in the colonial office was published as command and sessional papers in Britain and Nigeria respectively.⁵¹

The reactions in Nigeria as expected was mixed. The objection from the South, especially the N.C.N.C.⁵² was sharp and opportunistic in contrast to the more measured but critical views of the former leaders of the N.Y.M.⁵³. On the whole, the grounds of criticism pivoted on the procedure and substance of the proposal. The former because Bourdillon's earlier promises had raised

49. Flint "Governor versus " op. cit.

50. These are widely used as the catch phrases of the Richards' Constitution.

51. Cmd. 6599, *Proposals for the Revision of the constitution of Nigeria, 1945*; Sessional Paper No. 4 of 1945.

52. The National Council of Nigeria and the Cameroons led by Dr. Nnamdi Azikiwe.

53. Nigeria Youth Movement, one of the pioneer parties in Nigeria.

expectations and the latter, despite the embellishments, was less favourable to the educated elements.

Apart from these the N.C.N.C. seized upon the occasion to denounce some ordinances proclaimed over a long period, most of which dealt with nationalization of land in Northern Nigeria and restrictions on acquisition of native lands in both regions whose primary objective was to secure for the state, its rents but with the indirect effect of minimizing unbridled plunder by the commercial firms.⁵⁴ On his part, Awolowo was content to point out that "it retains some of the objectionable features of the old, contains unsavoury characteristics of its own and falls short of expectations".⁵⁵ But the often noted complaint was one made by H. O. Davies one of the major politicians of the time where he criticised the provision which only allowed Nigerians the "discussion" and not "participation" in the running of the country's affairs.⁵⁶

The divergence in reactions were more notable in the North. As expected since reforms would strengthen their hands by giving them more formal powers, the Emirs hardly said anything. On the side of the progressive educated men of the North, Imam's article is instructive.⁵⁷ He raised the fundamental question of the mode of filling

54. Irving, Worthyth, W. (1914) *Titles to Land in Nigeria* (Stevens, London). Sir Percy Girouard, (1907) *Memoirs on Land Tenure and Land Revenue Assessment in Northern Nigeria*.

55. J.O. Awolowo, who latterly became the leader of one of the three major regionally based parties. Quoted in E. Eze, *op. cit.* p. 77.

56. Cited by all the authors in fn. 1

57. Abubakar Imam, "Nigerian Constitutional Proposals" in *African Affairs*, January, 1948. He subsequently became the leader of opposition in Northern House of Assembly in 1959.

the northern quota in the central legislature -whether they would simply be appointed by the Emirs or not. Second, he wished that real opportunities should be created for the educated men of the north. Third, he noted that the N.A. system was closed to the common man and minorities hence, advocated a system where their voice could be heard. Finally, that since imperialism had removed any previous safeguard (if one existed) against oppression and selfishness of the emirates, it became imperative to provide for it in the constitution. It was in fact this article and partly W.A.S.U.⁵⁸ that provided criticism and serious alternative suggestions on future constitutional developments, from the nationalists.

There was little to suggest that criticisms from Nigeria were considered in the final analysis, the claims of Creech-Jones to this effect notwithstanding.⁵⁹ Rather, subsequent changes were in fact concessions made to Creech-Jones, the Labour Party's main colonial critic and in view of the impending election. Consequently, the franchise requirements for Lagos and Calabar were reduced from £100 to £50. Official representation was reduced and representation of members of commerce was modified to provide nominations for interests "not otherwise represented".⁶⁰ This all party rapport ensured that a change of government in 1945 did not result in a further

⁵⁸ West African Students Union-their criticism and suggestions published in the West Africa Review, June, 1945, pp 101-108.

⁵⁹ Creech-Jones (Secretary of State for the Colonies under Labour party succeeding G.Stanley) in Mansard, 1945-46, vol.416, pp.159-167.

⁶⁰ CO 583/266/10453, Stanley to Creech-Jones, 22/4/1945.

review of the proposal. In the same vein, it had earlier on received a unanimous approval in the Legislative Council in Nigeria.

The 1946 constitution therefore departed from its predecessors mainly in the active involvement of the colonial office and the definite attempt to give it a progressive face. But in terms of the beneficiaries, the same thread runs through them all, the traditional rulers via their organ, the N. A.s. It may also be noted that the various constitutions so far have derived little influence from within Nigeria in determining their principles, shape and directions. We shall see whether and how far this trend will be maintained or discontinued in succeeding stages.

2.B. THE MACPHERSON CONSTITUTION, 1951: CHANGE OR CONTINUITY?

The imposition of the Richards constitution and its deficiencies sparked off intense political activities in Nigeria. The element of regionalism it introduced and the political activities especially in the South engendered anxiety in the North. Also, it led to greater feuds between the Ibo and Yoruba elites in the South leading eventually to the emergence of the Action Group to represent Yoruba interests.⁶¹ The political atmosphere in Nigeria henceforth became less congenial to the leisurely

⁶¹ CO 537/3556/307727. Nigeria: Political Summaries, 15/12/1948. Asikivu had to call in the S.S.s C.S. to intercede in the dispute between his group and the emergent Yoruba group-*Agbe Omo Oduduwa*. The trouble "extends only to the educated elements and the uneducated labourers. Whether Yoruba or Ibo, are little affected by it" noted the report.

evolutionary constitutional-progress the colonial office had hoped for.⁶²

Correspondingly, 1947 onwards represented a period when a new group of democratizers took over in the colonial office. They were built around the archetypical anti-Lugard Andrew Cohen and his Labour minister and friend, Arthur Creech-Jones, the duo bent on restructuring indirect rule.⁶³ By this date the colonial office had concretized its thoughts with specific reform proposals for self government.

The constitutional aspect of it was unfolded during an African Governors Conference in 1947.⁶⁴ The plan broadly envisaged an accretion of responsibility to unofficials in the executive, widening of the electoral system and a progressive transfer of power to Nigerians on a parliamentary model. However, the entire plan predicated on two important and one less important, reforms. The former were the Africanization of the civil service, and the democratization of the N.A. by its conversion into

62. Robinson, R. "Sir Andrew Cohen: Proconsul of African Nationalism, 1909-1968" in Dan & Duignan, op.cit. 358-362; Bowden, J. W. (1980) Development and Control in British Colonial Policy, with reference to Nigeria and the Gold Coast, 1925-1948. unpublished Ph.D. thesis, University of Birmingham.

63. A. Cohen was head of the African Division in the colonial office, 1946-51. - Robinson, R. "Sir Andrew Cohen: Proconsul of African Nationalism, 1909-1968" in Dan & Duignan op. cit. 353-362.

64. CO 847/36/47238/1 (47), A.G.C.2 on the conference papers.

local governments.⁴⁵ The latter was economic progress within the colony.⁴⁶

It was within this period of activity that Macpherson wrote to Cohen that he and his chief commissioners had completed discussions on inter alia, constitutional reform in Nigeria.⁴⁷ The overall objective was twofold. First, to give the Regional Houses increased autonomy, legislative and financial powers envisaged to strengthen rather weaken the unity of Nigeria. Second, to give unofficial members of the legislative council greater part in policy formulation and responsibility for departments. The relationship of N.A. to the legislature and the position of chiefs would be determined according to each region which would be given the opportunity to express their wishes and the course to follow.

He emphatically stated that it was not to be an official plan but rather to serve two purposes. To acquaint the officials with official thinking so that they can "give some unofficial guidance to the public debate at all levels, which we are anxious to encourage". Also to allay officials' fears that the colonial office was caving in to "talkative" politicians. Although the essence of the reform was to establish a measure of collaboration with

45. A.Creech-Jones, "The Place of African Local Administration in Colonial Policy" in 3-6 Journal of African Administration, 1 pp 3-6; Cail, "On the Eve of..." op. cit. p.23

46. This follows the embracing of trusteeship more seriously following the World Colonial Charter-see Cmd.466, Comments on World Colonial Charter; Cmd 4713. Colonial Development and Welfare Programme and the Acts of 1940, 1945.

47. CO 537/4625/30453. Memorandum, Macpherson to Cohen, 29/1/1949.

the educated elements, they were to have little say in determining both its agenda and procedure.

The running theme of the procedure for achieving these ends was guided formal public discussion at all levels. He suggested a Select Committee of the Legislature to make recommendations for constitutional change. It was to comprise key official members together with all unofficials.⁶⁸ Preliminary debates would be introduced first in the regional houses, followed by one in the legislative council to sound public opinion in the main urban areas. The process was to be repeated to make final recommendations. To ensure that government hand was not seen guiding the process, officials were to avoid making public statements but participate fully in informal discussions.

Cohen agreed in broad terms to the substance and procedure of the proposals.⁶⁹ But the first hurdle, an official noted was to get Azikiwe and the N.C.N.C. to agree to the scheme because the former had preferred a constituent assembly (C.A.) or a committee with representation based on linguistic groups, which he was sure the Legislative Council would refuse.⁷⁰ On this Cohen requested that the committee must not be a C.A., a position he noted was shared by the secretary of state. Also it was "important that the great bulk of the country

68. The officers were the Chief secretary, the Chief Commissioners, the Attorney-General, the Financial Secretary and Commissioner of the Colony.

69. *Ibid*, Cohen to Macpherson, on 10/2/1949.

70. *Ibid*, H.W. Foot to Cohen, 21/2/1949.

with its moderate ideas should not get the impression that anything like a constituent assembly is to be established".⁷¹ The idea was to ensure that the government got what it wanted.

The scheme, having been broadly approved in the colonial office, was announced in the Legislative Council and set off preliminary public discussions. But these, as expected seemed confined to Lagos, with little impression made elsewhere and even in Lagos, general public opinion was not formulated.⁷² But most parties and journalists criticized the proposed procedure, although agreeing to the idea of sounding out public opinion. Following this trend and to ensure that a firm grip was had over the process, Macpherson suggested the Select Committee not as a review group, but "to advise how the constitution should be reviewed". This was widely accepted and unanimously approved and established by a resolution of the House on 11th March, 1949.

Its terms of reference were to make procedural recommendations. Thus, the test of its success was not in providing answers to the substantive questions but "whether all sections of the population are given full opportunity to express their views on all the great issues involved".⁷³ He wished that public participation should pass through village and divisional meetings,

71. Ibid, Cohen to Macpherson.

72. Ibid, Letter, Macpherson to Creech- Jones, 24/3/1949

73. Ibid, Speech in the Legislative Council by the Hon. C.S to the Government, on 11/3/1949.

provincial and regional conferences as well as representatives of organizations. In spite of the concern with procedure at this stage he however set the principal questions although neither the Committee nor him were to propose answers to them. They of course turned out to be the main issues on which discussions centered, circulated around by way of questionnaire.

Meanwhile because of the central role envisaged for the members of all the Houses in the country in the impending discussions, their term was extended.⁷⁴

This ensured that the collaborative unofficials, called stooges by the nationalists, through whom the process would pass, retained their positions. The report of the Committee when presented was only a slight modification of the procedure advocated by the government.⁷⁵ It recommended hierarchical consultation and discussions at three levels- Provincial, Regional and Central Conferences and finally a General Conference.

These recommendations were approved in London and conveyed in a broadcast in Lagos⁷⁶ setting the stage for series of meetings and conferences dominated and guided by a combination of senior colonial officials, traditional rulers through the N.A.s and regional councils in the North and West. In the East and the cosmopolitan areas of Lagos and the Colony, where

74. Ibid, #22 Macpherson to Creech -Jones, 24/3/1949.

75. Ibid, Nigeria: Report of the Select Committee, 22/3/1949.

76. Ibid, #10 Cohen, Telegram on 31/3/1949; #17, Governor's broadcast of 6/4/1949.

traditional institutions were less influential, the role of officials and sympathetic unofficials was more crucial in marginalising Azikiwe and his supporters.

2.B.1. PROCEDURE OF THE CONFERENCES.

There is very little in the records in respect of who participated and the issues raised in the village and divisional meetings and provincial conferences. As one official noted, such meetings were not expected to deal with complicated constitutional issues, but only to serve two purposes.⁷⁷ First, before subsequent conferences, they would give an indication of how and by whom the provinces wish to be represented in their regional houses. Second, it was expected to have an educative effect on the public regarding those and other political matters.

In the North, it was certain that the procedure advocated by the Northern Nigerian Congress, for the common people to choose their representatives for the series of meetings and conferences, was not followed.⁷⁸

The first progress report noted a good start.⁷⁹ In all the regions, the C.C.s consulted with the residents and unofficials of the regional houses regarding detailed procedure in the province and regional conferences. It also reported that with slight regional variations, all

77. Report by the Officer Administering the Government of Nigeria, 1/6/1949.

78. Initially controlled by the moderate educated Northerners, later became the pro-umakate Northern Peoples Congress party Nigerian Citizen, 1/7/1949.

79. Progress Report from the Officer Administering to B.N. on 6/7/1949.

arrangements fell within the framework set by the Select Committee and agreed to fully by the unofficials .

In the North as expected, the proceedings of the regional conference constituted by regional council members was smoothly conducted.⁸⁰ Its recommendations were formulated in a positive form such that if it appeared that members were unanimous or near so drafts were made in a manner that was most likely to be acceptable to the general conference. Clear differing views, were to be framed to show that although without full agreement, it had a measure of support, sufficient to form basis for discussion in a plenary session. In regard to the officials their role was "almost entirely limited to assistance in supplying information, methods of procedure drafting, explanations, etc".

In the West, the conference, presided over by the Oni of Ife aroused little local interest and "at no time were there as many as twenty African spectators".⁸¹ Awolowo who partly participated in the first day took little further part in it being absent for most of the time and "his stock slumped very remarkably in consequence".⁸² More remarkably, he declined to serve on the small but extremely important committee that was to draft regional recommendations. The draft committee itself in formulating the proposals for Western Region, used a

80. Despatch No. 1490 of 4/7/1949 from the G.A.G. to S.S. on the same day. ENCL.V.

81. Ibid, ENCL.VI Oni of Ife is a major traditional ruler among the Yorubas.

82. Leader of the Action Group, the major Yoruba dominated party in the West.

summary sent by the Chief Commissioner which deliberately classified the subject in line with the sections of the Eastern Region recommendations to facilitate the work of the General Drafting Committee. But this fiddling did not prevent the report from noting that a few of the contributors against the advice of the majority made "extreme" recommendations which, if implemented, would result in immediate self-government. The reason, it noted, was the psychological impact of the earlier and "more reasonable" Eastern proposals, the West trying to prove that it is not the reactionary region people thought it was.

The report on the Eastern Conference exposed more starkly the intrigues practised.⁸³ First, there was only one administrative officer throughout the conference and the drafting committee, unlike the North. It was a tactical manoeuvre to work behind the scene by maintaining minimum visible presence. The reason was that it is the home of Azikiwe, the N.C.N.C. and his group of "vituperative" newspapers.

Having tactfully organised themselves, noted a participant, unofficials secured a majority on the committee and "used the open discussion on the first day to tear the Freedom Charter to shreds".⁸⁴ The latter was earlier on launched by Azikiwe.

⁸³ . Ibid. RMCT.VII, written by Stevens, D.O.

⁸⁴ . Ibid

The lack of credibility of the Charter and its unpracticability by seeking to organise states on linguistic basis helped in its easy destruction, having been rejected even in Azikiwe's Onitsha home town earlier on.⁸⁵ In consequence, the products of the conference were highly mellowed and moderate in relation to the noted extreme stance of Azikiwe and the N.C.N.C., so much as to make it worthy of emulation for the West, albeit by stealth.

In the Lagos Conference, a motley crowd of all shades of opinion were gathered. They included representatives of N.Y.M. and N.C.N.C., Lagos chiefs, branches of principal trade unions, and main tribal unions.⁸⁶ Subsequently, Azikiwe and some NCNC representatives withdrew following a decision by the full conference that decisions would be recorded by resolution taken on majority vote.⁸⁷

The Colony Conference was formed with little difficulty. But great anxiety and interest was generated by its composition because of cross-cutting feuds among political parties, Yorubas and non Yoruba unions the last considered as "foreigners" by the former, etc. But they were persuaded by the officials that such "attitude was unreasonable".⁸⁸ Representatives sought enlightenment on

85. Progress Report from O.A.G. to S.S., 6/7/1949.

86. 17/5/1949.

87. Telegram from Governor's deputy to the S.S. on 10/7/1949 in reply to questions in the House of Commons on procedure, withdrawals, etc. - Telegram from S.S. to O.A.G., 9/7/1949.

88. Progress Report from the Officer Administering the Government of Nigeria to Sec. of State, 17/5/1949.

some substantive issues. "It is doubtful whether more than a few understood the proposals but after some discussion, they received general approval".⁸⁹

At the joint conference, in the prevailing atmosphere of restraint, reason and common sense there was little to encourage extreme views and novel conceptions, noted an official.⁹⁰ The intrigues in nominating its representatives to the drafting committee and General Conference is instructive. According to an official, while one of the representatives was a local lawyer, the other "was not a fortunate choice. He is not a member of a N.A. and is believed to be a political opportunist with few firm convictions". The third nominee, "a literate and intelligent chief...owed his nomination to a political manoeuvre to ensure the support of Lagos chiefs" while a fourth, a trade unionist was "intelligent and clear thinking...politically independent [and] out of touch with the extremists of the rank and file of the trade unionists". The sixth nominee was "a retired senior officer...He is widely respected... The final nominee was one who succeeded in the intrigues of Lagos politics".⁹¹

Such graphic anatomy of the characters of the members were not made in all regions. But it is unnecessary for the North where the colonial officials had no fears from the traditional rulers who were in control of the process

89. *Ibid.* FW.73, MMCL.VIII, Report by Fowler, M. 13/8/1949.

90. *Ibid.*

91. *Ibid.*

in alliance with the former, partly so in the West and already, the picture in the East has been given.

2.B.2.THE DRAFTING COMMITTEE.

In criticising the intrigues of colonialism, it is easy to overlook any positive aspect of its work. Such positive effects may only be unintended consequences or that colonialism may have been the original source of the problem. In performing the task of overseeing the constitutional process, nowhere was the apparent neutrality of colonial officials essential than in the drafting committee. By its terms of reference,⁹² it was the melting point of all the preceding conferences. Representatives of all the regions converged in it with their diverse views and conflicting mandates. Its main and formal task was to prepare draft recommendations based on the regional conferences for the consideration of the General Conference. It was also to set the agenda for the Conference. But the real job was more than the presentation of a summary of differences which mainly they were. It was to attempt to present a single statement. In a note on the proceedings of the Committee, one of the officials lamented the difficulty of their task because of acute regional disparities.⁹³ That at the closing stages of its work, only official presence kept the Committee going because of implacable positions

92. CO 517/4625/30453, Report of the Drafting Committee on the Constitution (DCC, henceforth).

93. Ibid, Williams, A.A. Note on the Proceedings of the D.C.C., 18/12/1949.

maintained by the delegates. It was however able to produce proposals for the Conference.

In the interim period between the drafting and the general conference, the colonial office began to express views in confidence regarding some of the issues raised in the various conferences, possible outcome of the debates in the impending conference, the issues still in contention, those that may be withheld from the Conference, etc.⁹⁴ For instance, Cohen⁹⁵ excluded the extension of franchise to elect representatives to the central legislature. He preferred the continued use of electoral college with an improvement on the existing system. Similarly, Foot suggested to the members of the drafting committee that an Expert Panel on revenue allocation should not report to the General Conference as initially proposed.⁹⁶ Rather it was to be a parallel body only to inform the Conference of its proceedings and vice versa. It removed an expected acrimony if matters of revenue sharing were to be debated in the full glare of the Conference.

In a meeting of senior officials the colonial office noted its own limits and the possible directions it might effect changes.⁹⁷ But everything was to be done with

94. CO 537/4625/30453/49 containing various correspondences among senior state officials.

95. Ibid. Cohen to Macpherson, 20/12/1949.

96. Ibid. PM.86.

97. Ibid. Note of Two meetings held to discuss the Review of the Nigerian Constitution, 9/1/1950. Present were the S.B., the Minister of State; Sir T. Lloyd; Sir E. Roberts-Wray; A. B. Cohen; J. A. Peck; L. W. Gorsuch and R. J. Vile.

utmost caution. First, it was important for the Nigerian government to know the views of the secretary of state to avoid fundamental divergence between them. Second, the Nigerian government was to state its views in the Legislative Council but restricting itself to those where there is agreement with that of the Council. Controversy was to be avoided. Third, although it would be difficult for London to modify substantially the proposals which emerged from Nigeria, any such changes must not cause difficulty for the government in Nigeria. Fourth, it predicted opposition from the House of Lords because of too much focus on constitutional progress to the neglect of economic development. Finally, it was possible and even expected that the nominated members of the Legislative Council might be able to persuade the Conference to recommend a small number of nominated members in the new constitution to represent commercial interests. Against this background of official plans, the Conference begun in January, 1950.

2.B.3.THE GENERAL CONFERENCE.

This was expected to have 53 delegates comprising 28 unofficial members of the Legislative Council and 25 Regional delegates.⁹⁸ But three of the latter did not attend, the most conspicuous of them being Azikiwe, who was said to have left for the U.S.A.

⁹⁸. CO 527/5786/30453, PC.2, #9A A.A.Williams, Extract from Intelligence Report on Nigeria, 3/2/1950.

In a progress report to the colonial office, it was noted that only few important amendments were made to the draft.⁹⁹ "On the whole, we feel that in spite of the great anxieties still ahead, we have emerged so far with a set of recommendations more in line with what we wanted than even the most optimistic would have dared to hope a year ago".¹⁰⁰ Obviously one of such useful recommendations was one for commercial interests which was carried through with ease because of "the personal qualities of Mr. Rogers, who has for several years been a nominated member of the Legislative Council, than any balanced conviction on the merits of the issue itself".¹⁰¹ But if colonial officials were happy with the outcome there was little public enthusiasm in the conference. Curiously, an official could not help lamenting as "obviously a matter of acute disappointment to many delegates that more public interest was not shown".¹⁰²

At the end of it, two major issues remained intractable—the size of representation for the North in the central legislature and the status of Lagos. The suggested solution was to remove these and subsequent processes out of public debate.¹⁰³ Therefore, instead of presenting the recommendations to a plenary sitting of the Regional and Central Houses respectively as earlier agreed, it went to

99. *ibid*, F3 Telegram, Macpherson to S.S., 28/1/1950.

100. *ibid* F8, Foot to Cohen, Feb. 1950.

101. *ibid* PW.90

102. *ibid* .

103. *ibid* F41 Macpherson to Cohen on 26/5/1950.

their Select Committees. Those Committees comprising unofficials and presided over by an official were more manageable and sympathetic to official views. Moreover, it had the merit of making those matters and discussions less open to the public, allowed easy compromises and the pressure on members to make firm commitments would be removed.

Once it went around the Committees as planned, the secretary of state broadly approved the recommendations subject to the resolution of the outstanding issues and other matters of detail.¹⁰⁴ It thereby ended official "public" involvement in the process. Henceforth, it became the formal turn of the imperial government to provide the "details" and make other modifications but always in such a manner as not to be noticed in Nigeria to avoid difficulties for the government.¹⁰⁵ However, apart from rationalising the rather discordant proposals and attempting solutions to outstanding issues, the colonial government was confronted with what it called European commercial interests.

2.C. EUROPEAN COMMERCIAL INTERESTS.

In the preceding process, through the consummate cultivation of collaborative moderate and conservative forces, the European commercial interests were advanced and protected in an oblique and long term manner. The only exception was the recommendation for special members

¹⁰⁴ is a Despatch No. 464A of 18/7/1950.

¹⁰⁵ CO 537/71678/30453/11. Various correspondences on this.

in the Legislature expected to be filled by commercial men. Again, although colonialism was necessarily for economic purposes, the relationship between government and commerce with regards to method was by no means healthy and predictable. Contact with commerce had been "frequent and friendly, but informal and irregular".¹⁰⁶

This kind of relationship based on mutual understanding is workable only with a sympathetic government, hence the quest for conservative forces. But individuals may also be fickle and therefore less reliable. There is more reliability and certainty in systems and relatively autonomous structures. It is for these reasons that European firms doing business in Nigeria at that time sought constitutional and other structural guarantees for their investments.

Soon after the Nigerian end of the constitutional process finished, the U.A.C.Ltd wrote seeking audience with the secretary of state so that "whatever changes might come about, conditions were not created which are likely to prejudice established enterprises and conduce to the withdrawal of existing capital or discourage the advent of new capital".¹⁰⁷ After a sympathetic hearing, the secretary of state assured that he was in general in favour of the closest coordination between commercial interests and Nigerian government. But the machinery to secure it was for the government of Nigeria to

¹⁰⁶. P41 Macpherson to Cohen on 26/5/1950.

¹⁰⁷. CO 537/5789/30453/11. Letter of 9/4/1950.

consider. However, if further consultations became necessary with him on constitutional points before "the decisive phase was reached", he might see them.¹⁰⁸ Through various correspondences, they sought three pronged constitutional and extraconstitutional safeguards. First, increased representation in the central legislature and representation in the regional houses. Second, a non discrimination clause in the constitution. Third, an economic Advisory Committee.

1. REPRESENTATION IN THE HOUSES.

On the request for increased representation in the Legislative Council the governor was at first reluctant fearing that it might be accused of bad faith in Nigeria if more was added at that stage. He noted that the initial success was in fact the sole effort of Rogers as only one firm replied when he consulted them on it.¹⁰⁹ However, the matter was taken up informally in the sessions of the respective Houses together with request for same in Regional Houses. This informal procedure, thought of as more effective, succeeded.¹¹⁰

The Europeans wanted the representation exclusive to them, but the governor had a better and more conciliatory idea. He secured a provision broad enough to include indigenous commercial interests, much to the chagrin of the Europeans. The provision empowered the governor to

108. FilGersuch to Mallor, 15/3/1951; 724, Note of meeting with representatives of the major firms-WAC Ltd.; British Bata Shoe Co.; J.Molt & Co.; Shell and Cadbury Ltd.

109. Ibid, Letter, Deputy Governor to S.S., 24/7/1950.

110. FilG, Telegram, Macpherson to S.S., 17/8/1950.

appoint special members to represent interests or communities not otherwise adequately represented.¹¹¹ However, the point of note is that all the special nominated members irrespective of race were expected to be representatives of commerce.¹¹²

2. NON-DISCRIMINATORY CLAUSE.

Here, the firms sought a constitutional protection that was short, simple and general in tenor prohibiting any future discrimination, mainly in trade, against non indigenes. They cited as precedents the Ceylonese and Gold Coast constitutions.¹¹³ There was no shortage of will and energy in the colonial office and government in Nigeria in considering this request. The obstacles to it were however enormous bearing in mind the consistent concern to cultivate and build on the goodwill of selected Nigerians. Two factors were to be decisive in considering whether to risk it through or not.¹¹⁴ The first is difficulties to Nigerian government in having such a clause.² The second was the availability of adequate safeguards to the firms against discrimination.

To the first, difficulties could arise because there existed a large body of legislation based on racial discrimination most of which the government wished to maintain. Examples were, those protecting the rights of

111. Macpherson to Mellor (rep. of UAC), 16/8/1951; P24, Macpherson to F. B. Williams, 17/8/1951; S.70 of the Order in Council, 1951 No. 1172 of 1951.

112. CO 537/71678/10653/11. Discussions in the C.O. between April and August, 1951 and various correspondences with the government in Nigeria within this date.

113. S.50(2) (3) of the Gold Coast Constitution, 1951.

114. Ibid

natives from acquisitive foreigners in respect of land, taxation-where only the natives as defined were assessable etc.¹¹⁵ Secondly, it could be the subject matter of legal wrangling in the courts which was not the best medium to resolve such disputes as it would publicise the issues. Finally, the Ceylonese and Gold Coast provisions were inapplicable to Nigeria because the former was based on religious non discrimination which was not relevant to Nigeria then, while the latter was found to be ineffective in practice. On whether the existing safeguards were adequate, the answer was more open. Existing safeguards were the reserve and general discretionary powers of the governor, the use of Europeans on various advisory boards and the nominations into the legislature. But there was no guarantee that such structures would not be pulled down at the slightest opportunity.

Eventually, the colonial office settled for the suggestion by the governor to insert the clause in Royal Instructions to the Governor.¹¹⁶ It required that any legislation imposing racial discrimination on one community be reserved for His Majesty's pleasure. Thus, the colonial government was able to settle an issue of major interest to its constituents without the knowledge of its Nigerian collaborators and its critics, as it did in most contentious issues- through the back door.

115. Native Lands Acquisitive Ordinance (Cap.144); S.1, Direct Taxation Ordinance (Cap.54) and other statutes on immigration.

116. CO 537/7167B/30452/11/51, Cohen to Mellor, 20/6/1951.

3. AN ECONOMIC ADVISORY COMMITTEE.

When the idea for this committee was suggested, the imperial authorities in Nigeria and London showed little enthusiasm for it. The secretary of state declined to be drawn into it by noting that it was outside the constitutional review and that in any case it was a matter for the discretion of the governor.¹¹⁷ On his part, the governor being reluctant, shifted responsibility to the firms for the details and structure of the committee. This was in marked contrast to the great deal of energy and interest shown by the authorities in the previous scheme.

The firms wanted a committee established by ordinance rather than the constitution to ensure continuity and place it "outside politics".¹¹⁸ Its objective was comprehensive and wide ranging. It was to examine and provide a check on "over-optimism or lend support to well founded schemes. *It would provide a means of protecting the government and ministers from organised agitation on any particular problem and from that type of insidious personal and family pressure which is common in Africa and the East...*" (italics mine). In addition to being an avenue for Africans to acquire experience, it was to be one to press on "Africans possessing extreme views...that such affairs should be examined objectively..."¹¹⁹ Heads

117. CO 537/5788/30453/11, Foot to Cohen of 16/10/1950; P11, Gorsuch to Mellow of 15/9/1951.

118. Mellow to Ag. Governor, 13/12/1950 following a meeting of the Governor with the firms in London on 31/10/1950; P13, Mellow to Gorsuch, 9/4/1951.

119. Ibid, Mellow to Ag. Governor.

of departments would be required to consult the committee on specified matters and in particular circumstances, for instance, when new policies were to be introduced through legislation or administratively. In other cases, consultation would only be recommended. Membership would be multiracial and appointed by the governor through the normal administrative machinery, but were expected to be exclusively people with commercial experience.¹²⁰

Having had the details and arguments, the governor made short shrift of them in a language that did not conceal his distaste for the scheme.¹²¹ The governor classified his objections on constitutional, political and practical grounds. He envisaged a constitutional conflict between the functions of the committee and those of the Council of Ministers since a constitutional body can not be obliged to consult one established outside the constitution by ordinary statute. Similarly, it would be politically difficult to get such a legislation passed in Nigeria as the government would face the charge and risk of side tracking representative institution. Further, the African members of the committee would be viewed as stooges, thereby handicapping it ab initio. Finally, if the members were to be chosen solely on academic qualifications or experience, they all would come from Lagos and could result in political storm in the regions. The practical reasons were the absence of Africans with

¹²⁰ Ibid. He in fact suggested the names of Gbadamosi, A. Maja, Oba Adale II (king of Lagos), Obasehin and Ojukwu, the who's who in business in Lagos some of whom were in the legislative council.

¹²¹ CO 537/7167B/30453/11, Macpherson to S.S., 30/7/1951.

experience while the few Europeans with it carried the danger of conflict of interest in the advice they may offer. Having failed to see any redeeming features in it, in conclusion, he was "absolutely convinced that the proposal would be constitutionally wrong, politically unwise and practically impossible".¹²² Obviously, the source of the governor's lack of sympathy for the idea may lie in his view of the firms as Fagan incarnate, who were either naive or indifferent of the governments' delicate rope walking. Typical of British decolonization in contrast to the French and others, they did not want to be placed in a situation where forced hasty retreat was inevitable. Moreover, there were in fact adequate safeguards both in the short term, in the concessions already made and in the long term, through friendly contact and promotion of pliant conservative interests in the emirates and the intelligentsia.

The governor's position was accepted in the colonial office subject to moderation of the tone of the letter. It was considered "too forceful and likely to upset the firms considerably".¹²³ Finally, after mellowing its tone, senior officials in London successfully persuaded the U.A.C. officials to take a sympathetic view of the obstacles. The resolution of these issues paved the way

¹²² Ibid.

¹²³ Minute by R.M. Vile, 3/8/1951.

for the conclusion of the final draft of the constitution.¹²⁴

In conclusion, the governor sent a memorandum to the colonial office, accompanied by a draft of the constitutional proposals suggesting the need for the latter to make a formal official statement on the process. It was to explain to the public the necessity of any changes made along the lines suggested in the draft despatch to make the process appear as a piece of cloth wholly cut out by Nigerians with only the buttons fixed by the British. The despatches containing the constitutional proposals as agreed to by Lagos and London were made in retrospect with the governor's coming after that of the colonial office to prevent it being seen as another governor's sole work.¹²⁵ Finally, the copies of the constitution meant for Nigeria were printed in London but on Nigerian account in Lagos.

2.D.THE CONSTITUTIONAL PROCESS, 1954-1960.

In his biography, Awolowo declared, "until 1951...the question as to what type of constitution Nigeria should have was not at all an issue in the country's politics".¹²⁶ This view is also supported by Alhaji Ahmadu Bello when he noted that "by no stretch of imagination could it be said that there was any strong, still less

¹²⁴Notes of meeting between Cohen and Vile, 14/8/1951.

¹²⁵Despatch Mo. 147A of 15/4/1951 and Despatch Mo. 17A of 15/5/1951 in that official order.

¹²⁶Awolowo, O. Autobiography, (Cambridge Univ. Press, London) p. 160.

universal feeling in the "matter".¹²⁷ But that was the document where imperial government dictated both the agenda and procedure as we saw in preceding discussions.

When the Nigerian government was told to ignore the General Conference recommendation to review the constitution after five years,¹²⁸ little did the colonial office anticipate that the pace and tempo of events in Nigeria would soon force such a review.¹²⁹ Accounts of such events have received extensive coverage, hence, its details need not detain us here. In the main, they ranged from struggles for power and position by individuals,¹³⁰ inexperience in parliamentary practice, to the tenuous position of the central institutions created under the constitution to foster unity by gradual confidence building among the squabbling elites.¹³¹

Consequently, after barely two years turbulent operation of the 1951 constitution, the secretary of state announced in the House of Commons that the three regions could not work together effectively in a federation as closely knit as provided in the constitution.¹³² The object of the

127. Ahmadu Bello, *My Life* (Cambridge Univ. Press, London) p. 67.

128. Note in despatch from the S.S. to the governor-Nigeria Gazette Extraordinary, No. 35, Vol. 38 of 6/9/1951.

129. Oliver Lyttelton, Secretary of State-statement in Parliament, Hansard, Vol. 513, cols. 2263-2266.

130. The crisis in the East resulted from the struggle between Asikwe, the majority party leader who could not secure a seat in the central legislature and his deputy, who was the parliamentary leader in the Eastern House of Assembly-see E. Eze, *supra*, FN. 1, pp. 156-175.

131. The action which sought self government in 1954 by the Action Group party and its modification by the Northern Peoples Congress and resultant hatching and violence on northern members was indication of the unreadiness and suspicions of the regions for a strong central authority. It was also evidence of differentiated levels of political development.

132. *supra* FN. 118.

review was threefold. First, to secure greater regional autonomy. Second, to remove the intervention powers of the centre in matters that can be regional. Finally, to secure the common economic and defence requirements of the regions. To achieve these ends, the imperial government was to cooperate as closely as possible with the leaders of the people in all the regions. As a first step, the latter were to be invited to London to consider the desirability of redrawing the constitution. This time around, the government was to make a definite collaboration with all the immediate critical interests. No attempts were made to upstage any segment of the dominant groups by any ideological reference to popular consultation hence, the tactics in subsequent processes would be less underhand. Two reasons may be offered for this.

First, the constitution had established an obvious regional structure and fostered clear identifiable leaders and political parties in the regions. Second, the necessary foundation had been laid for the long term advancement and protection of European commercial interests. It would not risk upsetting what had been achieved by clearly being partisan at this stage. The best security was to cooperate with those known regional leaders to concretise and possibly advance on extant achievements. The important thing was to keep the initiative and control the process.

On the part of the nationalists, they were either late or unwilling to embark on novel concepts or both. It must be stressed that although the activities of those held out as nationalists may have contributed to the formal termination of colonial rule in Nigeria, their contributions to the constitutional processes and its institutions were almost negligible. At critical stages as we saw, those generally held out as major king-pin nationalists in the decolonization period were either upstaged by colonial officials or abstained at critical times, a strategy of doubtful value. Rather, they seemed content to go along with the British to advance and consolidate the 1946 and 1951 arrangements to make their regional political havens constitutionally safe. Consequently, the 1953 and 1954 conferences resulted in a full fledged, loose federation with strong regions based on British Parliamentary system.¹³³ The subsequent conferences of 1957 and 1958 largely dealt with matters arising, in particular, control of the police, structure of the public service, revenue allocation, administration of justice and structure of courts, etc.¹³⁴ Similarly, attempts to allay the fears of minorities by creating more states were thwarted because the emirates of the North resisted break up.¹³⁵

133. Report by the Conference on the Nigerian Constitution held in London, July/August, 1953-Cmd. 8934; Report by the Resumed Conference held in Lagos, January/February, 1954-Cmd. 9059. These conferences have been extensively discussed-see, Hura, *ibid*; Bliese, *The British Commonwealth*. op. cit.; Odumaseu, op. cit.

134. Report by the Nigeria Constitutional Conference, held in London, May/June, 1957-Cmd. 207.

135. Taylor, C. (1961) "The Independence Constitution of Federal Nigeria" in 60 *The South Atlantic Quarterly*, 1:1-18 at p. 5.

Thus in negotiating independence, a constitutional system with inputs based on the experiences of the indigenous institutions or elsewhere, e.g. the U.S.A., France, etc were neither canvassed nor in fact encouraged.¹³⁶ In the North, insofar as the emirates were the colonial successors, it was an ironical return to the pre-colonial stage without the tenuous system of control. It was partly so in the West until the educated men finally triumphed over traditional institutions through universal franchise. In order to catch up with rest of the country, in the East, where the Ibos make no kings, a House of Chiefs was created bringing it into line more with the situation in the West. Consequently, through the constitution, a combination of traditional rulers and educated men—but in an acute state of conflict and tension—succeeded colonial rule in 1960.

However, despite the apparently delicate negotiations and its risk aversion, the British were able to exact important economic "concessions" mostly one may say, by stealth. These may be classified as immediate and long term economic benefits.

2.E.ECONOMIC CONCESSIONS EXACTED IN THE NEGOTIATIONS.

a). Immediate Economic Benefits.

In view of impending independence, arrangements for pensions, additional benefits and allowances were made for the staff of the colonial service. Little regard was had to the usual requirements of age and period

136. MacIntosh, J.F. (1966) Nigerian Government and Politics, Cap.1

qualifications for those facilities.¹³⁷ The financial arrangements were anything but extravagant having regard to the fact that they were in Nigeria to serve colonialism primarily. Moreover, except those due for retirement, their services continued wherever they were posted to, presumably with further pension!

b). Short Term Commercial Protection.

The safeguards for protecting commerce in the short term were extended. But at the insistence of the delegates of the East and West, the provision for special members in the House of Assembly but not the House of Chiefs was dropped from their regional legislatures. It was retained in the North and at the centre.¹³⁸

But the gains made were vitiated by the accretion of the governor's reserve powers empowering him to delay specified bills for the consideration of the government in London. These included: 1 Bills inconsistent with Treaty obligations. 2. Bills which would affect prejudicially the rights of property of Her Majesty's subjects who were not resident in Nigeria or their trade, transport or communications.¹³⁹ 3 Bills that might prejudice stockholders in relation to loans raised on behalf of a region or involve a departure from the original contract in regard to the loan.¹⁴⁰ In other words

137. Statutory Instruments, 1960 No. 1693, The Nigeria (Retirement Benefits) Order in Council, 1960 consolidating all previous legislations based on the various conferences since 1953.

138. Clause 11, Cmd. 207.

139. *Ibid.*, clause 10 (d).

140. *Ibid.*, clause 11.

loans or contracts entered into on behalf of a region could not be reviewed by that region without imperial authority, however onerous the agreement might have been.

c). LONG TERM COMMERCIAL PROTECTION.

We have seen that through an assiduous control of the constitutional process, in alliance with the local dominant forces, imperial authority removed the sting in decolonization in Nigeria. Similarly, the people holding the so-called extreme views were not particularly helpful because the choice offered were hardly credible as we saw with Azikiwe's Freedom Charter. Again, at critical times, as we saw, Azikiwe and Awolowo literally abandoned the process even though Awolowo acknowledges 1951 as a critical constitutional year. It was therefore no surprise that imperial authority secured all it wanted. This was capped in 1960 by converting an omnibus private letter written by the British High Commissioner to Nigeria to the Prime Minister of Nigeria, into a national agreement between Nigeria and the U.K.¹⁴¹

The letter begun with a reminder of the status of Nigeria as a Commonwealth member which meant that Nigeria would take over all obligations and responsibilities, rights and benefits of any valid international instrument Britain entered into which affected Nigeria. They were estimated to be 340 by 1960.¹⁴² A number of inferences may

141. Federation on Nigeria, International Rights and Obligations: Exchange of Letters between the Government of the U.K. and the Government of the Federation of Nigeria. Cmd 1214 (Nov. 1960, London).

142. C. Taylor, op. cit. p.12.

be drawn regarding its procedure and substance. Under the 1960 constitution, international agreements must involve the parliament before they can be valid. Consequently, a representative institution was side tracked thereby depriving it of the opportunity to know and appraise such treaties. Moreover, since officials constantly claimed to be concerned with democratic procedure, it was in fact setting an opposite precedent. Again, the letter was written and opportunistically presented on 1st October, 1960, the day Nigeria became independent. It is normal that within that short period, the engagements and euphoria of the occasion would not enable the prime minister to conduct important state business, much less to acquaint himself with those volumes of treaties.

With regards to the substance, the most significant consequence was the constitutionalization of all the agreements with the British and European commercial firms protected during colonial rule by the governor's reserve and discretionary powers. Consequently, through an inelegant procedure, they became Nigerian agreements without the opportunity to examine their merits and utility to the country as was thought in a seminar, 1960.¹⁴³ It was within this setting that Nigeria became independent in 1960 to begin another era of uncertainty, crises and constitution making without the not impartial imperial umpireship.

143. Ibid. The seminar was held between 8-15th August 1960, funded by the Ford Foundation and organised jointly by the Supreme Court and the Nigerian Bar Association. It drew a top cream of the legal profession in the world, both from the bar and bench.

2.F.CONSTITUTIONAL ATTEMPTS, 1960-1967.

Nigeria became independent under a constitution that was a bundle of compromises over a period of time first among colonial officials and subsequently, between them and representatives of regionally based parties. Three years later, the Nigerian legislators ended the country's Dominion status and converted it into a republic within the Commonwealth.¹⁴⁴ In legal parlance, the source of their legitimacy was never in the people through a popularly elected constitutional convention or in ratification by the electorate or legislative bodies directly elected. Rather, legitimacy resided in two other sources: representatives of the federal and regional parties, the former, mainly elected through electoral colleges which were in fact the N.A.s. The second source was the formal and informal acts of the imperial authority guided mainly by its own economic calculations since 1900.

Consequently, except the officials and political leaders who participated in the drafting and negotiations, its provisions were little known to the generality of Nigerians. As one observer lamented, the constitutions were mainly concerned with powers and rights of those in government without a corresponding obligation to the common citizens in whose names everything was claimed to

144. Sessional Paper NO.3 of 1963. The jurisprudential issue of autochthony is considered in Ellas, *op. cit.* p.131; Ojo, A.(1987) Constitutional Law and Military Rule in Nigeria (Moye & Sons) p.10.

be done.¹⁴⁵ There were also little concern with and therefore no provisions to check abuse of power.

Two years after, the bundle of compromises were too tenuous and control of political power too important to secure the trust and allay the suspicions of the educated forces among themselves in the South. The same mistrust persisted between them and the emirates and their allies in the North.¹⁴⁶ As noted in chapter one, the very survival of some of the interest groups became tied to the state and a fortiori those in control of it, since colonial rule. In the absence of the distant and apparently conciliatory hands of imperial authorities, in 1966, a group of soldiers thought the better solution was to kill those they perceived as the chieftains of the feud. Most of the victims including army officers were from the North, less from the West and lesser still from the East where most of the perpetrators of the first coup came. Eventually, the tenuous constitutional democracy caved in to a military rule.¹⁴⁷ The latter itself is not exempt, but rather is an integral part of the feud within the dominant forces in the bid to control state power and the patronage, privilege and preferences that go with it.¹⁴⁸ Moreover, it lacks the mass following, the

145. Ayua, I.A. (1985) "Constitutional Developments in Nigeria since the Colonial Era" in Atanda, J.A. & Aliyu, T.A., *Proceedings of the National Conference on the Nigeria since Independence*. Vol. I (Karia, 1983.) p.415.

146. A factual and analytical account of these events are made in Odumusu, G.T. op cit ;Diamond, J. *Class, State and Democracy in Nigeria*, supra, Chap.1.

147. Legalized by Decree No. 1 of 1966, suspending the provisions that were inconsistent with military rule. The legal implications are discussed in Ojo, A. (1971) "The Search for a Grandeur in Nigeria: the Legal case" in *International and Comparative Law Quarterly*, 18:117-126.

148. Usman, T.B. (1966) "Nigeria-Shortcomings of Military Rule" in *26 African Communist*, pp.38-41, makes the relevant point that these soldiers lack the mass following, discipline and force of revolutionary ideology. Also, the point is made regarding

force and discipline of revolutionary ideology. But before it plunged Nigeria into a civil war, the military made two main attempts at constitutional reconciliation.

A). THE CONSTITUTIONAL REVIEW GROUP, 1966.

According to General Ironsi, (first military head of state) "rigid adherence to Regionalism was the bane of the last regime and one of the main factors which contributed to its downfall".¹⁴⁹ He promised that these and other issues would be examined by various study groups. Constitutional changes "will be undertaken with the consensus of various representatives of public opinion". In due course, a constituent assembly would examine the constitutional proposals followed by a referendum before the new constitution comes into force.

The Constitutional Review Group was duly set up with terms of reference which inter alia were the reverse of Stanley's object of review in 1952. It was, in particular, in addition to identifying the defects of the constitution, to "ascertain to what extent the powers of the former regional governments fostered regionalism and weakened central government".¹⁵⁰ Soon after, the General himself aborted the take off of the Group and true to the importance of speed in military action, made a constitutional overkill by abolishing the regions to

the decisiveness of the idiosyncratic personal rivalries of the coup makers and their opponents-Decalo, S. (1976) *Coups and Army Rule in Africa* (New Haven, Yale Univ. Press).

149. General Ironsi, (1971) "Press conference of 21 February, 1966" in Kirk-Greene, A. N. W. *Crisis and Conflict in Nigeria, A Documentary Source Book, 1966-1969* Vol. I (Oxf. London).

150. *ibid.* "Terms of Reference of the Constitutional Review Group" pp. 158-159.

unify the country.¹⁵¹ But the damage done and the ensuing uncertainties could not be cured by Ironsi's courting of traditional rulers, directly or through his governors.¹⁵² It eventually led to the loss of Ironsi and others' lives in another coup in July, 1966.

The succeeding regime continued with the effort for constitutional solution through an Ad Hoc Constitutional Conference it established.¹⁵³ The latter was the result of a meeting of regional governors' representatives earlier on where they tried "to consider some grievances between the leaders of the country". The meeting was itself sequel to consultations by the governors with chiefs and "leaders of thought" in all the regions.¹⁵⁴

B). THE AD HOC CONSTITUTIONAL CONFERENCE.

General Yakubu Gowon (second military head of state) after noting how politics had been "thoroughly debased and commercialized" stated the object of the Conference. The violent reaction in some parts of the North "following the tendencies to extreme unification..points to one and only one thing. That a country as big as Nigeria and comprising such diversity of tribes and cultures, can not be administered successfully under a unitarian form of government" unless through

151. *ibid.*, "The Regions are Abolished: Ironsi's Broadcast to the Nation banning polytypical parties and introducing Decree No. 34, of 24/5/1966".

152. *ibid* Major Hassan Katsina's address to the Emirs and Chiefs on 1/6/1966; 16/6/1966; Ironsi's address to the National Conference of Traditional Rulers, Ibadan, 28/7/1966, pp. 181-181.

153. *ibid.*, "The Moment of Truth" Gowon Opens the Constitutional Conference in Lagos, 12/8/1966, pp. 214-219.

154. *ibid.*, "Recommendations made by the Representatives of the Regional Military Governors' Meeting on 9/8/1966", pp. 209-209.

suppression.¹⁵⁵ It was also to consider the distribution of powers between regions and the centre, territorial divisions, mode of constituting legislatures or a "form of association with an entirely new name yet to be found in any political dictionary in the world but peculiar to Nigeria".

Its terms of reference seem to be a re-run of the object of review in 1952 without the reference to the new formula. This underlines the continuity of the problems constitution making had confronted since 1900. In addition to the long term consideration of a constitution, it was as well mandated to provide an interim arrangement for administering the country. After several sittings where representations were made on the basis of regions through delegates, the Conference submitted progress reports containing some interim agreements.¹⁵⁶ The latter were basically a re-ordering of the subjects on the legislative lists of the 1963 constitution.

However, the work of the Conference was aborted following the withdrawal of the members from the East upon the instruction of the governor. He gave as the reasons for his action, the renewed violence in Kano against the Ibos, demand for compensation for the Ibos and the non implementation of some agreements by the federal

¹⁵⁵. Ibid, Govon, "The Moment of..."

¹⁵⁶. Ibid, pp.233-250.

authorities.¹⁵⁷ Subsequent attempts to resolve the impasse in Aburi-Ghana resulted in further mutual recriminations and controversy regarding the nature of agreements reached, mostly in camera and the different versions of which is beyond the scope of this work.¹⁵⁸ Constitutional lawyers and politicians involved in searching for a formula to reconcile these forces would not have the opportunity again until after a civil war, 1967-1970 and another coup that overthrew General Gowon in 1975.

157. *Ibid.*, "Resolution of Eastern Consultative Assembly, 7 October, 1966" pp. 256-57.

158. Some of the versions are contained in documents in Kirk-Greene, *Ibid.*, pp. 112-172.

CHAPTER THREE

3. INTRODUCTION: THE THIRD PHASE OF CONSTITUTIONAL ENGINEERING, 1975-1989.

In truth, Nigeria went through three phases of constitutional development. The first two covered in the preceding chapter, involved the period 1900-1946 when the governor was mainly the constitution maker. On the other hand, the constitutions made or attempted between 1947-1960 reflected a progressive implementation of colonial policy through the constitution, with limited aid from the indigenous elites. It resulted in a bundle of compromises at two levels. First, among colonial officials themselves, between them and the indigenous elites. Second, among the regional chieftains of the latter to whom formal structures of power were handed over in a calm atmosphere in 1960. In this way, colonial structures were passed on to the country unquestioningly including the international commitments made to benefit the metropolitan power. The constitution sought to rationalise the contradictions among the local elites all in vain as it crashed under its weight.

Thus, 1960-1974 was a period of crises and waste during which the colonial heritage was sought to be internalized with limited success in so far as the basic social, economic and political structures established by colonialism remain undisturbed. This historical context relating to the impact of previous constitutions is necessary to a proper understanding and assessment of

constitution making and the identification of any shifts or continuities in the effort to secure constitutionalism in Nigeria.

However, there is a major difference between the environment of the colonial period and immediate past on the one hand and the later period on the other which should be reflected at the constitutional level. First, at the practical level, there is no direct imperial hegemony except the military, (who share some of its features) to limit the range of options. Second, the practical experiences of the crises of the sixties and the civil war were there to learn from and improve upon. Third, the enormous revenue from oil ensured availability of the funds required to finance development projects to arrest illiteracy, unemployment, poverty, disease, etc given the appropriate constitutional framework, orientation and leadership. Finally, and more importantly theoretical and practical pitfalls could be minimized because the strengths, contributions and weaknesses of three perspectives which dominated the constitutional and political economy of Africa since the sixties into the eighties have been laid bare¹.

Briefly, these theories and prescriptions were: First, the law and development school emphasized institutions, law and order and expected Africa to continue to follow the course of development in Western Europe and America

¹ Mamdani, T., et al. (1988) Social Movements, Social Transformation and the struggle for democracy in Africa. CODESRIA, Working Paper No.1-provides a short and precise summary of these schools. Also Ghai, Y.P. (1987), "Law, Development and African Scholarship" 50 The Modern Law Review, pp. 750-76.

in this regard. Second, the dependency theory arose as a critique of the former, but heavily preoccupied itself with the external aspect of the crisis of Africa. Third, is the mode of production thesis which shifted the argument from the unilinear external perspective of dependency to a study of the internal contradictions of the "centre" and "periphery". In constitutional terms, the effect of the last two schools of thought had been the adoption of statism, generally inspired by the so-called African authenticity and the Soviet-China non-capitalist development.² Finally, the activities of the students of legal pluralism and other ethnographic researches contributed in raising critical issues concerning some aspects of the organisation of African societies.³ They focused on Africa's internal institutions that partly survived colonialism with important implications for constitution making given the persistent call for African solutions to its problems.

Given this fairly clear theoretical environment, a constitution maker may assess Nigeria's problems as merely "shortcomings of political procedure, techniques, style and the personality of the actors"⁴ and concentrate on creating or strengthening existing institutions to

². Shivji, I. (1989) Keynote Address to the African Regional Institute of the American Council of Learned Societies' Comparative Constitutionalism Project, held in Collaboration with the South African Political Economy Series/African Association of Political Sciences, South Africa, May 23-25, Harare, Zimbabwe. Also as Seminar Paper in School of Law, University of Warwick, July, 1990.

³ A major text on this is Benda-Bachman, F. von, Woodman, G.B. et al (1988) Between Kinship and the State, Social security and Law in Developing Countries. (Paris, Holland & U.S.A.)

⁴. Usman, Y.B. (1979) For the Liberation Of Nigeria. (New Beacon Books Ltd., London) p. 28.

foster an intra elite consensus and corporatism, as in the past. Meanwhile, the status quo would remain unassailed, if not strengthened.

On the other hand, the historic opportunity may be seized upon to break new ground and reverse the continued marginalization of the majority of the population. Rather than concentrating mainly on limited forms of liberal democracy, a framework would be laid to create the conditions necessary for popular democracy, for instance the competent use of franchise, debate and discussion of crucial issues, accountability, etc.⁵ But the ultimate central objective of a new constitutional frame must include the following:⁶ 1(a) to restructure the economy so as to reduce to the minimum the extant huge gap between the general public and those in control of public institutions and business.(b) Secure equitable distribution of resources in the various sections of the country and sectors of the economy.

2).To jettison the widely propagated belief that political activity is mainly concerned with contest for material resources and public status among the areas, nationalities, families and individuals. The holding of public office be dissociated from the current practice of private accumulation through huge official and unofficial remuneration.

5. Therban, G. (1977) "The Rule of Capital and the Rise of Democracy" in 103 The New Left Review; Sangara, Y. (1988) "The Crisis of Underdevelopment and the Transition to Civil Rule: Conceptualising the Question of Democracy in Nigeria" Africa Development. 13 Review of African Political Economy 1: 33-50.

6. Usman, op. cit. p.100

3) Foster a popular system of participation through which the common man can understand, guide and discipline its representatives.

4) Re adjust exploitative external relations "to internal demands for popular transformation and development, as against the bourgeois strategy of adjustment of internal growth to the constraints of the world wide expansion of capital".⁷

These objectives are attainable in the long term only through a practical and responsible citizenry. Such a citizen is built on the pillar of political education beginning with simple things as orientations about government, common political and economic knowledge, notion of and conscious sharing of institutions.⁸ Others are, knowledge about the significance of voting, campaigns, mass meetings, casting of ballot and political and economic practices defined as corrupt, etc. The constitutional context for realizing these can be secured through providing a special role for working class and students' movements, intelligentsia genuinely sympathetic to the cause of mainstream of the population, co-operatives and fostering consciousness and activity in the citizenry. The aim is not so much social engineering as to "underline actual forms of organisation ...that

7. Amir, S. (1987) "Democracy and National Strategy in the Periphery" 9 Third World Quarterly, 4 1129-1156.

8. Hayward, M. Fred. (1973) "Political Participation and Its Role in Development: Some Observations Drawn From the African Context" 7 The Journal of Developing Areas, 591-612.

have actually emerged [or existed] in the historical development of popular movements in Africa".⁹

The orientation of a constitution largely depends on those controlling its process. Constitutions, noted McWhinney,¹⁰ tend to reflect the personality or general intellectual (and economic) background of its drafters. It has already been noted in chapter one how Charles Beard and other writers thought of the American Constitution of 1787 as a document that rationalized the broad economic interests of its makers. The rest of the thesis covering this phase will consider the philosophy and orientation of the constitutional process within the theoretical grounding of the first chapter.

In attempting the discussion along this line, certain caveats and constraints are noted. First, not all the participants in the process have economic history or are accessible. The existing system of patron-client relationship requires in most cases a period of initiation for confidence and loyalty building. The situation is further complicated by the tendency to cluster shares and directorships in single influential patrons for easy access to public and private patronage. Again, information on those currently in government is not accessible. It is for this reason that some writers have used the income and occupation of some of the

⁹. Hamdani, et al. op. cit. p.16.

¹⁰. McWhinney, E. (1966) Federal Constitution for a Multinational World. (Sijthoff-Leyden) p.7.

participants to determine the class basis of the process.¹¹

It is also to be borne in mind that the lack of solidarity among the dominant groups has been the reason for the crises and instability in Nigeria, hence, the fact that they take divergent views on some issues should not come as a surprise. Finally, in class analysis, the role of thinkers and intellectuals is problematic.¹² This general position is exemplified by the existence of minority reports as we will see, written on the basis of fundamental disagreement with the position taken by the majority of the members on crucial issues. The authors of the minority report are people sharing similar objective privileged position with most of the majority but fundamentally differing in their subjective views. Thus it has been noted that "one can not simply infer a stratum's political orientation on the basis of its apparently privileged position vis-a-vis others".¹³ Within the context of this introduction, we now consider the constitutional process that heralded the Second Republic in 1979.

¹¹ See Onimode, B. and Osagie, E. (1977). "Economic Aspect of the Draft Constitution" *New Nigerian Newspapers*, 8/1/1977 & 10/1/1977. Sklar had used this approach as early as 1962 in a seminal work on the power structure in Nigeria: Sklar, W.L. (1963) *Nigerian Political Parties, power in an emergent African country* (Princeton)

¹² Hindess, B. (1987) *Politics and Class Analysis* (Oxford, London).

¹³ Sandbrook, R. and Arn, J. (1977) *The Labouring Poor and Urban Class Formation: The Case of Greater Accra* (Monograph Series, No. 12, Center for Developing Area studies, Montreal, McGill Univ.) p.7.

3.A.THE CONSTITUTION DRAFTING COMMITTEE, 1975-1976.

The making of a new constitution was part of the transition programme to civilian rule announced by General Murtalla Mohammed after overthrowing General Yakubu Gowon in a coup in July, 1975. Gowon had reneged on an earlier promise to hand over to civilians in 1976.¹⁴ In the transition scheme, a Committee would produce a draft constitution by September 1976; local Government would be organized and elections held on a non party basis. The latter would in turn, partly constitute the electorate for forming the Constituent Assembly to adopt the work of the Draft Committee. Finally, an existing ban on party activities would be lifted to usher in series of elections to form the State and Federal Governments. The assassination of Murtalla did not prevent the fulfilment of this programme by General Olusegun Obasanjo who succeeded him.

It may be noted that while the Committee had begun its work, the Military Government created seven more states and established a new federal capital-Abuja. The role of the Committee and the subsequent Constituent Assembly was therefore minimized in these matters.

3.A.1 Appointment and Composition of the Committee.

The 51 member body was handpicked first on the basis of a geographical criterion (2 per state) while the rest were learned men in disciplines considered to have direct

¹⁴ Panter-Brick, S. (1978) "The Constitution Drafting Committee" in Panter-Brick, (ed) *Soldiers and Oil, the political transformation of Nigeria*. (Frank Cass, London) p. 291.

relevance to constitution making- history, law economics and other social sciences, especially political science. Eminent Nigerians with some experience in constitution making were brought in to complete the spectrum".¹⁵ Specifically, they were exclusively from the professions of law, business and academics or university administration and politics. Of the 50 (Chief Awolowo having declined to serve) who participated, 24% were legal practitioners; 44% were academics and university administrators. In all, 24% of the entire membership had served as ministers or commissioners in either the civil government of the first republic and or the subsequent military regimes now engaged in private vocations.¹⁶

The available specific economic interests of some of the members is however quite revealing. Of the lot, 36% were directors or chairmen in companies that were either wholly indigenous or linked to multinationals and constituting the largest group. Specifically, those linked with international finance account for 66.7% of the whole. The Chairman of the Committee and a prominent Sokoto prince held directorships and or chairmanships in a record of at least ten companies each most of which were subsidiaries of multinationals. The Head of State at the time of the process, General Obasanjo subsequently

¹⁵. Address by His Excellency, the late General Murtala S. Muhammed, in the Report of the Constitution Drafting Committee (hereinafter called the Committee) Vol. I, p.xliii, 1976.

¹⁶. Report of the CDC, Vol. II (containing the Sub Committees' work) (Federal Ministry of Information, Lagos, 1976) p.3 for the list of members. For analysis, see Osoba, O. (1978) "The Nigerian Constitution and the Working Class" in *A Positive Review*, 3:1-42. Data extracted from: Nigeria Company Handbook, Information on major companies in Nigeria (Research and Data Services Ltd. Lagos, 1988); Who's who in Nigeria 1983 (Daily Times, Lagos); Who's who in Africa (1982).

retired to a multi-million naira agro-based and merchandise business which existed when he was occupying the office. Similarly, his second in command, General Shehu M.Yar'adua, retired to business in finance, construction and shipping.

It is therefore clear that the CDC and its appointors were a composite fusion of interlocking sectoral interests with a fairly comprehensive coverage of the overall ideological and value commitments of the dominant ruling class¹⁷. The high component of those who served in past administrations and past constitutional processes would ensure continuity of those values, as we will see.

In stark contrast was the absence in the Committee of effective, critical representation from the lower segment of the population such as workers, students and others in subsistence farming or petty trades. It was not omitted by inadvertence. General Murtalla had earlier on defended the omission on grounds of convenience. "It is not possible within such a small group to include all shades of opinion and all interests. Nor is this necessary. It is enough to ensure that all the broad areas of interest and expertise are brought into the Committee..."¹⁸ The concrete effect of this one-sided representation will become obvious in the procedure adopted by the Committee and the determination of concrete issues.

¹⁷, Osoba, op. cit.p.9.

¹⁸, Address by Gen. Mohammed, op. cit.p.xliii.

3.A.2 Terms of Reference and Procedure.

The Committee first met on 18th October, 1975 when General Murtalla made an inaugural speech to spell out important guide-lines after which the Committee would produce a first initial draft constitution for public comment and discussion . A running theme in the speech was the creation or strengthening of institutions and procedures in the constitution to change the behaviour of political leaders. "This administration believes strongly that the provisions of the constitution can be used for removing or minimizing some of our basic problems" and to transform politics from "its previous scenario of bitter personal wrangles into a healthy game of political argument and discussion".¹⁹

In concrete terms, the constitution should aim to provide for the following: i) To eliminate cut throat competition where the winner takes all.ii) Jettison institutionalized opposition to the government in power and develop consensus politics and government predicated on a community of all interests and not parochialism. iii) Defuse tension through a decentralized power structure and functions.iv) Create means of securing a free and fair elections. vi). Depoliticise the census, which has been a source of difficulty in the past because of its linkage with revenue allocation significantly based on population and a host of other factors.

¹⁹. Ibid.

On some matters, the speech disclosed that the Military Government had committed itself and were therefore not negotiable. These were: a) A federal democratic system of government and fundamental rights. b) A stable constitutional government that secures maximum participation and consensus. The government also considered the mechanics for attaining some of the objectives. They were: a) "genuine and truly national political parties" whose number should be reduced according to a criteria to be determined by the Committee. In view of disillusion with political parties, the Committee was free to devise means of forming government without parties. b) An executive presidential system where the latter would be elected on the same ticket with the vice-president and their mode of election broad enough to "reflect the federal character of the country". In line with the corporatist strategy, the composition of the cabinet was to reflect the same. c) An independent judiciary, corrupt practices tribunal and ombudsman to stamp out corruption and provide avenue for redressing grievances against public institutions. e). Restrictions on further states creation. These conclusions were commended to the Committee for "careful consideration".

Taking notice of an on going debate in the country on ideology, General Murtalla counselled the Committee against adopting one. "Past events have...shown that we can not build a future for this country on a rigid political ideology. Such an approach would be

unrealistic. The evolution of a doctrinal concept is usually predicated upon the general acceptance by the people of a national political philosophy and consequently, until all our people or a large majority of them have acknowledged a common ideological motivation, it would be fruitless to proclaim any particular philosophy or ideology in the constitution"²⁰. There was no suggestion of who and how such a national philosophy will evolve since it does not come simply out of the blue. Except those aspects on which the government was committed, the guide-lines were not strictly directives, although the Committee was not expected to ignore them. In any case it had a large room for exploration, apart from being issues with which most of them were comfortable.

After debating the inaugural address and "the basic causes of instability in Nigeria during the civilian regime and possible constitutional remedies", it invited memoranda from the "general public" through press and radio advertisement.²¹ Since there were no translation of the subject of advertisement into at least the major languages, it must have been intended for those literate in English and who could afford to buy radio sets or newspapers or had access to those who had. The contributor must also be determined to perform his civic

²⁰. Ibid.

²¹. Vol. I, p. 1.

duties to produce the required four copies. Oral evidence was thought of as unnecessary.

The memorandum was to address all or any of the general or specific issues outlined in the advertisement. The issues were in fact the Government's guide-lines reordered. Consequently, the range of options or alternatives that might be available were neither presented nor canvassed. Again the Committee imputed a certain knowledge of the essence of a constitution to the contributor. It is to be noted that a ban on parties and political activities was still in force, which means there was no organisation with the material, intellectual and human capacity to reach out to the public and explain the object of the entire exercise.²²

In the end, the Committee acknowledged receipt of 346 contributions, of which 15 were in Hausa, none in Ibo or Yoruba and other minority languages. The 15 Hausa contributions did not (as gleaned from the titles) address the issues in the manner designed by the Committee. In fact one of the contributions was addressed to "maigirma" (the big man), indicative of the ordinary man's idea of the exercise. On the whole, except the judges, religious bodies made the largest group contributions, followed by public authorities most of whom were local governments. Among the individual

²² For the importance of parties during this kind of exercise see, Ghai, V.P. (1988) Law, Politics and Government in the Pacific (Inst. of Pacific Studies, Univ. of South Pacific).

contributors were ex-President Azikiwe, ex-Premier Osadabey and some of the Committee members.

There is little in the Reports of the Committee acknowledging the limited public contributions and their utility.²³ The mild cynicism for public contribution which runs through the entire exercise seems to be informed by two assumptions. First, the majority of the members assumed constitution making to be an intricate legal exercise which ordinary folks could not be expected to understand. Secondly, following the Head of State, they thought of themselves as sufficiently representing a cross section of opinion and so were familiar with the problems of all as to render wide consultation otiose.²⁴ This attitude also seems to have guided the way a Minority Submission by two of its members was given short shrift, even though it was submitted not very late.²⁵

To facilitate its work, the Committee set up six subject sub committees whose members were assigned according to their expertise or political experience in the field of assignment.²⁶ The latter's recommendation once approved in plenary sessions were sent to the Sub Committee on Legal Drafting. In turn, the latter, composed entirely of lawyers, apart from putting the recommendations in

²³ Panter-Brick, H., (1978) "The Constitution Drafting Committee" in Panter-Brick, op. cit. p. 286

²⁴ Osoba, O. and Usman, V. B., (1976) A General Report on the Work of the Constitution Drafting Committee, A Minority Submission p. 3; Panter-Brick, op. cit. 296.

²⁵ Osoba and Usman, *ibid*.

²⁶ Williams, P. B. A., (1980) "The Making of the Nigerian Constitution" in Goldwin and Kaufman, op. cit. p. 403.

lawyer's language, co-ordinated the work of various sub committees. It was the final draft of this Sub Committee that was approved in August 1976 by the full Committee and together with the Report of the Sub Committees, submitted as its Report to the Head of State.²⁷

The Committee noted the expression of wide ranging views by its members and that no member agreed with every recommendation. Depending on the perception of interests, decisions were made by majorities, some very thin, others overwhelming.²⁸ However, there is no Hansard of the proceedings to disclose the nature of coalitions and on what issues. In considering some of the major themes that pre-occupied the Committee, emphasis will be on their philosophy and orientation rather a clause by clause approach.²⁹

3.B. National Goals, Development And Human Rights.

At independence, constitutions tend to be concerned with the tensions of the moment and a pre-occupation of those seeking to succeed the imperial power. The constitutional development of Nigeria was no exception. The constitutions were hardly "fundamental agreement of the whole people as to how they wish to be governed"³⁰ apart from being the basic rules for governance. However, subsequent processes provide a unique opportunity to

²⁷. see Vols. I & II, op. cit.

²⁸. Vol. I p. 111.

²⁹. Such a clause by clause approach was adopted by Dent. M. (1977) Improving Nigeria's Draft Constitution (Dark Horse Publications); also a discussion by Panter-Brick, op. cit.

³⁰. Dent. ibid p. 1

restructure the foreign imposed system and provide a charter for government, leadership, popular participation and development. That is, to provide the necessary link between democracy and development.

It is in this light that the Committee aptly noted that past constitutions and governments were too concerned with power, rights without duties, provision of opportunity for the acquisition of wealth and prestige of those in office to the neglect of the basic needs of the people for food, clothing, health and education.³¹ In this respect, it recommended that the new constitution should be a charter of government. The latter would assume definite duties and ensure participation of the citizens in government through referendum and elections "in accordance with the provisions of this constitution". The overall objective is "Liberty, Equality and Justice".³² On these noble goals of the nation, agreement in the Committee was unanimous.³³ The Sub Committee on Fundamental Objectives, etc which considered the matter was guided by the constitutions of Ghana, 1960 and those of French speaking African countries, most of which were framed in the sixties.

However as those ideals are not self-executing, the procedure and institutions for realizing them was problematic. It brought to the fore the real value

³¹ Vol. II, p. 39.

³² Ibid, Arts. 1 & 2.

³³ Vol. I p. vii.

commitments of the members. First, the mode of enforcing the socio-economic provisions contained in the directive principles of state policy was simplified to a zero sum argument on justiciability. The Sub-Committee had recommended a half way house of enforcing it through a declaratory judgement to determine the consistency or otherwise of any administrative action or legislation with it. The intended effect of this was political rather than judicial as it provides a ground for impeaching the authority concerned.³⁴ The Sub Committee also recommended the establishment of task force to determine the feasibility of enforcing them "at any time as our circumstances and resources permit"³⁵ indicating that it had not in fact convinced itself of the propriety of its recommendation in this regard.

The middle ground measure was itself expunged by the majority members on the argument that it would foster confrontation between the judiciary on the one hand and other arms of government on the other.³⁶ However, the main political and ideological underpinning for the rejection could not be disguised in the rest of the reasons advanced. The majority of the full Committee asserted that the fundamental objectives were "new and no one can be too confident of the most appropriate method of ensuring their observance". That if they turn out "to

³⁴. Vol. 11, Arts. 2-4.

³⁵. Ibid. p. 110.

³⁶. Vol. I p.vii.

be unsuitable or ineffective, it would require a constitutional amendment to deal with the situation".³⁷

In charting the specific socio-economic rights the Sub Committee relied on the Indian and Pakistani constitutions as models and was aided by the U.N. Covenant on Social and Economic Rights. But this positive use of existing progressive constitutions and the U.N. recommendations was limited by the lack of will to improve on them. Those constitutions were made in the 1940s and much has been done, especially by the Indian courts to give it reality. Some of those decisions could have been considered by the Committee to reflect the current position in India.³⁸ Moreover, the U.N. Covenants are only declarations of principles and ideals allowing individual countries the latitude to adopt suitable mechanisms for achieving them. In any case, Nigeria is not yet a party to the Covenant which came into force on 3rd January, 1976.³⁹

It is rather curious that a set of principles which existed for several decades is described as "new" today. Of course it is new to Nigeria, but that is what the constitution making is all about-chart a new course! On the question of the objectives provision becoming unsuitable at some point, it is indeed hard to imagine a

³⁷. Ibid.

³⁸. see Suderdhan, B. (1980) "In Quest of State: Politics and Judiciary in India" in *The Journal of Commonwealth and Comparative Politics* XXVIII 45-69; Baxi, U., "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" 29 *ICJ Review*, p. 37-49

³⁹. New International (1987) (*Freedom to and Freedom From: the Two Faces of Human Rights*) p. 9; Brownlie, I. (1981) *Basic Documents on Human Rights* (Oxford) 118-149.

situation when the right to shelter, adequate food, old age care, etc will become unsuitable, quite apart from the issue of enforcement in the courts.

Redress through the courts in their current typical common law tradition and procedure is undoubtedly the lesser, more restrictive and short term of the ways of realizing the objectives. Bearing in mind the Nigerian condition- of high illiteracy, poverty and rural based population, the constitution must concentrate on creating the conditions that will popularize the objectives. They are to be given

"the widest possible publicity at all levels of government; in towns and villages; in schools and tertiary institutions; in churches [and mosques] and other organizations so that our people will become fully aware of them, discuss them and obtain a clear sense of the direction in which our country is heading. It should give each man and woman a clear appreciation of the need for him or her to participate fully in the building of our new nation...firmly based on equality and social justice".⁴⁰

Consequently, the suggested solution of the majority members of the full Committee, empowering the National Assembly to establish by law, authorities to promote and enforce the principles was clearly a way of avoiding the issue in view of the restricted category of people who under the constitution qualify for elections into the Assembly, as we will see later. As it stands, the

⁴⁰. Constitutional Planning Committee of Papua New Guinea, writing on a similar subject--see Final Report of the Constitutional Planning Committee, 1974 Part 1, p.2/2.

efficacy of this section predicates on three variables. First, the political will of the government to comply; second, the creation of a public opinion which values and insists on their application, and finally a judicial system with the orientation and ability to convert such de facto and de jure clauses into a due process contrary to the intentions of the framers of the constitution following the approach of some Indian courts.⁴¹

3.B.1 Human Rights and Duties.

According to Learned Hand, "liberty lies in the hearts of men and women...When it dies there, no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it".⁴² The role of the constitution, laws and courts is not to create, but to give reality, dimension and substance to these basic rights.

In Europe, these rights have been explicitly identified and elaborated in a certain form-political and civil.⁴³ However, as noted earlier on, concrete socio-economic forms have been provided through legislation creating social and welfare institutions. On the other hand human rights as a constitutional element was introduced in Nigeria by the British on the eve of decolonization to allay the fears of minorities.⁴⁴ Its form as sanctified

⁴¹. Baxi, U., "Making Suffering..." op. cit.; Omot, op. cit. p.9.

⁴². Hand L., (1952) *The Spirit of Liberty* (N.Y.).

⁴³. Robertson, *Human Rights in Europe* (1963), (Manchester).

⁴⁴. Cmd. 505, *The Minorities Commission*.

by the Law of Lagos 1961⁴⁵ followed the civil and political categories as restated in the European Convention for the protection of Human Rights and Fundamental Freedoms.

The majority of the Committee had little difficulty in adopting the recommendations of the all lawyers Legal Drafting Sub Committee where "most of the debate" took place.⁴⁶ It may be surmised therefore that it was this Sub Committee that rejected the justiciability of the socio-economic rights as proposed by the Sub Committee on Fundamental Rights, et al. The reason for its rejection was that they are rights which depend on "the availability of resources and in the final analysis...to the obligation or duty of government to provide the facilities".⁴⁷ Their proper place opined the majority is in the fundamental objectives and directive principles of state policy. Having rejected labelling it as rights, the mechanism for its enforcement as recommended, free legal aid and a commission on fundamental rights which would follow through the legal process on behalf of an indigent citizen, fell by the way side. However, the false basis of the Committee's antipathy or scepticism to the cost of welfare principles was exposed by the fact that the Military Government was in the process of introducing

⁴⁵. The ICJ, Lagos Conference on the Rule of Law, 1961-see Brownlie, op. cit. pp. 426-437.

⁴⁶. Vol. I, p. xv.

⁴⁷. Ibid.

a free universal primary education and abolishing most tuition and boarding fees in higher levels.⁴⁸

Having stripped the concept of rights of enabling content, the position under the independence constitution was adopted with minor changes. It went on to list extensive exceptions, providing for the suppression of some under an automatic or declared emergency and for the derogation of others by laws "reasonably justifiable in a democratic society".⁴⁹ This stood in stark contrast to the elaborate provisions which secure private property, prompt payment of compensation in the event of nationalization and guarantee of speedy access to a judicial tribunal to determine same in the event of a dispute. Its essence according to Nwabueze (who was one of the members) is to restrict the power of the state to take compulsory possession of property "lawfully" acquired.⁵⁰

A major omission regarding this subject is the silence of the draft on the correlated duties of citizens. This is because to realize rights in the wider sense, the citizens have to take positive steps to create the resources necessary for its realization and be active in

48. Foster-Brick, *op. cit.* 303.

49. For the position under the 1960 & 1963 constitutions, see Proshi, P.O. (1970) *Fundamental Rights under the Nigerian Constitution, 1960-1965*. Occasional Paper no. 8. (African Studies Center, Univ. of California L.A.).

50. Nwabueze, N.O., (1985) *Nigeria's Presidential Constitution, 1979-1983*. (Longman, London).

its defence. The more balanced and recent constitutions of the Pacific countries followed this.⁵¹

The framework and effect of the provisions on fundamental rights and objectives is to restrict the category of its beneficiaries to those with the financial, intellectual and information resources. The fact that only the coalitions of the dominant forces of the socio-economic order have these resources while the majority of the population have not need not be restated as we consider another elite arrangement in the constitution.

3.B.2 NATIONAL INTEGRATION AND FEDERAL CHARACTER.

The desire to foster and enhance unity in a plural Nigeria has been a central theme in the Reports and one on which the largest proportion of time was spent in debate.⁵² Unity and stability are desired consequences of national integration, consequently, they constitute one of the national goals defined in the Reports. In the words of the main Report, "the need for such provisions in the Nigerian constitution is all the greater because of the heterogeneity of the society, *the increasing gap between the rich and the poor, the growing cleavage between the social groupings*, all of which combine to confuse the nation and bedevil the concerted march to orderly progress"⁵³ (emphasis mine).

⁵¹. For instance, Vanuatu constitution, (1983) Part 2 in Pacific Constitutions, Vol.2 (Pacific Law Unit, Pot VII and the Inst. of Pacific Studies, USP).

⁵². Williams, op. cit.p.403.

⁵³. Vol.1 p.vi.

The broad objectives were first stated in the motto, "Peace, Unity and Progress". Accordingly, free mobility of people and services, inter marriage and the formation of cross-cutting associations is to be encouraged. The state shall guarantee full residence rights to citizens in all parts of Nigeria and foster a feeling of belonging and involvement.⁵⁴ These broad principles were to be achieved through several devices. First, in the formation of political parties, the name, emblem or motto is not to contain an ethnic or religious connotation or give the appearance that its members and activities are confined to only a part of the country. Again, its executive committee must belong to not less than two thirds of the states of Nigeria. The Committee assumed that real power lies in the executive of a party which is not borne out of the experience in most party regimes including Nigeria.

It also implied state citizenship which obviously contradicts the general goals of securing a Nigerian identity as against parochial tendencies. The idea of suppressing national groups in the interest of a bigger nation is itself fraught with dangers as the experience from USSR, East and Central Europe testifies. Finally, the Committee proposed the banning of associations of any kind from canvassing for votes, rather than confining it to religious and ethnic based ones, if at all necessary. On the whole, as it relates to parties the approach was

⁵⁴. These objectives are better elaborated in the Sub Committee Report, Vol. II, Art. 3.

wholesale assimilationist rather than pluralist,⁵⁵ desiring groups to submerge their identities and claims to that of the intrusive nation.

A second major aspect regarding integration is the mode of electing the president which required support in almost two thirds of all states of the federation. Finally, and more significantly, because it sapped the energy of the members a great deal more, was the "quest for [elite] ethnic balance"⁵⁶ or ethnic equitability⁵⁷ which went under the slogan of "federal character". In its final compromised

form, the formula requires that "the composition of the government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in a manner as to reflect the federal character of Nigeria and the need to promote national unity, and to command national loyalty thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or any of its agencies"⁵⁸.

Accordingly, the president is enjoined to appoint a minister each from among citizens belonging to a state, with similar requirement for other federal agencies and the various state apparatus. This formula was a compromise between those who sought a full scale ethnic

⁵⁵ Bellay, Claire, (1976) Constitutional Law and Minorities, HRG Report no. 39 for the variety of choices available to a plural society; A plea for a pluralist approach in a heterogeneous society is made by Lustgarten, L., "Liberty in a Culturally Plural Society"

⁵⁶ Diamond, L. (1987) "Issues in the Constitutional Design of a Third Nigerian Republic", 66 African Affairs, 343

⁵⁷ Pyle, C., (1988) XVI "African Nations as a Constitution Maker" The Journal of Commonwealth and Comparative Politics, 2:167.

⁵⁸ S. 8 (2) of the Draft Constitution, Vol. I.

based patronage and those who counselled against using a person's ethnic or linguistic affiliation as the primary definition of his quality as a human being.⁵⁹

Two important points may be noted here. First, the formula creates and entrenches an insidious principle of hierarchy of citizens through the concept of belonging to a state, thereby undermine the essence of national citizenship. As Usman⁶⁰ rightly noted the first class citizens are those in a state who can claim to belong to a community indigenous to the state. The second class are those who although claiming to belong to one state, live in another and will on that account suffer pervasive discrimination. A third group are those who although are citizens of Nigeria, can not with certainty lay claim to a community indigenous to a particular state. Thus, in trying to provide for elite ethnic balance, it constitutionalizes an unhealthy concept of state citizenship. It would complicate the already delicate practice of discrimination in the enjoyment of services against those not resident in their states of origin such as differentiated admission and tuition in schools, non-award of scholarships, etc.

The second strand of the problem is the emphasis of the principle on personnel in the public service, instead of amenities and services. It assumes that such power sharing *simpliciter* will foster a sense of belonging and

⁵⁹. Vol.I pp.viii-is.

⁶⁰. Usman, *For the Liberation*, op. cit.p.118.

that such appointees will act on behalf of group interests.⁶¹

However, the fact of the matter is that federal character represents an optimum culmination of the gradual historical process as we saw since colonial rule to establish corporatism and consensus at the dominant elite level. This is clearly reflected in the way the other problems identified by the Sub Committee, namely, the increasing gap between the rich and the poor and the increased polarization of social cleavages were glossed over. Those are in reality the crucial issues which need urgent attention rather than elite power sharing. Writing on a similar goal, a similar Committee in Papua New Guinea provided thus:

"No particular area or grouping of people should be developed at the expense of another materially or in other ways. There should always be an equitable distribution and balanced sharing of all the benefits and opportunities the nation has to offer. For this type of development to come into being, it is necessary for such conditions to be created and to obtain throughout the nation at all times as to be conducive to that development...Thus co-operatives and general purpose corporations should be actively encouraged or promoted..."⁶²

The Committee was however at pains to acknowledge the need for broad representation of the various peoples but without elevating it to a matter of major constitutional principle.

⁶¹. Olingunju, T. (1987) "Federal Character and National Integration" in Ukwu, I.U.ed., Federal Character and National Integration (NIPSS, Kuru, Nigeria).

⁶². Final Report of the Constitutional Planning Committee, 1974, Part I pp.2/3 & 2/7.

3.B.3 THE ECONOMY AND IDEOLOGY.

A constitution as already noted embodies a set of values which may be explicit as in communist/socialist regimes or implicit as in capitalist states. In the making of constitutions therefore, conflicts and interests will in all probability arise regarding which values to enshrine and their formulation. Moreover, the existence of the two major modes of organizing the economy, capitalism and socialism, is likely to bring the argument into sharper focus. Specifically, in a federation three major economic issues will have to be considered in the process.⁶³ The first is fiscal powers and revenue allocation, second, is the allocation of powers over control of economic activities between the centre and the states. Finally, and more important is the determination of individual property rights and the overall economic direction of the country. In a sense, the form of the latter, determines the position of the first and second, consequently, effort will be concentrated on the third.

The relevant Sub Committee wanted a socialist order as a long term goal, based on "public ownership and control of the means of production and distribution". This is said to be "the only effective answer to the conditions of under-development, inequality and exploitation that exist in the country today".⁶⁴ However this view was not acceptable to the majority in the full session. A number

⁶³. Toyin, Akor, 1977 "Workshop on the Draft Constitution for Nigeria" in Proceedings of Workshop on the Draft Constitution held at the Univ. of Maiduguri under the auspices of the Department of Law, 23-27 May.

⁶⁴. Vol. II p. xiii.

of reasons were advanced by them for rejecting the proposition. First, Nigeria [not Nigerians] had always had its own ideology-mixed economy which must not be abandoned in favour of one "conceived in a foreign political and social climate". Second, the Nigerian constitution should be flexible. Third, that it is not possible to accumulate wealth and mitigate material inequality at once and therefore warned against arousing public expectations that can not or rather will not be met. The majority further employed arguments relating to the alleged paucity of bureaucrats in Nigeria to implement socialism and also noted the efficiency of agriculture and industries in capitalist societies in contrast to socialist regimes.

It then concluded that Nigeria should maintain a "mixed economy in which the public sector plays a large and leading role and able to determine basic prices and to mitigate the harsher effects of private competition but at the same time also allows room for private initiative".⁶⁵ The final provision therefore enjoined the state to control and operate the major sectors of the economy and protect individual rights to participate in spheres not under its control.⁶⁶ The major sectors are those already exclusively controlled by the government unless it is changed by legislation.

⁶⁵. Vol. I p. xiv.

⁶⁶. S.10(b)(c) of the Draft Const.

Necessarily at this juncture, the government was enjoined to ensure that there is no concentration of wealth or economic activities in a few hands. Finally, the Marketing Boards which in the past had partly shielded the farmers from the vagaries of the market and middlemen were abolished limiting the government to regulating transactions in these commodities to give effect to "freedom of trade and commerce throughout the Federation".⁶⁷ But the decision was undermined as the government had shortly before sought to centralize the disparate regional boards in the interest of "maximum benefit to the farmers".⁶⁸

Several observations may be made on the majority decision. It is the first time that socialism was canvassed as an alternative model in an official forum in Nigeria. Its rejection was not based on a balanced consideration of the two economic models. That is, no case was made against capitalism, rather its alleged virtues were uncritically advanced and defended with sweeping assertions and generalizations⁶⁹ while the shortcomings of socialist regimes were put with equal energy. Secondly, the decision assumed or presented the public sector as serving egalitarian purposes and therefore appeared to make a limited concession to welfare principles. This obviously flies in the face of the

⁶⁷. Vol. I, p. xiv.

⁶⁸. Speech by Lt. General O. Obasanjo, (1976) in 23 Nigeria Trade Journal, 3:8-12.

⁶⁹. For a vigorous factual contestation of these assertions, see, Toyin, E. 1977 "The Mixed Economy as Fundamental Objective, A Study of the Economic and Ideological Proposals of the Draft Constitution", in Political Issues in the Nigerian Draft Constitution (Nigerian Pol. Sc. Association, Sept.).

historical *raison d'être* of the public service in Nigeria.

It was established to provide colonialism with requisite infrastructure, clerks and intellectual resources for its economic activities. This role has been modified only to the extent that the public sector now serves first as intermediaries between the state and multinationals and as a training ground for future managers and directors in multinationals or well endowed private companies to which such bureaucrats aspire.⁷⁰ This is reflected in the Committee's membership, as seen in Appendix A on fusion of elites in chapter one where past top bureaucrats hold multiple directorship in subsidiaries of multinationals. Any meaningful role for the public sector has to begin with a restructuring of its inherited conception, function and mode of operation. The effect of the decision is in reality a further consolidation of the hold the same group of people have over the socio-economic structure.

The Draft Constitution rightly vested in the National Assembly enormous powers to determine the division of public revenue between the centre and the states and the latter inter se. It is also empowered to set up by law, a body to periodically review the ownership and control of business enterprises operating in Nigeria.⁷¹ This is

⁷⁰ This role was historically forecast by Panos, P. (1978) *The Wretched of the Earth*. (Penguin, London). For a factual account of this role in Nigeria, see Abba, A. et al, eds (1985) *The Nigerian Economic Crisis, Causes and Solutions* (ABUU, Nigeria) cap 8.

⁷¹ ss. 102, 103 & 10(4)(a) of the Draft Const.

potentially democratic but-when considered against the background of the qualifications for elections to the legislature, the implication becomes obvious. Under section 64(f) of the Draft, no person is qualified for election to any legislature if he is an employee in the public service of all the tiers of government including the armed forces or was such employee within four months before the elections. In effect, only those in business, private professions or their nominees can vie for seats. Of course, by reason of their poverty, illiteracy and ignorance, the majority of the people are excluded while those in the organised private sector can not take advantage of their group strength to sponsor parties or candidates because associations of any sort are prohibited from doing same.⁷²

3.B.4 Discussions and Policy on State Land.

Land is a major factor of production and vital resource endowment. Decisions on it are critical for economic programmes. It is not therefore surprising that " this subject evoked very heated controversy".⁷³ The source of the debate was the Sub Committee decision that no person shall own or occupy more than one plot of land throughout the country.⁷⁴ The recommendation generated hysteria and provided the members with the opportunity to vent anger at what they perceived as tendencies by those with the

⁷². S.171 of the Draft Const.

⁷³. Vol.I, p.8.

⁷⁴. Ibid., i.

opportunity to use their official positions to accumulate land.

Two strands of arguments were used to reject the proposal. First, it was observed with great elaboration that it would constrain business operations particularly those with diverse bases in one state and across several states. Second, some Nigerians use land as an investment employing its income to meet family commitments or old age care. It then concluded that it is "obnoxious, immoral, unethical and wholly unjustifiable to take away through the constitution by way of mandatory provisions vested rights of a citizen which he lawfully acquired and for which there is *no state necessity or need*. This is confiscatory in concept..."⁷⁵

However, despite the majority members' strong objection to restructuring land a general case for restriction was well supported. It was noted that in spite of indigenization which brought to the market the shares of numerous industrial and commercial concerns, land is still vital and critical as an investment because the former are limited. Again, land traditionally carries prestige and status, "a quality lacking in company shares, and which therefore makes it more highly prized and sought after". Pleading equality of opportunity, the members exclaimed, "it is revolting to one's sense of justice and equity that one person alone should own about

⁷⁵. *Ibid.*

three or seven more plots of state land...when others of comparable status have none."⁷⁶

Having made a vigorous commercial case for redistributing land, several modes of implementing it were explored. The "ability to develop" was described as a "desirable" condition for allocation while "a more radical approach" which advocated the nationalization of all lands in the country was rejected out of hand.⁷⁷ In the end, the majority rejected all the proposals and settled for the status quo. A year after, the military introduced the kind of order the Committee could not agree on in the acquisition and use of land and entrenched it in the constitution.⁷⁸ It converted all lands in the country juridically into state land largely under the administration of a state governor who grants certificate of occupancy to users. But in practice, the situation hardly changed regarding easier access to land.

It is obvious that the contemplated and actual reform were not about the basic ends which the policy should have addressed. That is, to remove bureaucratic and commercial restrictions on the social or communal use of land, to make it accessible to those in need for housing

⁷⁶. Ibid

⁷⁷ Ibid, xii.

⁷⁸. The Land Use Act 1978 (then known as a Decree) and entrenched in the 1979 Constitution via s.274(5)

or farming, to eradicate exploitation and speculation through land ownership, and minimize private ownership.⁷⁹

3.C.STRUCTURES OF GOVERNMENT.

a). The Executive.

According to the Chairman of the Committee, the choice of form for the executive was one of two issues that occupied the largest proportion of time spent on the debate.⁸⁰ The issue was presented as a straight choice between the American type executive presidency with rigid separation of powers and the bicephalous executive monarch and prime minister of British parliamentary system.

The latter was rejected along with a "middle way" which urged the transfer of some of the enormous powers conferred on the president. It suffices to mention that the reasons for the part adaptation of the American variant is its so-called consistency with African custom, its integrative and unifying value coupled with the alleged defects of the Westminster system as operated in the first republic.⁸¹ The main check against the possible evolvement of a dictator in view of the enormous powers was rightly pointed out as a "politically conscious society jealous of its constitution". But as noted the structures for creating such a society was glossed over.

⁷⁹. Teyo, S.op. cit.FM.63, p.90.

⁸⁰. Williams, op. cit.403.

⁸¹. Vol.II, p.xxix-xxvii; The arguments are debated in Dent op.cit.;Panter-Bricks, op. cit.

It should be pointed out that the new and strong executive which is made the centre piece in the overall design of the constitution followed the pattern of post independence constitutions in Africa.⁸² Other institutions the legislature, judiciary, political parties and other consultative organs are primarily conceived and organised as procedural and substantive restraints on the presidential powers.⁸³ One can only but agree with Usman ⁸⁴ in cautioning that whether a constitutionally powerful president is desirable and effective will depend on the purposes for which the power is intended. Its capacity will be determined less by the constitution than the overall social, economic and political setting of the country. In Nigeria currently, the relevant forces in the power structure are not the common people who therefore would not be the beneficiaries of a strong president. But paradoxically, the inability of the dominant forces to secure consensus and establish hegemony and the attendant in-fighting may not allow a president to actualize his constitutional powers without being perceived as a dictator.

b). The Legislature.

The Committee rightly noted that legislatures play a vital primary role in a democratic society. In making laws and overseeing their execution, they need to be guided by

⁸². Ajani, G.P. (1982) "The 1979 Somali Constitution: The Socialist and African Patterns and the European Style" 1 Review of Socialist Law, pp. 289-299.

⁸³. Paster-Brick, op.cit. p. 213.

⁸⁴. Usman, For the Liberation... op.cit. p. 97.

the overall current problems and set standards for future conduct.⁸⁵ Although the Committee defined the role of the legislature in relation to the overarching powers of the president, it nevertheless vested it with potentially immense powers. Apart from its traditional law making role, it was conferred with enormous financial powers as already mentioned, it was responsible for the appointment and regulation of an Ombudsman, the Auditor-General of the Federation and States' Directors of Audit, etc.

Without delving into the details of these powers, its democratic concept is stultified by the restrictive nature of the qualifications for legislature. This defect could have been partly cured by an electoral arrangement which links the direct election of the president to that of the legislature. This has the advantage of bringing the legislature, the government⁸⁶ and the people into contact, albeit a tenuous one given the limitations. Two other means of minimizing the rigid separation between the executive and the legislature have been suggested. First, to appoint ministers as ex-officio members or secondly, oblige the president to appoint ministers wholly from the legislature.⁸⁷

On the whole, the expenditure of efforts and energy on the horizontal division of powers among the three arms of government leads to a progressive erosion of powers of

⁸⁵. Vol. I, p. xv.

⁸⁶. Mwabuewa, B.O. (1974) *Presidentialism in Commonwealth Africa* (London), pp. 432-3.

⁸⁷. Panter-Brick, op. cit.

the electorate. The latter's position can only be guarded by constitutional recognition of co-operatives, etc as alluded to using occupation alone or together with geography as the criteria for constituting the legislature. Also, provisions could be made for a set number of citizens to initiate policies or legislation coupling it with referendum to give the initiative, legislative effect.

C). The Judiciary.

By its own account, the Sub Committee on Judicial System "adopted a procedure which separates those general ethical and ideological aspects of our work and those general recommendations proceeding immediately on their own account from the more specific recommendations on the future structure and principles of operation of the judicial system".⁸⁸ Consequently, the more fundamental issue of examining the ideological foundations, orientations and structures of the colonially modelled courts was skated over. Rather, it considered the extant structure as given concentrating only on a code of ethics for judicial officers additional to the general code for public officers.

However, it added a Sharia Court of Appeal to the federal courts in fulfilment of the Sub Committee's promise "to give relevance to the moral, religious and ethical beliefs of all segments of this society". The Court is an arm of the Federal Court of Appeal which hears appeals

⁸⁸. Vol. II. p. 101.

from the various High Courts of the States. The jurisdiction of the former is limited to appeals on Muslim personal law. But its creation was preceded by very serious and delicate problems which almost resulted in a deadlock on the issue.⁸⁹ We shall come back to this issue in the next chapter when we discuss the debate in a forum where the arguments were open.

d). POLITICAL PARTIES.

The Committee had little difficulty in agreeing on a plurality of parties consistent with the rights to "hold opinions and to receive and impart ideas and information without interference" and "to assemble freely and associate with other persons".⁹⁰ It was fortified in this regard by an overwhelming preference of the members of the public who wrote on parties for plurality.

It was however necessary to regulate the parties and redirect their past regional tendencies to ensure that subsequent ones are genuinely national and democratic. The first restraint required parties to federalize their character in terms of the origin, name, motto, officials and membership. Secondly, they were severed from any particularistic interests or sentiments by prohibiting associations from canvassing for votes. Third, detailed provisions regulated the internal management of the parties' election of officers, source of finance and illegitimate means of persuasion. Specifically, parties

⁸⁹. Williams, *op.cit.* p.412.

⁹⁰. Ss. 32 & 33 of the Draft Const. respectively.

were to be funded only through individual contributions and government grant. There were no limits to the former. Contributions from abroad, and local associations including theoretically, business organizations and more practically workers' associations, were prohibited. An electoral commission was entrusted with the task of administering these detailed regulations, including the recognition of parties.⁹¹

The first problem to note on the Committee's recommendation relates to its conception of political parties. They were conceived of as electoral machines whose main role is to herd the electorate in support of contestants, requiring nothing of the people in return save their loyalty.⁹² Also by denying associations the right to canvass for votes, sponsor candidates or contribute funds towards the project, citizens are atomized and kept at the periphery of the political process. Of course those worse off in the arrangements are not the affluent or their candidates as the Report of the Panel on the Federal Electoral Commission (FEDECO) established conclusively the link and the massive funds some rich tycoons sunk in various political parties in the second republic.⁹³ This has been the pattern since 1954 as we saw.

⁹¹. Ibid. ss.170-178

⁹². Mullin, C, ed.(1981). Tony Benn: Arguments for Democracy. (Penguin) p.211-212.

⁹³. Report of the Judicial Commission of Inquiry into the Affairs of Federal Electoral Commission, 1979-1983 (Federal Republic of Nigeria, Main Report, 1986) especially, pp.133-139.

Thus the Committee ~~was~~ unable or unwilling to recognise the educational value of parties especially in the case of Nigeria where most people are ignorant of their rights, the modes of securing redress or protecting themselves from common official abuse. The failure to use political parties as vehicles for political education and redress seems to be another common feature of Africa save Julius Nyerere's TANU.⁹⁴ The latter and Ghana's Center for Civic Education before it was abolished in 1972 made honest and serious attempts to explain the operation of government and the rights and responsibilities of citizens.⁹⁵ Another major negative restraint on the role of parties as conceived by the Committee is the restriction on the programme that a party may adopt. For instance, in rejecting socialism as an ideal, the majority passionately argued that "the Nigerian constitution should be flexible and should enable a popularly elected government to pursue policies which have been put and explained to the electorate".⁹⁶ On the other hand, the Draft Constitution declared, "the programme as well as the aims and objects of a political party shall conform with the provisions of chapter II [fundamental objectives] of this constitution".⁹⁷

⁹⁴ Hayward, F.W., (1973) "Political Participation and Its Role in Development: Some Observations Drawn from the African Context" 7 The Journal of Developing Areas, pp. 541-612.

⁹⁵ Ibid.

⁹⁶ Vol. I, p. xiii.

⁹⁷ S. 174 of the Draft Const.

In effect, a party is prevented from making enforceable those fundamental objectives made judicially unenforceable in the constitution, the only concession being the provision which allowed a party to advocate or canvass the alteration of any portion of the constitution. Of course, this post- facto concession is really harmless and meaningless given the range of forces against any party that seeks to overturn some of these positions now firm in the constitution.

e). Public Services And Accountability.

The Committee noted within the context of the Code of Conduct, but of general application, that "corruption and abuse of office has eaten deeply into the fabric of the public service in this country".⁹⁸ This has been a recurring theme for the overthrow of both civil and military regimes in Nigeria since the first coup in 1966 which is an indication of the failure of the extant disciplinary rules of the civil service and criminal codes. It was therefore an issue on which there was little disagreement.

However, the nature of and the mechanics to secure and enforce public accountability and minimize corruption were multiple, problematic and mainly institutional. Specifically, to ensure that the president/governor and their deputies were responsible and did not abuse their office, the legislature was vested with the power to impeach for "misconduct in the performance of the

⁹⁸. Vol. I, p. xxiiii.

functions of his office or is unable to perform those functions."⁹⁹ This is complemented by a further legislative investigative powers with a wider compass as it was to cover any person or matter within the competence of the particular legislature. The latter enable it to acquire information to assist in legislation or "to expose corruption, inefficiency or waste in the execution of laws...and in the...administration of funds appropriated by it".¹⁰⁰ A third method was the establishment of Ombudsman, called the Public Complaints Commission.¹⁰¹ It was responsible to the legislature. Its function was however circumscribed as it was confined to the remedy of private grievance against public authorities in contrast to what obtains in Scandinavia and New Zealand where maladministration in general may be inquired into to guard against future injustice.¹⁰²

In drafting the code, the relevant Sub Committee was partly guided by the leadership codes of Tanzania and Zambia. But it declined to follow the neater Tanzanian position where different rules apply to separate categories of leaders. It also expanded the category of leaders in both cases from high and middle cadres to include all employees of the public service including parastatals and universities. The latter would include messengers, cleaners, typists and labourers in government

⁹⁹. ss.117 & 118 of the Draft Const.

¹⁰⁰. *Ibid*, s.80.

¹⁰¹. *Ibid*, s.81.

¹⁰². Dent, *op. cit.* p.24.

service.¹⁰³ Given the size of the people affected, the code was likely to create a huge bureaucracy of its own. It was certainly an error to have included people who because of their lowly position in the structure could only become victims of the abuse of office and corruption. This extended spectrum was an easy means of rendering it inoperable.

The Code enjoined the time worn admirable principle that a leader must not put himself in a position where his private interest conflicts with public duty. In addition to not holding two public offices at once, he is not to run a private business or profession in such a way as to jeopardise his public duty or opportunistically advance his private concern. Thus, a leader may operate a private concern or assist spouses and children once he is able to avoid the practical difficulties of conflict of interest. Also he may derive income from spare time activity.¹⁰⁴

This contrasted with the recommendation of the PNG Committee prohibiting those engaged in profession or business for profit from being constitutional office holders. It also requires leaders to declare any private interests in any discussion so as to value the proper weight to such person's contribution.¹⁰⁵ It is instructive that the Sub Committee's suggestion is close

¹⁰³ S.210 of the Draft Const.

¹⁰⁴ See Panzer-Brick, op. cit. p.323.

¹⁰⁵ Final Report, op. cit. 3/8 & 3/10.

to this. It sought to prohibit officials and their spouses from engaging in any private trade or profession or employ workers in the same. Also the leaders/spouses may not be shareholders or directors in such private enterprises. But it permitted income from land owned or occupied by the official, from bank deposits, government stock or shares in public registered companies.¹⁰⁶

Similarly, the Sub Committee's prohibition of officials receiving positions of chairmanship, director or other employee of a public company after retirement was rejected in plenary session. It however made a limited concession by confining the restriction to the offices of the president/governor and their deputies and limited to foreign companies.¹⁰⁷ Some constitutions restrict leaders from acquiring interests in foreign firms some years after retirement.¹⁰⁸

After assuming office or the coming into force of the Code, the affected officials were required to declare their assets and liabilities and those of their spouse and children under the age of 21 years and finally at the end of their term of office. Such declarations would be available to the public for inspection but "on such terms and conditions as the National Assembly may prescribe".¹⁰⁹ In view of the kinds of interests who will

¹⁰⁶. Vol. II, pp. 42-3.

¹⁰⁷. S.S, Fourth Schedule of the Draft Const.

¹⁰⁸. Final Report...op.cit. limits the period to 3 yrs.-p.3/10.

¹⁰⁹. S.15 (1)(b) of the Draft Const.

probably converge in the Assembly, terms for open inspection are unlikely.

Again, gifts are not allowed except "those from relatives or from personal friends to such extent and on such occasions as are recognised by custom", while borrowing is confined as regards public officers of the highest rank to loans from recognised financial institutions.¹¹⁰ We have already alluded to the kind of problematic and corrupt link that existed between party, state officials and financial institutions since 1954. This requirement simply constitutionalizes that relationship. The entire Code depended for enforcement on a Bureau and Tribunal whose establishment and operation depends on a future legislation. We will see in the next chapter whether and how this has been accomplished.

It is clear from the preceding account and analysis that in their nature, operation and orientation, the Committee provided for the accountability of one set of the dominant group to another only. There was scarcely any reference to the people from whom power and authority is derived, on behalf of whom they act and who ultimately bear the burden of maladministration.¹¹¹ Commonly used devices such as recall, initiative or the right of the citizens to lodge complaints in any department against any official or authority and the obligation of the

¹¹⁰. Sec. 6(3) & 7(b) of the Draft Const. respectively.

¹¹¹. Osoba and Usman, *Minority Submission*, op. cit. p. 23; Usman *For the Liberation of Nigeria* (New Beacon Books, London) p. 113.

latter to forward the petition to the Bureau and Tribunal were completely ignored.¹¹² Finally, by providing for a number of Commissions and certain bodies to advise the president, power was diffused and would serve as a mechanism of accountability.¹¹³ Again, membership of such bodies are confined to the same group of people by tying the criteria for membership to qualification for House of Representatives, the second arm of the national Legislature.¹¹⁴

In summary, it is quite clear that the Constitution Drafting Committee who were wholly representatives of the elites, understood the problems of constitutionalism in Nigeria in terms of crises among the dominant groups but without admitting it and carefully sought to provide institutions and procedures horizontally at that level. However, since the Committee did not have the last word on it, we will see whether and to what extent its prescriptions would be adopted, rejected or modified by the Constituent Assembly after the public debate and discussion of the Report.

¹¹² This channel of complain was recommended by the PNG Report, op.cit.p.3/13; see also s.91 of the Chinese Const.,1978.

¹¹³ s.128 of the Draft Const. establishes a host of Commissions covering a whole range of issues.

¹¹⁴ Ibid, s.131.

CHAPTER FOUR.

4. THE CONSTITUENT ASSEMBLY, 1977-78.

The life of the Constituent Assembly began with the local government reform 1976. The Federal Government considered the structure of administration at the local government level as critical in the next phase of constitutional development. Consequently, a reform was introduced in 1976 to serve three broad purposes.¹ First, the local governments would serve as electoral colleges to constitute the Constituent Assembly. Others were the standardization of the disparate systems of local government administration in the country and to establish it as a third tier of government with specific functions and fiscal powers. The idea was to secure a firm link between people and government at the most basic level. The government was however careful to spell out what the reform was not about: to disturb the traditional political structure or impose uniformity.²

It is important to highlight some of the structural and practical obstacles in reforming the councils and which undermined their suitability as vehicles for constituting the Constituent Assembly and achieving other goals. On the structure, the various state governments were given the leeway to determine the mode of forming the councils by either direct franchise or indirect electoral college in addition to a provision allowing for nominated

1. Guidelines for Local Government Reform, 1976.

2. Choysey, A.B. & Oyediran, O. (1978) "A View from Ibadan" in Penter-Brick, K., Soldiers and Oil, (Penguin Press, London). pp. 257-269; Aliyu, A.V. "As Seen in Kaduna" *ibid.*, pp. 270-287, op.cit. cap III.

councillors. Nine of the- nineteen states opted for indirect elections, seven of which are in the North.³ The main reason for the decision was said to be the absence of political parties which would have enabled voters to elect councillors on the basis of party programmes and debate the issues that the voters expected their prospective candidates in the C.A.to grapple with. Rather, candidates were left to campaign on their "personal merit and ability" with no discernible criteria for assessing it.⁴

Public employees could contest only if they resigned their work four months before the elections, a risk most sensibly declined. Hence, in the main, professionals in self employment, retired workers, etc could contest, thereby robbing the councils of knowledgeable and articulate candidates. It may be noted that although paramount traditional rulers were barred, their clients, the District and Village heads were not.⁵

On the practical aspect of it, the actual conduct of the elections was problematic. Cases of rigging and fiddling by traditional rulers in favour of client candidates, the opportunity for which was maximized in areas with indirect elections were reported.⁶ In general, few women contested and more particularly in the North, most were

³. Only Anambra and Cross River in the South opted for indirect elections-Gboyega & Oyediran, *ibid.*, p.262.

⁴. Aliyu, *ibid.* pp. 275-76.

⁵. West Africa, 19th Sept. 1977, pp. 1917-8.

⁶. Aliyu, *op. cit.* p.280.

excluded by tax requirements. These difficulties were compounded by the absence of electoral regulations at the time.

For these reasons, a large body of councillors were returned unopposed most of whom were people in petty private business such as traders, contractors, big time farmers. From the public sector were scribes to traditional councils, village and district heads, etc.⁷ Few of them had formal educational qualifications higher than the primary school level, but most had strong links with the first republic politicians. Above all, there was little evidence of awareness in the general population that the councillors only would elect the Constituent Assembly members.

4.A.Composition And Socio-economic Background Of The C.a Members.

The C.A., established by Decree No.50 of 1977⁸ comprised a total of 232 members. They fell into three categories. Those nominated by the government including its chairman and his deputy. The 22 persons in this category were chosen on "grounds of personal merit", being "citizens who have distinguished themselves in one aspect or other of our national life.." while others who "have also risen to positions of authority or excellence within their respective interest groups are here to represent such interests". The reason for nominated members was the

7. *ibid.*

8. Constituent Assembly Decree, 1977.

government's concern "to cover every aspect of the national life and that all shades of opinion should be brought to bear" on the deliberations.⁹ In this group, tertiary institutions, trade unions and students body had one member each while women had four with the remaining thirteen mainly drawn from the private sector.

The second group of members, seven of them were the chairman of the CDC and chairmen of its various sub committees. They were to serve as a bridge between the two works to clarify issues and the thinking behind the recommendations. Finally, the bulk of the members, 203 of them were elected by the various local governments forming an electoral college for the purpose. The size of members from each state was determined by the criteria of equality and population, hence it varied from 16 (Kano) to 7 (Niger). The Decree¹⁰ sets out the qualifications for candidature: i) Indigeneity to the state where the candidate proposes to be elected or residence for five years. ii) Payment of tax for three years consecutively and not paid in a lump sum in the year of elections as some candidates attempted.¹¹ iii) The candidate was nominated by ten eligible voters in the local area, other than members of the council.

⁹ Inaugural Address by the Head of State, General Olusegun Obasanjo, on the 6th Oct. 1977 in Proceedings of the Constituent Assembly, OFFICIAL REPORT, Volume I (Federal Ministry of Inf. Lagos).

¹⁰ S.3(1).

¹¹ Constituent Assembly (Special Provisions) Decree, 1977, No. 60.

The Decree disqualified some people absolutely or partly. In the latter category were employees of the public sector who were subject to the requirement of four months resignation prior to the elections. Absolutely prohibited were former public sector employees who were removed from office due to dishonesty or dismissed on any ground. Similarly, such public officers who were found guilty of corruption or abuse of office by a tribunal from 15th January, 1966 were subsequently added.¹² Lastly in this group were the paramount traditional rulers.

The election was organized by the Federal Electoral Commission.¹³ The councils were however allowed to look outside their own ranks for candidates, consequently almost half (77) of the elected members were returned unopposed, mostly from the North, with a heavy dose of "old politicians".¹⁴ Apart from the probable hold which such politicians had over the councillors who returned them unopposed, some got membership through corruption, as one member robustly put it. "I am fully aware that many of my colleagues here have been told very bluntly by their constituents that: 'I like you Mr.X, I respect you, but let me be frank with you, unless you give me some money at least to compensate me for being in the local government council which is going to act in the electoral college, you are not going to get my vote'. A lot of us

¹². C.A. (Amend. Decree) 1977, No.52.

¹³. Federal Electoral Commission Decree, 1977, No.41.

¹⁴. West Africa, 12th Sept. 1977.

have heard this kind of thing ,clear and simple. Let us face it. It is a fact."¹⁵

Corruption was of course facilitated by the small size of the constituencies. In effect, the sovereignty of the people to determine the structure of the constitution was undermined by corruption and the mode of elections into the councils and the C.A. which doubly removed them from the process. Thus, the claim of a member that the "Assembly is profoundly and democratically representative" can hardly be supported by available evidence.¹⁶

In situations where there are adequate fora and opportunities for pressure groups to provide an input through lobby, it may not be necessary to have representatives of all or most shades of opinion in this kind of exercise. But the debates as we will see clearly show that most delegates being active politicians were more pre-occupied with securing a good deal for their constituencies while the overall interest of the nation was tangential although the latter was a constant reference theme.

4.B.Terms Of Reference And Procedure.

The Decree establishing the C.A.conferrred on it "full powers to deliberate upon the draft constitution".¹⁷ Explaining further, the Head of State, General Obasanjo

¹⁵. Alhaji Y. Paiko in the Report, Vol. I, par. 1182.

¹⁶. Chief M.P.Adegbie, *ibid*, par.1450.

¹⁷. S.I Decree No.50 1977.

in an inaugural address restated the Assembly's task to "discuss the draft constitution..and come out with a recommendation" which will be considered and promulgated by the Supreme Military Council.¹⁸ It had one year for the exercise beginning 6th October, 1977.

The C.A. and the Government were at cross purposes on the question of who had the final power to enact the constitution. The chairman of the Assembly, after an initial prevarication settled for the unanimous view of all the members who had contributed on it including the CDC chairman that "we are here to enact the constitution" and that "the will of the people should not be treated as a recommendation".¹⁹ The military government of course had little difficulty in brushing aside the envisaged powers of the Assembly to enact its work as the constitution. However, according to Read, if the Assembly had got its way, the end result would be a "deracinated" rather than an "autochthonous" constitution. The latter applies if there is a breach of continuity with a foreign imposed document while the former reflects a constitution that is the product of its natural local environment.²⁰

In its work the Assembly was to consider the official majority draft and no other. Subsequent demand by several members to secure for the Assembly, the Minority Report to ensure a balanced discussion was dismissed by the

¹⁸ Gen.Obasanjo in Vol.I, op. cit. par.10.

¹⁹ Justice Udo Udoma, *ibid*, par.330 & 336.

²⁰ Read, J.B. (1978) "The New Constitution of Nigeria, 1978: 'the Washington Model'?"
23 *The Journal of African Law* 2: 146.

chairman as outside its agenda. He said: "What is before us is what we are supposed to consider. We are a legal body established by law and we have our own restrictive power...I am not interested in listening to any minority report"²¹ This rigid construction of its agenda indeed robbed the Assembly of a major arena on which to organize opinion on a cross-cutting basis, given the non existence of parties. More profoundly, as we will see, it largely contributed to redirecting attention to religion and the tenacity of region as major cleavages on which opinion was firmly and implacably organized.

Together with the draft, the Assembly was also to consider the report of the Technical Committee on Revenue Allocation and public contributions as monitored by the government. General Obasanjo passionately exhorted the members to adopt a wider rather than myopic view of their responsibilities. He said: "There are of course millions and millions of our country men and women who will never express an opinion on these matters. Many are not inclined to comment on such issues as a rule[?], while many more are permanently engaged in the desperate efforts of making ends meet. We have millions of our country men and women who face a harsh situation almost fated, as it were, to continue to labour under very primitive conditions of eking a livelihood, with little modern aids, in thick forest zones as in swampy regions and the sahel. The interest of such people and their

²¹. Justice Udoma, op. cit. par. 330.

future happiness must also be taken into account when we compare the views of those who write in the press or talk on the radio and television..” Finally, he advised that “valuable time will be saved by sticking to your ‘term of reference’ as closely as possible”.²² In conclusion, the chairman in response , presaged in opposite direction what was to come when he noted that members were not there as delegates with their minds made up and with immutable instructions to vote in a particular way.

The work of the Assembly was therefore at the outset profoundly circumscribed by the military and the chairman, himself a Supreme Court Justice, who had a narrow, heavily legalistic view of its role. By being limited to the majority draft, some narrowly based public comments as we will see and other technical papers, its agenda and role was reduced to one of detail rather than an opportunity to examine the orientation and structure of the entire exercise in the light of all available draft proposals and contributions.

The procedure in the Assembly was governed by the Standing Orders of the House of Representatives in force on 12th January, 1966 as may be modified.²³ This means, the Assembly would function as if it was a legislative house and treat the majority draft as if it was a Bill to pass through the usual three stage procedure for legislation. Following this procedure, the C.D.C.

²² Gen Obasanjo, op. cit. par.9-10.

²³ S. 4 of Decree No. 50/1977.

chairman opened discussions by presenting the entire draft to the Assembly as a Bill for first and second reading on its principles. He espoused the main considerations behind what he considered as the major aspects of the draft. According to the Assembly's Chairman, this aspect of the procedure was a favour done by the CDC chairman to the Assembly in the absence of parties. "There is no party leadership. All of us are like periwinkles wearing the same hat."²⁴ Before considering the issues raised, a word on public contributions is apt here.

4.B.1 The Draft And Public Debate.

The federal government had decided at the outset not to organize a referendum on the end product of the exercise. Consequently, between the submission of the draft by the CDC and the commencement of the C.A., one year was allowed for public debate and discussion of the majority draft. For this, a Media Monitoring Unit was established in the Political Division of the Cabinet Office, Lagos to monitor and collate the discussions all over the country. However, no further structures were established to disseminate the exercise and receive inputs from the rural areas. Consequently, what is available as public contributions were views expressed by individuals and few groups as reported in the country's newspapers, reported debates on television and radio, reported organized symposia and individual memos and letters sent to the

²⁴. Justice Udo Udoma, op. cit. par. 44.

unit.²⁵ In effect, the debate was confined to those with the resources and access to the media. There is of course little argument on the inability of a bureaucracy based in Lagos to co-ordinate discussions in such a vast country, thereby necessarily narrowing the base of contributions.

The importance which should have been accorded to the debate is underscored by three considerations. First, the CDC whose work was the main document before the C.A. noted, each controversial issue was debated and determined by majority decision which in some cases was slight and in others, overwhelming. The view of the public in those regards is very important. Secondly, the CDC comprised not of representatives but a mixture of technicians. The wider public might reflect a different balance of opinion if the issues were properly presented and understood. Finally, some of the CDC members who authored the draft had publicly disavowed some of the provisions underlining the need to re-examine those matters critically.²⁶

The Report of the Government Unit provides only a summary of the major issues raised by the debaters, without the contributors' identities. But one compiled by the Nigerian Institute for Social and Economic Research attempted to produce a list of contributors which by its own account is not comprehensive.²⁷ In this report, 451 persons

²⁵ The Public Debate on the draft Constitution; prepared by the Media Monitoring Unit of the Political Division of the Cabinet Office, 1977.

²⁶ See West Africa, 31st Jan., 1977.

²⁷ Univ. of Ibadan, Nigeria.

contributed. The list indicated that as a generic group, but not as an organized opinion, the largest contributors were university academics and administrators, many of whom later became members of the Constituent Assembly. The largest individual contributor was Chief Obafemi Awolowo, with eight articles. He was one of the three 1st Republic regional leaders. Newspapers made the highest group contributions.

On the substantive issues, one aspect of fundamental rights, freedom of expression and the press, received the highest comments, followed by the executive president. This agrees with the summary of the Government Unit. In both reports, the legislature received little attention except the qualifications which attracted considerable comments from the teachers in particular. Also the need to transfer more functions and fiscal powers to the states and local governments attracted a fair attention in both reports. However, the economy and finance did not feature much, partly because a Technical Committee on Revenue Allocation established by the government prior to the discussions had not submitted its report.

The judiciary attracted very little comments, with only two articles on the Sharia Court in the NISER report while the few contributions reported by the Unit centered on improving the draft on the subject. Political parties received ample debates, but were mostly confined to suggestions aimed at reducing their number, ranging from zero to multiple. The funding of parties was commented

upon with suggestions to prohibit open or secret contributions to parties by business so as to inhibit foreign manipulation of the political process and also limit individual contributions. But only one person was reported to have complained against the CDC decision to sever associations of any kind from having links with parties.

On the public services, there was no broad discussion on its structure and orientation. But a group of commentators noted that the federal character principle was a ploy by the elite to sow seeds of discord in the population by creating the impression that the basic cause of instability is diversity of people and not the gap between the the rich and poor. Another group wanted civil servants prohibited from taking up appointments as chairmen and directors of statutory corporations and government owned companies. Mixed economy as the ideological foundation of the draft constitution invoked controversy, notably among the academics. One group saw it as the rejection of socialism, while another considered it proper and compatible with the inclination of Nigerians. A third group yet, argued that the debate was futile as socialism could only be introduced in Nigeria through revolution and not the CDC who have a vested interest against it.

Finally, a fair proportion of contributors demanded the official release of the minority report for balanced debate and discussion. It is obvious that the limited

contributions were a re-run of the debates that took place in the CDC deliberations, a not surprising result given the constraints already noted.

4.C.The C.A.Debate On The Principles: Major Issues And Cleavage Structure.

In determining the issues and cleavage structure in the American Convention of 1787, Jilison²⁸ sought to bridge the polarized position of those who saw the dominance of ideas against those who posit the dominance of parochial economic interests. His data was the roll-call of votes taken in the Convention. He concluded that in dealing with the issues relating to the scope, scale and form of government, "higher level of constitutional choice", principles prevailed and coalitions were formed on intellectual cleavage. On the other hand, on the choice of institutions, nature of their relationship, regulation of political behaviour, distribution of power among the organs, between the latter and the citizens, etc, being matters of practical politics, they involved "lower level" decisions. In these areas, decisions were taken with direct reference to the political, economic and social characteristics of the choosers, their states or regions. His findings and conclusions were attempts to elaborate with evidence earlier hints and suggestions by others to that effect.²⁹

²⁸. Jilison, C. Calvin (1988) Constitution Making: Conflict and Consensus in the Federal Convention of 1787 (Agathon Press, N.Y.).

²⁹. Buchanan, J.M. & Tullock, G. (1962), Calculus of Consent: Logical Foundations of Constitutional Democracy. (Ann Arbor, MI: Univer. of Michigan Press); Dahl, R.A. (1976) Pluralist Democracy in the United States: Conflict and Consent. (Chicago: Rand McNally).

In testing this approach against Nigeria's Constituent Assembly, some limiting factors must be underlined at the outset. First, the procedure adopted in the latter reduced considerably the use of open votes and divisions in deciding propositions. The idea was to enhance compromises and consensus. Second, most of the members especially the elected, lacked actual economic data because of the tendency of companies and business to cluster in few influential individuals. Notwithstanding these limitations, on the whole, the tendency in the 1977 CA apparently compares with Jillson's findings as we shall now see.

Issues & Cleavages In The Discussions On Principles.

The C.A. approached its work by separating discussions on "principles" from the detailed considerations of the nitty gritty of the draft. It therefore assumed like Jillson, that principles are distinguishable from practical issues, an exercise that transpired to be futile as most members dwelt on what they perceived as the issues that affected them and their constituencies rather than the niceties of the constitution. The debates (second reading in parliamentary terms) contained in Volume I of the Proceedings, was moved by the CDC Chairman, Chief Rotimi Williams. He identified two main themes and made out the case for their adoption.

The first and main issue was the adoption of the presidential in contrast to the parliamentary system. The central reason for the choice was the desire to

concretize the concept of the sovereignty of the people by enabling them to choose the president directly instead of allowing the choice made for them by the political party with majority which obtains in parliamentary systems.³⁰ Practical considerations of Nigeria's past involving in fighting and tension between the ceremonial president and the prime minister played a significant role in the choice.³¹ The executive president became the centre piece of the entire system with all other institutions created in its shadow. Such organs as the legislature, judiciary, code of conduct, ombudsman, etc were to serve mainly as checks and balances on an all powerful president and his team.

The second theme, although part of the judicature, stood in its own right, that is, the question of a Federal Sharia Court of Appeal. According to Williams, the CDC recommended the creation of a Sharia Court of Appeal at the federal level to rectify a legal anomaly arising from the dissolution of the regions where such a court catered for the entire region but had to be limited to individual states in the new structure. Second, to give recognition to the rights of the millions of Nigerian Muslims by providing a judicial avenue which is not available in existing federal courts structure for redressing

³⁰. Vol. I, op. cit. par. 38-9.

³¹. These occasions were: a). On the choice of the Nigerian successor to the departing British head of Nigerian Army. b). In 1964 when the President delayed in calling on the outgoing Prime Minister to form the government after winning majority of seats in parliament. c). In 1964, when the President declined to appoint acting P.M. to deal with the mutiny in the Army in the absence of the substantive PM, on the ground that he had to contact the latter overseas-ibid. Alhaji Abdul Basaq. par. 1893-1901.

particular grievances. Furthermore, since there are appeal structures at state level for these courts, it is necessary to harmonize their decisions to ensure uniformity, predictability and certainty of the laws in tune with the federal structure. The CDC could not recommend the adoption of the entire Sharia jurisprudence because Nigeria is plural and secular.

In the debate that followed, members largely lifted the issues and pattern with very strong views expressed either ways. In particular, Ibrahim Tahir (Bauchi) who was also in the CDC advanced powerful arguments against the presidential system dubbing it as "anti-populist" (presumably dictatorial) and "anti democratic" because it tends to individualize and personalize the state away from the representatives of the people.³² Therefore in a broad sense, it could be argued that in the choice of form of government, principles and the desire for good government largely guided the discussions with cleavages veering towards intellectual. However, on several issues and cleavages, members reacted on different levels and under different influences and motives because of the personal, practical effect it would have on them as individuals or members of a group.

1. Political Constituency Interests.

Although the dichotomy is not clear cut in all cases, the following issues and groupings were evident and each pressed for particularistic interests. a) Members from oil

³². Ibid, Dr. I. Tahir, par. 1748.

producing areas. Those from these states sought a provision in the constitution to take into account their position as the producers of oil and the nation's wealth to secure special funds. b) Religion. Almost all Muslim members pressed for the establishment of the Federal Sharia Court, a position opposed by a large proportion of the Christian and other members. Similarly, a significant minority of Christian members wanted schools previously run by the missionaries but taken over by the governments returned to the past proprietors. c) Abandoned Properties. Most of the Ibo members wanted a provision in the constitution to compensate or return to the owners, property abandoned in the wake of the civil war in Rivers and Bendel states. This demand met stiff opposition from members of those states. d) Traditional Rulers. Although traditional rulers did not have a heavy representation, almost all the large members who contributed on it, pressed for a role for the traditional rulers. In urging caution on this demand, Okigbo ³³ gave reasons for its apparent popularity.

According to him, since military rule, most civil political organizations had either been dismantled or driven under ground. Instead, the military relied on traditional rulers to reach out to the people, thereby creating a political constituency. Therefore, the attempt to glamourise the institution was an attempt to follow the short cut to reach the people. This is evidenced in

³³. *ibid*, par. 1851-52.

the common practice of such protagonists grovelling for all sorts of traditional titles.e) Students. The only representative of students in the Assembly, after considerable heckling from the chairman over his dress (all red from cap to trousers) pressed for issues pertaining to education.f) Women. The four women in the Assembly, expressed their wish to expunge or modify provisions which seemed to derogate on equality sections of the draft to uphold custom and Islamic laws as well as provisions which legitimate children born out of wedlock.³⁴ They also pressed for other issues affecting women in general.

2. Federal and States' Rights Campaigns.

Being active politicians, with geographic constituencies, issues affecting states and local governments were profoundly raised. Most of the elected members from all states in marked contrast to their nominated counterparts, pressed for greater resources and responsibilities for these arms of government. They charged the CDC with coming heavily under the influence of the military government to produce a unitarist constitution, a charge angrily denied by a CDC member.³⁵ The CDC decision to create only two lists-exclusive federal list and residual for the states was severely attacked. Champions of states' rights also pressed for the decentralization of police.

³⁴. Ibid, Mrs. Ukpabi, par. 80; Mrs. Akintunde, par. 81; Toyin, 696-7; Mrs. Braide, 1508.

³⁵. Ibid, Alhaji Ramati, 1810-11 denied such influence.

But the latter group were among themselves divided between populous and smaller states on a host of other items such as revenue allocation, whether in the allocation of seats in the national assembly, equality or population should weigh greater, procedure for states creation, etc. Together with the CDC members, the government nominees seemed to share wider views. One reason is the simple fact that they were federal government agents, hence were not expected to behave differently. But more importantly, most of them had over the years built a large interlocking network of economic, personal links and other interests spanning across several states. This was obvious in the dispute in the CDC over control of land.

3. Personal Economic Interests.

Personal concrete economic interests featured mainly in three areas. First, there were advocates of minimum government, most of whom were the nominated members and intellectuals sympathetic to that cause.³⁶ Their positions were expressed during the discussions on control of the economy, ideology, and justiciability of fundamental objectives and directive principles of state policy which Okigbo described as "neo-socialist" which does not "square neatly with the neo-capitalist leanings

³⁶ Those with known properties are: Abiola, 258; Guobadia, 817; Oduola, 1108; Malani, 1070; Shugb, 1274; Some of the intellectuals are: Dr. Fafis, 1146-7; Dr. Ugoh, 1333; Mwanodi, 1322.

of the chapter on the economy".³⁷ The few advocates of socialism seemed overwhelmed and on the defensive in contrast to the vigorous arguments in the CDC which produced non justiciable fundamental objectives as a concession. The nature of land ownership and distribution produced a complex and diffused grouping. As in the CDC, there was a general chorus for redistribution. Most of the members who spoke on it and not known to be share holders in companies wanted land nationalized.

However, Alhaji Shehu Shagari³⁸ who later became the president in the second republic made a vigorous case for social justice in the distribution and use of land and its resources in relation to the farmers rather than the elites who mainly complained of monopoly by the more established generation of elites. Finally, there was a general reference for the need to cater for the people with Mallam Aminu Kano and Alhaji Ali Mungono dwelling extensively on those problems affecting the common man.³⁹ Their resolution required collective rather than individual leadership, and Mungono rightly noted that sovereignty and poverty are incompatible. It is only by resolving these grave needs that there can be cohesion and tolerance and accomodation which all yearn for.

³⁷. Okigbo, 1750.

³⁸. 1117-1118.

³⁹. Aminu, 1599-1611; Mungono, 1240-1247.

4.D.Issues and Cleavages in the Full Committee.

Order 43(2) of the Standing Orders applicable to the Assembly required it to consider the draft clause by clause. An initial attempt to modify it to provide the Assembly with some flexibility in approach was heavily defeated. Curiously, it produced an almost instinctive North (less the minority areas of Benue and Plateau) versus South cleavage. The latter together with the aforementioned minority states defeated the amendment which was made by Alhaji A.Z.Mahmudu from Kwara, with a strong backing from the CDC chairman. The amendment sought to delay discussions on the preamble until the entire Bill was considered. See Appendix B, Table I.⁴⁰ The Table also shows members voting in block, first according to states and then according to the old regions less the Benue and Plateau areas of the North, rather than consider the issues on an individual merit and vote as such.

Through the chairman's sole approach, and in the face of incessant objections by many members, the Assembly subjected itself to another major disability. According to his decision, an amendment however important, lapsed if the person in whose name it appeared was absent.⁴¹ Incidentally it encouraged members to team up in making amendments to cover for absentee colleagues and also had the unforeseen effect of partly diffusing an obvious

⁴⁰. Vol. XX, pars. 1920-24.

⁴¹. Ibid, 5842-46.

North Versus South voting to other geographically or ethnically cross cutting divisions and partly aided compromises.

However, the Business Committee of the Assembly decided in keeping with the general perception that the chapter on the executive was the most important, became the first item to be considered while others seemed to follow as consequential.

1. The Executive.

There was a re-run of the origin and merits of both presidential and parliamentary systems between Ibrahim Tahir who opposed the former and Richard Akinjide (later minister of justice) who made the case for presidential system relying heavily on practical considerations. The latter was upheld by the Assembly.⁴² Most items under the executive were adopted in a spirit of compromise, but few others attracted sharp and sometimes open divisions. a) Age limit. The younger generation of the Assembly were fiercely pitted against most of their older colleagues on the question of 40 years minimum fixed by the draft for the presidency. Abubakar Rimi (Kano) strenuously argued that a minimum age of 21 should apply to all elective offices. Ultimately, the division on the issue produced a complex cleavage structure, as Appendix B, Table II shows.

⁴². Ibid, 1962-55.

It showed first, a division between the nominated/CDC members and a large proportion of the elected overwhelmingly against it. Almost all the members from the South less a divided Anambra and Rivers and the members from the North less an almost equally divided Benue and Borno were against it. But members from Kano and Plateau states made a strong showing in its favour because Kano is noted for having a strong, radically politicized anti-establishment youth under the leadership of Mallam Aminu Kano.⁴³ Although the older members won, a compromise age of 35 was agreed upon for the president and subsequently, 30 for the senate.

A subsequent amendment introduced separately by Wodi, A.K.(Plateau) and Yusuf, A.B.(Kano) to place a maximum age of 70 years for the presidency curiously re-produced a single alignment between the predominantly Hausa-Fulani states of Bauchi, Kano, Niger and Sokoto versus all the members from the South plus Benue and Plateau in the North. But Borno, Gongola, Kaduna and Kwara states with significant minority nationalities were almost equally divided on the issue. See Appendix B, Table III⁴⁴.

b). An amendment to section 109(2) of the draft to delete the words "Chief executive of the Federation" on grounds of being superfluous produced yet another single cleavage of members from the North less the Benue-Plateau axis

⁴³. Whitaker, C.B. (1965) "Three Perspectives on Hierarchy: Political Thought and Leadership in Northern Nigeria" in III The Journal of Commonwealth and Comparative Studies, pp. 1-19.; Paden, J.B. (1984) Ahmadu Bello, Sardauna of Sokoto: Values and Leadership in Nigeria. (Hodder & Stoughton, London) pp. 378-81.

⁴⁴. Vol. II, pars. 2031-2036.

versus their Southern counterparts. See Appendix B Table IV. The amendment was sponsored by Adamu, M.(Sokoto).⁴⁵

c). Partial reform of the civil service was suggested to remove appointments under section 146-secretary to the government, permanent secretaries, ambassadors, etc from the civil service structure so that the appointees vacate office with their appointors in line with the practice in the U.S.A. It was sponsored by Chief J.O.Udoji (Anambra) a person who had spent a long period in the civil service.⁴⁶ Together with most current or former members in the civil service, the chairman was vigorously against the amendment. "It is true we are following the American pattern, but it does not mean that we must adopt everything American. I think there is a great deal which is very good in the British civil service system which must be retained in the country".

Predictably, most members from the North, less Plateau and a divided Benue and Kaduna voted against it. Except those from Bendel, most members from the South were almost evenly divided. See Appendix B, Table V. Two main reasons may account for the differences. First, there was a greater mix of members from the public and private sector from the South in contrast to the North where a larger number were drawn from the public sector. Naturally, the latter group would resist attempts to

⁴⁵. Ibid, 1981-88.

⁴⁶. Ibid, para. 5728-5750.

restrict their career prospects. Equally important, especially for members from the North, the public sector has been the incubator for careers in the private sector because of their relative lack of capital base in contrast to their southern colleagues. Apart from this amendment, there was no serious attempt to reform the public sector. In fact, there was greater emphasis on applying federal character in all spheres of the public service including the armed forces which most members viewed as a means of ensuring the economic and political security of every section of the community.

Apart from these instances involving open division of votes, there were some questions on which cleavages became pronounced. d) Mode of electing the president. The procedure for electing the president attracted considerable discussion because of the fear expressed by the minority groups and smaller states that a few bigger and populous states might gang up to perpetuate the office among themselves. Consequently, the twin requirements of territorial spread and popular acceptance was agreed upon. That is apart from securing majority votes, it has to spread in a specified number of states. e) Political parties. Broadly, the CDC recommendations were adopted with little discussions. The changes introduced, stripped those on the left of the ideological spectrum of the concessions made by the CDC.⁴⁷ The latter had tied political party programmes to mixed economy and

⁴⁷. See Selebo's explanations along this line in *ibid*, 5957-8.

a non justiciable directive principles, but provided a small window by allowing a party to canvass or advocate for the alteration of the relevant chapter. The Assembly almost unanimously abolished this concession altogether.⁴⁸

An amendment which sought to minimize the control of the political machinery by the rich men through limiting the expenditure of parties and contributions of individuals was negatived after little discussion.⁴⁹ The attempt to limit individual contributions was scoffed at as impractical, denial of human rights, blackmail or inadequacy of subscriptions while one member dubbed the mover of the motion as a "socialist".⁵⁰ Finally, an attempt to separate occupational from other associations for the purposes of contributing to and canvassing for political parties was negatived. The valid point made by the mover that occupational associations including trade unions and other professional groups are wholly integrative and satisfy the conditions of federal character more than the prescriptions of the draft, was ignored.⁵¹

It is clear that unlike the debates on other aspects of the section on the executive, where apparently non economic interests seemed predominant, the area on

⁴⁸. Ibid, par. 5959.

⁴⁹. Moved by Mahmud, A.S.(Kwara), Ibid, 5972-3.

⁵⁰. Ibid, 5976-97.

⁵¹. See Dr. O.Omoruyi (Bendel), Ibid, 5940-41.

parties disclosed a bias pertaining largely to the economic interests of the members.

2.The Legislature.

In deliberating on the Legislature, the Assembly adopted most of the CDC recommendations. Consequently, there were only three open votes and division on contested items. But they reveal shifted alliances, different and at times diffused cleavages.

a). Majority versus Minority.

a).Size of the National Assembly. Some members from Sokoto which houses the large Hausa-Fulani groups supported by others from Kano also inhabited by the same group pressed for an increase in the size of the senate. The applicable formula would be equality in the first instance which insures a minimum number for all states to reflect their equal status in the federation and then population to reflect those large populations under-represented by using equality alone.⁵² As a result of a fierce objection from the members mostly from the minority areas who saw the proposal as an attempt to shrink the federal principle embodied in the equal status of the states in the senate, the amendment was withdrawn.

⁵². See N. Adamu (Sokoto) 6028; Bimi, W.A.(Kano), 6035-6; Alb. A. Shagari, (Sokoto), 6044.

In a slightly different form, the issue came up again in the discussion on the ratio of a legislator to a constituency and the size of the House of Representatives. Ratio was a matter that appealed to both those from smaller national groups who had to be clustered together to form one constituency, and also bigger national groups who tended to have fewer representatives in proportion to their huge populations.⁵³ If the amendment was adopted, there would be a legislator for a minimum of every 150,000 and a maximum of 200,000. But a large proportion of the Assembly was not inclined to adopt it in the constitution because it presented enormous technical difficulties. The Assembly was however unanimous in agreeing to an increase in the size of the House of Representatives. Therefore, the open division recorded on whether to adopt the CDC's 350 or the suggested 450 or 480 does not disclose a clearly discernible cleavage as Appendix B, Table VI shows.

b) Appropriation Bill. Under section 56(7) of the draft, if both arms of the Assembly did not agree on a Bill, it would be referred to its Joint Committee on Finance. The question again arose if the Committee was unable to resolve the matter. The amendment sought to resolve it if it is a money Bill, through the two Houses in a joint session where if it is passed by a simple majority, would

⁵³ Spokesmen of minorities were: Bella, A.T. (Gongola); Gani, A.M. (Kwara); Prof. A. Ali (Bendel), 4101; For populous groups see Abdullahi, S.U. (Kano), Aghimien, J.G. (Bendel), 6085.

be sent to the president for his assent.⁵⁴ Those from smaller states objected to a joint sitting on the ground that states with fewer members, as house of representatives is solely based on population, would be swamped along with the senate inspite of equality of representation in the latter. Some members from the smaller states were also keen to ensure that there is equality of all states in the membership of the Joint Committee. The complication set in because members perceived it mainly in terms of sharing the national cake.

An attempt by Alhaji Shehu Shagari and a few others to present the likely cleavage in the legislature in the event of such a deadlock to be between parties rather than majority versus minority nationalities had little appeal to members. In the end, after a protracted debate, the amendment was adopted.

c) Legislative Lists. The question whether or not there should be two or three lists of areas of legislative competence between the national and state legislative assemblies evoked a spirited debate. The supporters of two lists-exclusive for the centre and residual for the states were the chairman of the Assembly and a significant number of nominated/CDC members who may pass as federalists. Most others wanted an additional

⁵⁴ Alh. G. Ja Abdulhadi, Ibid, 6333.

concurrent list.⁵⁵ The latter were conceded to without an open vote.

d) Procedure for states creation. There was an almost unanimous agreement on the principle of creating states where there is a genuine need and desire. But the criteria that must be fulfilled became one of the most contentious issues in the deliberations. It forced the Assembly to set up a sub committee to consider and collate the various propositions made in the Assembly. Two camps were discernible. On the one hand were "hard core agitators for state creation".⁵⁶ As the division list on **Appendix B, Table VII** shows, most of them came from states where there are strong demands—Anambra and Imo, Cross River, Kaduna and Gongola.⁵⁷ They demanded a procedure that is flexible involving less other states. They put the question of states creation as a right to self determination. Most of their opponents comprised the majority nationalities of both the North and Western states of the country with fairly insignificant minority groups.

In the latter group's view, states creation is a national issue which must involve all states because it affects allocation of seats in the National Assembly, revenue allocation, etc. Inevitably, they insisted on a procedure that compromised the very rigid prescription of the

⁵⁵. Ibid, par. 6704-6738.

⁵⁶. So called by A. Y. Gussau, Chairman of the Sub Committee of the Assembly on States creation, Ibid, 6794.

⁵⁷. States have now been created out of Kaduna and Cross River states.

draft and the very lax one demanded by opponents. This position was reflected in the sub committee's formula most of which was adopted after another thorough debate.⁵⁸

e). A similar cleavage between members whose interests were greatly served by the public sector against their colleagues inclined to the private sector was repeated in considering the provision which required public servants to resign four months before qualifying to contest elections. See Appendix B, Table VIII. One member charged that most of those opposed to relaxing the rules were lawyers in private practice.⁵⁹ In the end, the Assembly deleted the period and required that such civil servants were only to show that they had resigned their appointments.

In the preceding discussion, except in its broad orientation, the issues and cleavages do not disclose much proprietary interest. There were however specific cases where such interests surfaced.

⁵⁸. Ibid. para. 6749-6817, 6823-6852.

⁵⁹. T. Muhammadu, Ibid, 6502.

b). **Quorum.** A member sought to reduce quorum in the parliament from one third prescribed in the draft to one quarter because "the generality of the members of the legislature of this country are going to continue to be businessmen mainly...They are going to be businessmen who by themselves are managing directors of various companies and the problems as regards the day to day decisions on their business will take a great deal of their time..."⁶⁰ This position was adopted.

c) **Disclosure of interest by members.** Section 54(3) of the draft contained an enabling provision whereby the legislature may provide in its rules that the vote of a member with a direct proprietary interest in a subject matter may be disqualified. Some members sought to provide it in the constitution and extend the disqualification to participation but excluded indirect pecuniary interest. The member was also required to make that declaration.⁶¹ Most speakers were anxious to emphasize the non inclusion of indirect interest because the members's direct interest may coincide with those of his constituency. Therefore, they reasoned, it is unfair to his constituency if he is excluded from speaking on their behalf.⁶² In the end, Udoji's suggestion that the entire matter be left to the rules of procedure of the legislature to allow "some flexibility to accomodate various situations" was adopted.⁶³

⁶⁰. Chief Ollilo who later became the governor of Cross River State.

⁶¹. N. Mayatuddin, 6250.

d) Deletion of Public Complaints Commission.

Under sections 81-89, the CDC provided for an Ombudsman to inquire into private grievances against public and private institutions, separate from any other forum provided by the legislature. On the other hand, the Assembly recommended that it be abolished. Two reasons were adduced for the decision as articulated by Umaru Dikko. First, that it duplicated the investigative powers of the legislature. Second, that the public could channel grievances through their representatives and consequently, it would be a "white elephant".⁶⁴

No more need be said than an observation of one member that it was "indeed legalising oppression and misdeeds by those in power". Incidentally, political and financial profligacy and lack of accountability were the main factors that led to the collapse of the second republic in which the principal actors were members of the Constituent Assembly.

e). The Sharia Controversy.

Undoubtedly, the most controversial and deeply divisive issue in the Assembly was the recommendation of the CDC for the creation of a Federal Sharia Court of Appeal (F.S.C.A.). As noted in the beginning, while introducing the main elements of the draft constitution,

⁶². Alh. S. Shagari first raised the issue.

⁶³. Udoji, 6254.

⁶⁴. Umaru Dikko became one of the most powerful ministers in the second republic and is alleged to have been involved in colossal corruption.

the CDC chairman apparently motivated by good intentions, put the spotlight on the reasons for and the decisions of his Committee to establish the courts. Subsequently, it turned out to be the issue commented by almost all speakers generally with a great deal of passion and sometimes, threats. However, because the issue and the attendant controversy was replayed in the later constituent assembly of 1988-89, its discussion and analysis will be deferred until then so that its historical, contemporary and socio-economic dimensions could be put in a proper and complete perspective.

It suffices to mention here that following an impasse and a subsequent boycott of the proceedings of the Assembly by 88 members⁴⁵ mostly from the Muslim dominated states of the North, the Federal Military Government intervened after repeated warnings for caution and tolerance by the Head of State, other senior state officials and concerned citizens.⁴⁶ Ultimately, the government adopted the version recommended by a compromise committee set up by the Assembly and chaired by Simeon Adebo which was rejected by the pro-Sharia camp. This version provided that instead of a separate court, there should be special sittings of the Federal Court of Appeal where only Justices of the Court "who are versed in Islamic Law" would preside. Thus, no full F.S.C.A. was established, and

⁴⁵, New Nigerian, 7/4/1978.

⁴⁶, General Obasanjo, West Africa, 24/4/1978; Inspector General of Police, New Nigerian Newspapers 12/8/1977; one unidentified lawyer, West Africa, 14/11/1977.

more over, "persons versed in Islamic Law" need not be Muslims.

Following the bitterness engendered by this dispute, it is no surprise that the Assembly rushed through its work, rejecting special provisions for press freedom, overwhelmingly turned down amendments aimed at establishing Houses of Chiefs as part of state legislatures. Similarly, the provision which sought to prohibit discrimination because of circumstances of birth, generally perceived as the constitutionalization of illegitimate children was completely deleted.⁶⁷ Finally, it left decisions on the criteria for revenue allocation to the Technical Committee on Revenue Allocation established by the government and the subsequent civilian legislature.

Following this, the Assembly adjourned indefinitely on 5th June, 1978, four months ahead of schedule under the impression that unless the chairman felt it necessary, there would be no need to convene another meeting.

4.E. Promulgation of the Constitution.

Given the circumstances the Assembly's work was completed and of course in the exercise of its supervisory powers, the government introduced a number of changes totalling 22.⁶⁸ First, it restored the Ombudsman, earlier rejected by the Assembly. Second, using the provision on adaptation

⁶⁷. West Africa of 12/6/1978, 26/6/1978.

⁶⁸. Ayua, I.A. (1983) "Constitutional Developments in Nigeria Since the Colonial Era" in Atanda, J.A. and Aliyu, A.Y., Proceedings of the National Conference on Nigeria Since Independence, Ibadan, Volume I.

of existing laws⁶⁹ it conferred a constitutional status on some existing institutions, the most notable of them being the National Youth Service Corps and the Nigerian Security Organisation. Similarly, three days before the constitution came into effect, the government introduced another amendment incorporating fresh provisions relating to run-off elections, issue of proclamations for convening and dissolution of assemblies.⁷⁰

Finally, the government enacted the Constitution as an ordinary Decree: The Constitution of the Federal Republic of Nigeria (Enactment) Decree, No.25, 1978 in which the Constitution formed a schedule. But section 2 authorised its future reprinting separately. Section 1 of the Decree gave it the force of law and came into effect as a whole on 1st October, 1979 except section 262 establishing the new federal capital. The latter was to become effective on a date to be specified by the president upon confirmation by resolution in each federal legislature. Lastly, the government completed the process by repealing sixteen laws, half of which date back to 1966 relating to supremacy of military government, public order and security regarded as obstacles to political activities. This therefore enabled and ushered in the second republic on 1st October, 1979.

⁶⁹. S.274 of the Constitution.

⁷⁰. The Constitution (Amendmt.) Decree No.104 of 1979.

CHAPTER FIVE.

5. THE POLITICAL BUREAU.

The preceding processes which culminated in a constitutional government in 1979 highlighted the nature and diversity of interests which competed for constitutional protection and entrenchment. The end result was institutions and a system of accountability, which were almost wholly elitist in purpose, structure and execution. In the main, it lacked a system of accountability to the citizenry and in its operation, to the premises of the system itself requiring a certain degree of honesty and impartiality, due to massive corruption and electoral fraud.¹ This led to the overthrow of the second republic in 1983.

Three years later, in the bid to secure a stable constitutional system, another process was begun. The spate of failures by the dominant elites to stabilize the political economy however, engendered a thoughtful debate among some students of African politics on the necessity of developing a democratic control over the continent's elites to overcome the perennial economic and legitimacy crises.² Clearly, the past elite strategy of repressing voluntary democratic movements through violence,

¹ Diamond, L. (1987) "Issues in the Constitutional Design of A Third Nigerian Republic" 86 African Affairs pp.209-226.

² McIntel, P.P. and Hain J.D. (1988) "Developing Democracy when Civil Society is Weak: The Case of Botswana" in 88 African Affairs, 356:323-340; Mamdani, T., et al. (1988) Social Movements, Social Transformation and the Struggle for Democracy in Africa. CODESRIA, Working Paper no.1; Graf, W., (1988) "Issues and Substance in the Prescription of Liberal Democratic Forms for Nigeria's Third Republic" 88 African Affairs, 350:91-100; Maynes, Jeff. (1989) Inching Towards Democracy: the Obasanjo Revolution, the International Monetary Fund and the Politics of the Possible. The 1989 Conference of NCASF: Taking Democracy Seriously: Socialists and Democracy in Africa. Warwick University, Sept.

cooptation or vertical mobilization along communal lines have become increasingly unviable and counterproductive.³ Instead, there seems to be a full cry in favour of providing structures that could relieve lower class marginalization through genuine reform, a broad based development, multiplying opportunities for groups and individuals and socio-economic mobility to reduce anti-systemic pressure--the classic Hirschman trade off between exit and voice. This provided the setting and tone for the approach to, debate on and choice of institutions and philosophy of government the framework for which a future Nigerian constitution is expected to provide.

This theoretical debate became official government policy in 1986 when President Babangida made a commitment that "In order to establish a viable and enduring peoples oriented political system devoid of perennial disruptions, this administration has decided to involve the people in the search for a solution to the problem of political instability".⁴ He promised to sponsor a national debate on the country's future political system. He underscored the "need for systematic mobilization of farmers, workers and youths for production, community governance and widespread national consciousness". The mobilization was wrapped up in a patriotic flag as it was essential "to defend the integrity of the nation's

³ These elite strategies in the face of lower class mobilization are discussed by: Chazan, Sodom (1982) "The New Politics of Participation in Tropical Africa" 14 Comparative Politics, 2; Diamond, L. (1987) "Social Change and Political Conflict in Nigeria's Second Republic" in Zeitman, I.W. (ed) The Political Economy of Nigeria (Prager N.Y.) pp.25-84 at 28-30.

⁴ President Ibrahim Babangida, Address to the Nation on the 1986 Budget, 31 Dec. 1986.

economy, to fight corruption, discourage smuggling and expose all forms of social ills".⁵

This populist gesture had a precedent in an earlier government sponsored national debate on whether or not to accept conditional IMF facilities. But more importantly, it was part of a continuing legitimating device cultivated by the president since he staged a successful coup. The reason for the coup was given as the rigidity and unpopular policies of his predecessor. It was also useful as a survival strategy to discourage restive coup plotters. Hence, the "sincere and widespread support" shown by the people against a coup plot against the government was implied as part of the utility of the mutual confidence between the people and government.⁶ To accomplish the objective set out by the government, a Political Bureau (PB) was established in 1986.

5.A.Appointment And Composition.

The 17 member team was entirely appointed by the government. They were overwhelmingly academics-11. There were 2 women, and 2 from the Nigerian Labour Congress. In view of the preponderance of academics, only 3 were known to be directors of companies, two of whom were publishers. One member described the ideological outlook

5. *Ibid.*

6. President Babangida, Inaugural Speech to the Political Bureau at Abuja on 13th Jan. 1986. Report of the Political Bureau, Appendix 1 (Federal Printer, Lagos 1987, p.).

- of the members as left of the centre liberal democrats.⁷ consistent with the view of another member that only four were avowed socialists.⁸

5.B. Agenda And Terms Of Reference.

After pouring scorn on Nigerian politics and politicians and especially singled out the latter for contempt, the president set out an omnibus agenda for the PB.⁹ First, the PB was required to act as a resource group using the rich academic and intellectual background of its members to "provide an objective and indepth critique" of Nigeria's chequered political experience to serve as background information for the debate.

Secondly, it was mandated to organise a national debate along the following schemes: a) For this purpose, it would organise public discussions through debate, seminars, symposia on the various issues essential to the search for a new order. b) To gather, collate and synthesize public contributions. c) Consider other political questions that the government may refer to it. d) Evaluate the contributions and produce a blueprint of model(s) for the administration to consider.

Third, in the search for a new order, the PB was required to "sensitize and energize the ordinary people". Fourth, it was enjoined to help the military government in the

⁷. Dr. Madunagwu, Edwin, in a discussion in Oct. 1989.

⁸. Dr. Adamu, Maroun, in a discussion in Oct. 1989.

⁹. The agenda was set out in the 1986 Budget Speech and Inaugural Address to the Political Bureau, See notes 4 & 6.

difficult task of disengagement by working out a realistic implementation programme for the agreed model. This was a precaution to avoid responsibility for and minimize flaws in the transition itself. The transition process to the second republic was widely criticized for being too abridged with little room for learning, hence partly contributing to its failure.

The government left itself open to fresh ideas as it challenged all contributors to be "daring and imaginative". The process was thought to be too important and urgent to constrain contribution. "We are committed to an order that will check the excesses of government and the abuse of power by the political leadership. We shall equally frown at a system in which a small group of individuals shall be allowed to misuse power to the detriment of our national aspirations". However, the president had an idea of some unwanted things. Hence, he advised the PB not to regurgitate the models of the advanced industrialized countries because Nigeria lacks their economic foundation and constitutional maturity. Thus, "every socio-economic order has a political arrangement appropriate to it".¹⁰ This double edged caution is of great significance given some of the government policies adopted while the debate was on and its ultimate attitude to the PB's recommendations, as we will see later.

¹⁰. Ibid, Inaugural Address.

5.C.Procedure And Conduct Of The Debate.

Three weeks after its inauguration, the PB chairman announced to the nation the range of issues to be debated and the way to do it.¹¹ In order to appeal to and secure the confidence of all segments of the society, the PB sought to present itself as an independent machinery standing apart from the class and other interest configurations in the country. It identified thirty major issues and themes which formed "the bedrock of the political culture of Nigeria and that discussion and analysis of them should provide a basis for fashioning a comprehensive political model for the country".¹² The themes were indeed profound and comprehensive, more than any earlier process had attempted to do.

Broadly, they ranged from the mode of organising the economy, political and constitutional systems, apparatuses of state, machinery of democracy, special groups and issues to a programme of transition to civilian rule, etc. The PB hoped to stimulate, guide and co ordinate the debate by: a) organising and mobilising the broad population. b) encouraging the participation of functional groups and associations. c) solicit the opinions of "men of experience in public affairs". In concrete steps, the following measures were adopted.¹³

¹¹. Vest of a broadcast to the nation on 3rd Feb. 1986 by the chairman of the Political Bureau, Dr. Cookey, J.S., see Report of the Bureau, pp. 228.

¹². *ibid*, p. 9.

¹³. *ibid*, p. 9-10.

First, a monitoring officer was appointed for each state with a base in the capital. Specific duties were assigned with a guideline. In the main, they were to coordinate and oversee the work of assistant monitoring officers two of whom were appointed for each local government in the country. Clearly, a team with greater membership both for the state and local governments would have been a more practical approach instead of depending on the judgement of an individual covering an entire state. Similarly, the 4 day workshop organized for training the officers could not have been adequate given that the PB was to "sensitize and energize" the people.

Second, in addition to specifically commissioning nine national associations to hold debates on assigned topics, topics related to their areas of interest, the PB invited individuals, and other organisations to write commissioned papers. It also encouraged others to send memoranda, write newspaper articles, engage in radio and television talks and organise seminars, symposia and conferences on the scheduled topics. The individuals specifically contacted were described as early active nationalists, retired senior military and police officers, retired top civil servants, renowned academicians and distinguished professionals.

Third, to mobilize the unorganized segment of the population, the local government area was identified as a basic unit for the exercise. Questions for interviews with them appeared simplified and partly slanted to

issues directly affecting them. Also, Publicity and Enlightenment Committees were established in all states and local government areas. At the state level, the Committees comprised the general managers of television authorities, states radio, local newspapers and representatives of labour, students and women's associations. Others were the federal and states' chief information officers and the PB's state monitoring officers. Its main role was to publicise the work of the Bureau and the issues at stake. A television screen play "Ombudspirit in Politics" was shown as it was thought to be educative and suitable for raising the political consciousness of the people, but it was conducted in English which inevitably excluded majority of the population.

Finally, the PB divided itself into small committees and toured the country in zones created for the purpose. The tour was aimed at inspiring and facilitating the debate , acquaint the members at first hand with the debilitating social and economic conditions of the ordinary population and raise awareness of the peoples' rights and responsibilities. The immediate objective was to secure the confidence of the general population to participate in the exercise by instilling the belief that their views may be reflected in the recommendations based on which it was "possible to evolve a just and democratic political system in the country."¹⁴

¹⁴. Ibid.

However, despite this apparently elaborate approach, three months after the debates had commenced, the PB found it necessary to place a newspaper advertisement cautioning against its extremely narrow pattern.¹⁵ The contributors had overwhelmingly concentrated on the form of the future political system to the neglect of the reasons for past failures, solutions to it and the whole range of other scheduled items. At the end of it, the PB recorded 27,324 contributions which included memoranda, commissioned papers, seminars, interviews, etc.¹⁶

5.C.1 Constraints On And Limits Of The Debate.

A debate on the past and future direction of the Nigerian political economy can scarcely be expected to run without major difficulties. First, because government bureaucracy was a major factor in providing and administering the enabling facilities, such as funds, transport, etc. The PB complained of delays in releasing funds which affected the early execution of projects, although the period was later extended. But more seriously, the bureaucracy, which is a major component of the system is not likely to yield to any attempts to whittle down the role carved for it since colonialism. Consequently, a procedure for reform through its own operation would more probably be futile.

¹⁵. Ibid; West Africa, 14. 4. 1966.

¹⁶. The P.B. Report, p.254.

A second limit and a factor that rendered the debate futile was government policies and actions while it was on course. During this period, the government banned the students association in the aftermath of students demonstration nationwide against the murder of some of their colleagues by the police in Ahmadu Bello University. Ironically, the association was unbanned by the president to enable the students¹⁷ participate as a functional group in the exercise. Following this, relations between the government and the Nigerian Labour Congress deteriorated when the latter planned to protest the incident by peaceful demonstrations, a move resisted by the government who saw it as "a direct challenge to [its] authority and legitimacy". Henceforth, the governments strategy of "maximum harrassment with minimum violence" poisoned the environment and undermined the political efficacy of the contributions of labour.¹⁷ Thereafter, its participation was symbolic only. Rather labour concentrated its energy on preparations for promoting a workers' party.¹⁸

Third, a few months after the discussions had taken off, the government embarked on a scheme of privatization and commercialization of the public sector enterprises. This was in pursuance of a larger structural adjustment programme intended to reduce government role in running

¹⁷. African Guardian, 31/12/1987. p. 12.

¹⁸. West Africa, 18/8/ 1986.p.1720.

the economy.¹⁹ The programme was not preceded by any officially sponsored public discussion like an earlier one by which conditional IMF facilities was rejected. The entirety of the economic policies undoubtedly goes to the heart of the economy, ideology and philosophy of government with pervasive constitutional implications. For instance, guidelines on it would have to grapple with the provisions of the 1979 constitution requiring the state to control the economy in such a manner as to secure the maximum welfare and happiness of the citizens on the basis of social justice, equality of status and opportunity. Also, it required the economy to be operated such that the means of production and distribution are not concentrated in a few hands.

All these led some discerning and articulate Nigerians to believe the debate to be a fruitless and diversionary tactic by the government. Against this background, except to provide justification for its report, it is difficult to find any basis for the wholesome satisfaction expressed by the PB with the general response of Nigerians, especially the less privileged. Clearly, such satisfaction can only be partial and in relation to those groups whose activities are not normally constrained by government such as traditional rulers, chambers of commerce, etc.

¹⁹. PRM Structural Adjustment Programme for Nigeria, July 1986-June 1988. (Fed. Govt. Printer, Lagos).

5.D.SUMMARY OF ISSUES AND GOVERNMENT RESPONSE.

1 Nature of the Nigerian Society and the Development of Its Political Economy.

The Report of the Political Bureau was heavy with theoretical explanations for its conclusions and recommendations. It began with a discussion of the nature of the Nigerian society, the diversity of its nationalities and geography and yearned with nostalgia for the period when these groups lived together in unself-conscious ethnicity. It noted with great concern, how this diversity had progressively become a tool in the hands of political and other elite groups to enhance their positions in the competitive system with a resultant disharmony in the community.²⁰ It also observed the negative impact western education has had in undermining the recipients' perception of the erstwhile norms and ethos of the society.

In discussing the class and other social configurations in Nigeria, it declined to adopt a pure Marxist methodology because it "seems superficial". In its view, the society comprises "both a modernising, capitalistic system and a largely pre-industrial...subsistence economy".²¹ For this reason, it structured the society into six interest groups. a). Those with ascribed status-traditional rulers. b). The landed gentry. Prior to the Land Use Act, 1978, this group were largely traditional

²⁰. The P.B. Report, chapter 1, op. cit.

²¹. Ibid.

rulers and a few individuals and corporate organizations. The position is still the same after but with a marked shift to influential individuals in government and business.²² C). Industrial/commercial elites. D). Intellectual and military elites. E). Quasi-proletariats. They are so called because most low level urban workers retain land rights and other cultural ties and obligations in their rural homes partly to secure economic security in an uncertain future and in the absence of a social welfare system.²³ This obstructs the development of a fully developed proletariat. F) Workers, peasants and the unemployed. It implied that except the last two, "the masses properly called" who have always borne the burdens of the country- a broad convergence of interest and role is evident with regards to the rest who have more often participated as beneficiaries of the system.

On this, the PB concluded that "the challenge of converting the above assets and liabilities into positive development calls for ingenious social engineering, clear ideology and committed and purposeful leadership". In its subsequent reaction, Government merely noted the PB's analysis but accepted the challenge.²⁴

22. Koehn, P. (1983) "State Land Allocation and Class Formation in Nigeria" 21 *The Journal of Modern African Studies* 3:661.

23. Sandbrook, R. (1981) "Worker Consciousness and Populist Protest in Tropical Africa" in *Research in the Sociology of Work*, pp. 1-36.

24. *ibid*: Federal Republic of Nigeria: Government's Views and Comments on the Findings and Recommendations of the Political Bureau. (1987) (Government Printer, Lagos.), par. 7.

The difference between Nigeria's dominant groups as identified by the PB and their counterparts in the industrialised world lies in attitude. The latter tend to be productive, largely operate and observe the norms and conventions of the constitutions of their society. On the other hand, those in Nigeria denigrate the rules of law as prescribed by them, avoid all forms of accountability whether to themselves, the constitution or the society, thus producing instability. More importantly, they found it convenient to inherit the colonial bureaucracy, institutions, system of education and ideology which were geared to exploitation rather than service to the people and legitimated by subsequent constitutions.²⁵ Thus, what emerged in the realm of the rules of the constitution and other laws were not robust and humane but rather a notion of it which bedazzled the people.

The PB noted some of the positive effects of military rule such as the balancing of the skewed regional structure, local government reforms, etc. But the current government policies were severely criticized for being undemocratic and would lead to their further impoverishment. On the whole, the overall effect of military intervention has been largely negative. It stultified the political growth of the country and legitimized violence as a succession mechanism.

In conclusion, it identified what a new constitution must do. "It must seek to restore the balance between rulership

²⁵ P.M. Report, chapter II, *ibid.*

and responsibility on the one hand and power and accountability on the other... a philosophy directed towards the promotion of the welfare of the people, to whom sovereignty must be restored..." In response, the government noted the analysis, accepted the challenge posed but rejected the criticism of its on going policies.²⁶

2) A New Political Economy For Nigeria.

Among its terms of reference, the PB had the task of recommending a basic philosophy of government for Nigeria and a fortiori a corresponding constitutional framework. The absence of such a well articulated popular philosophy in the past was noted as partly responsible for failures. In the course of the debate, various suggestions were made, some of which are "Afrocracy", "African communalism", "Triachy", "Meritocracy" "Islamic Theocracy" along with the usual ones-Capitalism and Socialism.²⁷ In making a choice, the PB set a criteria, the core of which is "justice".The contributions attributed to the rural areas were used to elaborate in concrete terms the essence of justice. These were: social rights-shelter and education for all at all levels, health services, security of lives and property. Economic Rights-provision of basic infrastructures, full employment, modernisation of agriculture, reduced taxes,

²⁶. Ibid; Government Views...op. cit.par 16.

²⁷. The P.B.Report, Chapter IV, Ibid.

elimination of middle men, restructuring the economy to ensure the equitable distribution of wealth. Constitutional rights- democratisation of the political process and elimination of violence, victimisation and discrimination and right to political education. These, the PB recommended as minimum and enforceable rights.

Against this background, the PB decided that only socialism has the capacity to fulfil all these aspirations, hence recommended it.²⁸ Following this, the state was required to nationalize and socialize the commanding heights of the economy. The latter were identified as: i) public utilities, ii) enterprises requiring heavy capital expenditure, iii) assets tied up with the security and political integrity of Nigeria such as Banks, Insurance and the Oil sector. However, a private sector that is "cooperative or non monopolistic in character" will be permitted to co-exist alongside state agencies. As expected it urged the government to reconsider some of its policies consistent with the recommendations.²⁹

As expected, the government rejected what described as "the imposition of political ideology on the nation" and expressed satisfaction with the time-worn all-embracing goals stated in the Second National Development Plan (1970-74). These were adopted in the 1979 constitution through the non justiciable fundamental objectives. The

²⁸. Ibid, p.50.

²⁹. Ibid.

nationalization schemes which would have entailed a complete reversal of policies were rejected almost out of hand.³⁰ The government noted those aspects which the PB called "minimum rights" while sharing in the concern and aspirations on matters of social justice. However, the government fully agreed with the PB on the duties of citizens.³¹

Apart from these broad review of policies, the PB examined some specific aspects and made recommendations.

5.D.3 Land and agriculture. It pleaded for the democratization of land and the payment of adequate compensation for that already acquired by the government. The principles were agreeable to the government but not the concrete steps which required it to organize farmers into cooperatives and provide them with mechanized farms to produce inputs for industries. 5.D.4. Income distribution and the reward system. It recommended a re distribution of income by reviewing and enforcing the various economic laws. Similarly, the reward system should be re examined to abridge differences between public and private sectors as well as within the sectors. The former was accepted while the latter was noted.³²

It is to be noted that the recommendations seem too statist. Although they were made on the premise of a socialist order, it is however no guarantee that

³⁰. Government Views...par.53.

³¹. Ibid, para.55-57.

³². Ibid, cap.V.

socialization would by itself be effected given the experience of bureaucracies in the the USSR and the ertawhile socialist regimes of Eastern Europe. In Nigeria in particular, statism is a profound problem for several reasons. First, the state itself tends to resist democratization. Second, it would further become the object of acquisitive and rapacious private attention. Furthermore, the magnitude and perniciousness of corruption, inefficiency, nepotism and complicity of the political leadership increases "with the size of the role accorded to the state in economic regulation and management".³³

This is not however to endorse the present wholly exploitative and muddled system nor the governments' approach which aims to plough back to few people the nation's resources. We shall come back to this later.

But more importantly, the centre-piece of the PB's work was the ordinary people, thus its first point of call ✓ should have been a thorough investigation of existing informal social security system which is already in crisis due to a number of pressures ³⁴ It is evident that like their predecessors and the general approach of those who talk about social security in Africa, they dwelt on

³³. Akier, R.L. (1988) "Beyond Capitalism and Socialism in Africa", 361 *The Journal of Modern African Studies*, 1; Joseph, E. A. (1982) "Class, State and Prerogative Politics in Nigeria", in 21 *The J. of C/wealth and Comparative Politics* 1; Jeffries, R. (1982) "Rawlings and the Political Economy of Underdevelopment in Ghana", 81 *African Affairs*, 324-331.

³⁴. Some of these systems that survived colonialism and the current crises they are experiencing are discussed by: Woodman, G.M. (1988) "The decline of folk-law social security in common-law Africa" in P. von Mehta-Sachman, G.M. Woodman et al eds *Between Kinship and the State: Social Security and Law in Developing Countries* (Portsmouth, N.H. U.S.A.) pp. 69-88; Schett, R. "Traditional systems of social security and present-day crisis in west Africa", *ibid.* pp. 89-107.

formal, state social security based on European concept of it.³⁵ It can not be emphasized enough that the implementation of that kind of social system is predicated on administrative, financial and economic structures together with a sense of commitment, most of which are lacking at the moment. Although the reason most often given is lack of financial resources, it is in fact the least problematic given that governments undertake elaborate schemes in health, education and other wasteful projects such as the festival of arts and culture of 1978 (FESTAC), military weapons, etc.

The kind of schemes they advocated like most others would only benefit the wage earners given that these welfare rights in their original conception were intended to be offered by the state to those who suffer distress due to loss of earnings.³⁶ Clearly, this can not apply to the situation in Nigeria where due to some disabilities or misfortunes whether of the body or economic resources such as scarcity of land, a person remains unemployed. What is needed in the case of Nigeria is a constitutional framework that could bolster existing systems that are disintegrating. For instance, it would be extremely useful to organise communities on extant units which may be family, clan or even village where insurance cover could be provided to cater for disasters, natural or human. These units could serve as basic

³⁵. Woodman, *ibid.*

³⁶. The Social Security (Minimum Standards) Convention, 1952 (No. 102) of the International Labour Organisation, which definition and its inadequacy to the African situation is critically examined in, *ibid.*

instruments for advice to and implementation of other welfare and development projects of the government.

Secondly, given that there is a high incidence of polygamy in the country with uncertain implications in state law, the status of the parties, their property and inheritance need to be protected. This is due to the tendency among those entitled to inherit under customary law to inherit the property of the deceased but reject the accompanying customary responsibilities such as care for the children and widow.¹⁷ Lastly, it is extremely important to re-examine some of the state taxation, a large part of which have taken away the surplus that would have been available to family bread winners to assist their less fortunate kins in the customary way. In any case it partly contributes to the shifting away from the growth of food to cash crops.

5.E. Constitutional System and Structure of Government.

The constitutional system and form of government attracted the largest contribution. Various suggestions were made which include "Diarchy"- joint venture between the military and civilians; "Triarchy"- a mixture of the latter with traditional rulers. These proposals were made on the premise that the inclusion of all the strata of the dominant class in government would remove the incentive for coups.

¹⁷ See Pn. 16.

The PB had little difficulty in properly dismissing such claims given that most coups have been intra military and that traditional rulers are inter alia, hereditary and therefore undemocratic. According to its scheme, the PB was left with a choice between the presidential and parliamentary systems. As earlier on, strong arguments were made one way or the other and with the benefit of experience of both. It opted for the former. This decision was acceptable to the government but noted its analysis of diarchy and triachy.³⁸ Having adopted the system under the 1979 constitution, most of its structures were also carried over.

1). THE EXECUTIVE.

It sought to plug some of the loopholes in the 1979 constitution by introducing a limited accountability of the executive to the legislature. The composition and role of the Council of State was enlarged but still far short of the overbearing National Oversight Council suggested elsewhere.³⁹ The merit of the latter lies in its involving functional or groups such as the professional associations, peasants, women traders, etc. The executive will have only one term and a ceiling placed on the cabinet to reduce the practice of over bloating the cabinet to provide jobs for the boys at any cost.

³⁸. The P.B. Report, cap. VI: Government Views...op. cit. par. 85.

³⁹. Diamond, L. "Issues..."op. cit. 209-228.

2). THE LEGISLATURE.

A novelty was sought to be introduced at the legislative level. A one term unicameral legislature was recommended throughout the country. It reasoned that they would be better able to fulfil the function of a vigilant check on the potentially enormous powers of the president, be active partners in policy making and reduce cost in government. A minority rejected the proposal and saw in it a revival of the hegemony of the three nationality groups. The latter has been reduced through the application of the principles of equality and population separately for the bicameral legislatures.

The basis of representation to the legislature was considered, that is whether on population, territory, functional/interest groups or a mixture. It opted for a territorial form but based on local government units instead of the existing system of federal constituencies separate from local governments. However, the government preferred two terms for the executive and the limited involvement of the legislature in the executive had little appeal, otherwise the rest of the suggestions were accepted. Women and labour were reserved 5% each in all legislative seats.

In order to raise the quality of legislators, the rules which required public servants to resign their appointments prior to elections was relaxed. Henceforth, they only need to take leave of absence without pay until the end of the election or tenure of office. This was a

position strongly resisted by traditional rulers who favoured the past system.⁴⁰ These recommendations were rejected in entirety by the government, consequently, the token gains made by labour, women and public servants foundered. The government affirmed the position under the 1979 constitution.⁴¹

3) The Machinery Of Justice: The Judiciary, Police And Prisons.

Here, three problem areas were identified: the nature of the law itself; its administration and weaknesses of the organs responsible for administration.

On the law itself, the PB urged a review of its colonial heritage and structure and the redirection of the curricula of legal education to the needs and realities of the nation. In the administration of justice, it recommended de-emphasis of the role of lawyers and money as well as the use of the jury system in minor offences. Borrowing from the pre-colonial mode of dispute settlement, it urged the introduction of intra-community procedure in tackling delinquency, in place of prisons. It sought to minimize the role of politicians in the appointment and removal of judges of superior courts by involving a supposedly less political Council of State.

These recommendations did not appeal to the government who preferred the 1979 position. It is to be noted that

⁴⁰. A position taken in a conference of all traditional rulers in the North on the constitution--West Africa, 2.11.1988.

⁴¹. Government Views...op. cit.par.99.

the total pre occupation of the PB with superior courts was unjustified given that the bulk of cases affecting the ordinary man are decided in the lower level courts. Similarly, what is required in harnessing the skill and role of lawyers is not disengaging them, but rather how they can be positively used. This may be done through improving the quality and breadth of existing legal aid, establishment of citizens advice centres easily accessible to ordinary people in the rural and urban areas. Lawyers manning them could offer advice on a whole range of issues on the socio-legal implications of government policies to determine the rights and opportunities offered or denied them. This of course will require changes in the training and orientation of lawyers.

Incidentally, even within the framework of the existing legal system, a body of lawyers⁴² customary law have evolved over the years especially in the arena of family and land laws.⁴³ Lastly, they could help in the training of para-legal staff who could offer services in environments that are conducive, cheap if not free, and less intimidating.

In regards to the police, the PB suggested re-orienting the force and integrating them in the society as servants

⁴². For the distinction between this and folk-law and the former evolved in Ghana and Nigeria, see Woodman, G.R. (1983) "How State Courts create Customary Laws in Ghana and Nigeria" in Finkler, H.W. (Compiler), *Papers of the Symposium on Folk Law and Legal Pluralism*. XIX International Congress of Anthropological and Ethnological Sciences, Vancouver, Canada

⁴³. See Wuehuase, B.O. (1972) *Nigerian Land Law* (Enugu, Wuehuase; Dobbs Ferry, Oceana); Wuehuase, R.T. (1973) *Family Law in Nigeria* (London).

in its proper sense. Thus, it recommended Citizens Monitoring Organizations to oversee police conduct. Its members would be drawn from the various associations of drivers, farmers, traders, students, the army, the Bar and the police itself. These suggestions were in addition to the familiar cry about improving the quality and conditions of service of the force. However, the activities of this group may well be revised to include a general oversight of implementing specific government policies rather than relying on ineffective intra elite mechanism for accountability. But most of these suggestions were rejected.

4). The Civil Service And Bureaucracy.

The civil service and its bureaucracy had not undergone any major reform since its colonial creation. Hence, the PB recommended a three pronged reform. First, it urged its re-orientation so that it could be perceived as implementers of programme for the welfare of the people. The instrument for this purpose would be social mobilization and political education. Secondly, the Code of Conduct and Ombudsman will be used as agencies of oversight. Finally, it recommended the adoption of the American style of Project Management, Programme and Performance Budgeting, earlier on recommended by an official commission.

Tied up with this, were recommendations on the reform of the parastatals and other public sector agencies. What is noteworthy here is the recommended reforms of the board

memberships of these agencies which have become places of patronage for the cronies of those in power. According to the PB, it would be modified to include a female, one representative of labour and any group that is a recognised primary consumer of its services or products. This fiddling was merely noted by the government, a euphemism for rejection.⁴⁴ Again, the Bureau was mistaken in the sense that it merely referred to a "female" implying that any woman would reflect the interests of all women.

5) Local Government System.

For quite some time, the system of local administration had attracted a great deal of attention in the country. Its potential as a third tier of government and agent for development has been discussed and articulated.⁴⁵ The PB therefore had the opportunity to provide a tangible framework to accomplish these objectives.

The PB recommended the creation of multipurpose units subordinate to the local governments. These were the Development Area Councils and the Village and Neighbourhood Committees. Both would be organized for production, community action and mobilization in a two way traffic between government and people at the grassroots level.⁴⁶ Some of the extant local government functions

⁴⁴. The P.B. Report, cap. VII; Government Views... op. cit. par. 159.

⁴⁵. The latest major official undertaking on this was the Dasuki Report-PB, Local Government: Report by the Committee on the Review of Local Government Administration in Nigeria, The Dasuki Report. (Fed. Govt. Press, Lagos, 1984).

⁴⁶. The P.B. Report, pp. 117-122.

would be devolved on the Area Councils. On its part, the Committees would be engaged in community development activities, control, allocation and use of land and other natural resources, help with social services such as care for orphans, delinquents, aged and the disabled, etc. The leaders of the Committees would be members of the Area Councils while the latter will be led by the elected councillors from the particular Area Council in the local government council.

The main weaknesses of the scheme was in its lack of linkage with the structures of power at both the state and federal levels. They had no defined source of finance. These groupings could be important agencies for a decentralized power sharing with the people devoid of bureaucracies and with their basic needs tackled by themselves. But despite the limited nature of the recommendations, they were merely noted by the government.⁴⁷

6). The Machinery Of Democracy.

The major candidates in this area were political parties and the electoral systems. They have been the main structures for elite abuse and manipulation of the system in the past. However, despite the great anxiety expressed by Nigerians regarding the spectacular failures of the party system in the past, as indicated by increasingly loud calls for zero or one party system, there was a

⁴⁷. Government Views...op. cit. par. 169.

solid support for its use in the new order.⁴⁸ Accordingly, guided by this and the desire to give expression to the constitutional right of freedom of individuals and groups to form associations, the PB examined the format of multipartism to determine which is suitable to Nigeria. It eventually proposed a two party structure. But the PB envisaged no fundamental difference in the orientation and ideology of the two parties because both must subscribe to the national philosophy of government with minor differences only on priorities and strategies.

This regimentation was justified by the argument that the next decade must be regarded as "urgent and extremely difficult" for Nigeria.⁴⁹ But, it must be noted that assuming the validity of the argument in the current circumstances, which it is not, there is a strong case for providing a constitutional leeway to allow for review after a certain period of trial. This is indeed necessary given the fear that elites may continue to exploit the party system around the two regional or religious blocks.

Attempts were made to reduce any strangulating influence financiers may exert on party structures. Hence, under the new dispensation, the state will provide the bulk of the funds. Limited individual contributions when made would be subject to disclosure while foreign

⁴⁸. The P.B. Report, cap.VIII.

⁴⁹. *Ibid.*, pp.126-8.

contributions were prohibited, to check the influence of alien agencies on the internal politics. Except the funding which the government noted is a matter for the electoral system, the above recommendations were accepted.

First, the PB rejected proportional representation on grounds of technical difficulties because given the choice of two parties, the usual argument relating to its engendering of multiplicity of parties does not hold.⁵⁰ Second, regarding the electoral system, opinions varied not surprisingly because of the controversy that follow elections in Nigeria.⁵¹ Suggestions by the public ranged from a wholly military electoral commission, a mix of civil and military or civil only.⁵² The PB chose the latter but with functions that go beyond the conduct of elections. It also had the power to recognise and register parties, monitor their campaigns and finance and determine the level of government funding. In its membership, were recommended two military officers of a rank not below a colonel or equivalent, one woman, a representative of labour. All of them were required to fulfil certain conditions regarding age, integrity and experience in service. It may be mentioned that the age requirement (50 yrs.) could hardly be fulfilled by the

50. Bae, Douglas. (1971) *The Political Consequences of Electoral Laws* (New Haven & London).

51. The 1959 Federal elections had less difficulties because it was conducted under the tutelage of colonial officers, see Post, I.E.W.J. (1963) *The Nigerian Federal Election of 1959* (Oxford); However see Ojo, J.D. (1985) *The Development of the Executive under the Nigerian Constitution, 1960-1981* (Univ. of Ibadan) cap.3 for the 1964 elections; Oyediran O (1981) *The Nigerian 1979 Elections*

52. *Ibid.*, pp.133-141.

military members because most of the officers attain generalship before or by 40 years and retire soon after to lucrative business. This difficulty was obviated by the decision of government to decline the functional group representation.⁵³

7) Referendum And Recall.

The full cry for popular control over issues, policies and government is not propagated by sympathetic intellectuals only. Such desire emerged strongly across the board during the debate. Obviously some people, especially the politicians would call for it only to secure recognition and popularity with the masses, while others were well intentioned.

The PB sought to fulfil this aspiration by recommending referendum and recall as a further control mechanism in specified circumstances.⁵⁴ Referendum would be used to ratify the new constitution and any major amendment affecting the new philosophy of government, states creation, adoption of a national language(s) and changes in the form of government. The list may be expanded by the national assembly.

Through recall, an elected official at any level may be removed before his term expires for offences falling short of "minimum 'good behaviour' required by the electorates of their elected officials". Recall process

⁵³. Government Views...op. cit. par 187.

⁵⁴. The P.B. Report, pp.138-141.

would be initiated by a petition of one third of the registered voters in the particular area and become effective if approved by a simple majority of votes cast. Both processes will be administered by the electoral commission.

The recommendation was accepted in principle by the government but rejected the part requiring its application to the new constitution on the ground that there has been wide consultation already.⁵⁵

5.F. Special Groups And Issues In The Political Economy

Unlike past constitutional processes, the PB identified the diverse strata of interest groups who have either been dominant or oppressed with a view to recommending remedial measures, if desirable.⁵⁶ A lot of pressure was exerted by or on behalf of some of these groups for a special place in the constitution. It also sought to locate the main issues which have been in contention, contribute to disunity, etc.

In the dominant segment are the traditional rulers, the military, the political class and the bureaucracy. Together, they have held on to the political economy of the country to the alienation of women, workers, youths including students and the small time farmers. As noted earlier on, the PB found no compelling case for making a

⁵⁵. Government Views...op.cit.para.209-210.

⁵⁶. The P.B. Report, op. cit.caps IX & X.

particular provision for the traditional rulers and the military. In fact there were views strongly expressed for the abolition or democratization of the former. In the end, the PB recommended that their activities should be confined to their respective local governments. It was largely agreed to by government. Similarly, the military was confined in the main to its traditional role of the defence of the realm and few other named social functions related to its skill and training.

1). Women.

This group rightly attracted the greatest sympathy of the PB because they have been exploited and neglected more than any social class. Consequently, it recommended a constitutional role for them in politics, economy and social programmes.

However, it is a tragedy that the government merely noted or rejected most of the suggestions which would have structurally uplifted their lot. Examples are: the reserved legislative seats, provisions for day care centres for working mothers, adult education with emphasis on skills acquisition, free medical and health facilities, minimum age for marriage, equality of conditions of service, the formulation of broad policies on women and development, etc. Although most of the recommendations aimed at women who have acquired formal education, they however provided a starting point for more expansive policy to cover those in the rural areas.

2). Workers.

The position of organised labour in the dispensation was reflected in two opposing strands of opinion. One view advocated an active political role for workers as a distinct class to be realized through a workers' party. The other opinion preferred them to be non partisan, that is without formal structures to promote workers' interests. On its part, the PB steered a middle course by not openly suggesting a workers' party, but recommending the establishment of a political fund, impliedly to be used to support pro-labour candidates and parties. It also recommended the review of laws and structures which inhibit labour in the pursuit of its interests, 5% of legislative seats and the integration of workers in the overall structure of the economy. These modest concessions were rejected by the government describing the political fund as "discriminatory and dangerous".⁵⁷

3). Youths And Students.

No specific constitutional role was envisaged for this group, but recommended the strengthening of extant positive policies and programmes directed to them. However, recommendations which would incidentally involve youths in politics or even the adoption of a name implying that, was rejected by the government. For instance, government would not replace the existing National Youth Council with a National Youth Vanguard or their involvement in mobilising youths to raise their

⁵⁷. Government Views...op. cit. par. 246.

awareness, etc. But the government would allow their participation in agricultural activities and to be organized for community development projects during long vacations.⁵⁸

5.G.SPECIAL ISSUES.

The PB identified the following issues as major areas of concern for all administrations in Nigeria with recommendations for their resolution.⁵⁹

a) **National Census.** The linkage between population, revenue and political representation has resulted in Nigeria not being able to conduct a census acceptable to all, and consequently, deprived it of essential data for planning. It therefore recommended a scheme that seeks to depoliticise the scheme.

b) **Revenue Allocation.** The PB dwelt on the political aspect of revenue sharing in the federation. Revenue formula has been a perennial source of difficulties in the country.⁶⁰ The emphasis of the PB was however on greater devolution of fiscal responsibilities to the local governments and in line with this, an enhanced percentage of revenue. The rationale is their proximity to the people for development and political activities.

⁵⁸. Ibid, par. 249.

⁵⁹. The P.B. Report, cap.X.

⁶⁰. That partly explains the reason for its exclusion from all the constitutional bodies since colonialism.

c) Creation of states. Immense pressures were mounted for the creation of more states for developmental and political reasons. The case for creating more states for the latter reason was made out with greater emphasis by the Ibos who form 1/4 of the nations' population but felt cramped in and sharing the facilities of two states only. Consequently, the PB recommended the creation of more states based on those grounds.

d) State and religion. This is an issue that has increasingly gained greater potency in the nation's politics. The main concerns were considered by the PB but its discussions will be postponed to chapter seven where it almost stalled the work of the constituent assembly. However, the PB largely adopted the position in the 1979 constitution but suggested further withdrawal of the state from religious activities and increased education of ordinary Nigerians about the basic tenets of the major religions.

e) External affairs. The PB noted the capitalistic orientations and economic conditions of Nigeria due to its colonial linkage but urged the redefinition of its external relations to be guided by the principles of social justice, human rights, self reliance at home and liberation of Africa, promotion of security and peace abroad.

f) Federal Capital Territory. The problems here relate to its status in terms of accessibility to all,

administrative (nature and efficiency of the territory's government), and physical structures. Detailed recommendations were made to solve these issues of concern.

g) Citizenship and nationality. The problem here arises from the definition of a Nigerian citizenship. The constitution refers to a person belonging to a community indigenous to a state, hence bolstered home communities. It eventually acquired a political and economic meaning through the concepts of regionalism, statism and ethnicity together with a perception of being dominated by minority groups. Those individuals and groups who had early contact with western education and acquired an edge in the political economy and the elites of the major nationalities did nothing to mitigate the disadvantages of those not so favourably placed. In fact the former used their advantageous position to the detriment of less privileged areas and peoples, hence resulted in resentments by the latter group. This resentment has been expressed in minority politics and discriminations of all sorts in states against non indigenes.

The FB sought to tackle the problem in three broad ways. First, it adopted the total elite formula of sharing posts in public offices which carries the name "federal character". It provided neither a new definition nor mode of application. Its frontier could have been expanded to include an equal opportunities mechanism for all groups and individuals. This is more urgent at lower levels

where massive victimization, oppression and discriminations take place.

The PB's second approach was to modify the criterion for citizenship to lay emphasis on place of birth or residence where the person has lived in the place for a period of ten years. Finally, it enjoined the government to adopt and sponsor educational, industrial and social policies and programmes to narrow existing gaps as render the exploitation of these primordial factors ineffective. The government accepted the broad principles of the recommendations in this area.

5.B. A NEW PHILOSOPHY OF GOVERNMENT: MASS MOBILIZATION AND OFFICIAL ACCOUNTABILITY.

In conclusion, to secure the objective of democratising the social, economic and constitutional structures of the country along a socialist path, the PB sought to rely on two props. The main tool are the people themselves who for this purpose were required to be virile and vigilant to guard their rights and the conscience of the nation. Their ignorance had rendered them easy prey for misinformation by the elites, thus, consultations if at all have been top down exhortations by the officials requiring people to show sympathy for policies they provided no input.⁶¹

⁶¹. For A survey of these schemes, see Agbaje, A. & Adisa, J. (1988). "Political Education and Public Policy in Nigeria: the New War Against Indiscipline (NAI)", in XVI The J. of C/wealth and Comparative Politics, 1:22-37.

The PB sought to modify this approach by recommending the establishment of a permanent autonomous body for mobilization-the National Directorate of Social Mobilization and Political Education.⁶² The Directorate was to work through existing popular, voluntary agencies/institutions, and if non-existent, their creation was to be fostered. These are cooperatives, organizations of women, youths and students, age grades, village, ward and clan councils, etc. There was no specific mention of the membership of the Directorate except that they were expected to be persons of impeccable character and committed to the programme. The substance of the mobilization was pervasive but primarily aimed at inculcating in the citizens acute awareness of their rights and duties in relation to the leaders, involving them in community projects and raising the moral consciousness of the nation. There is no gainsaying the fact that it is the dominant class who require a great deal of moral education.

On its part, the government accepted the entire recommendations. But, in the Decree establishing it, the objectives were further mellowed and replaced with some vague concepts. For instance, it talks of the "positive mobilization and education of all Nigerians towards economic recovery and development and a new social and political order" etc.⁶³ This struck accord with the

⁶². The P.B. Report, op. cit. pp 204-208.

⁶³. Directorate of Social Mobilisation Decree, No. 21, 1987, s.4.

language of the government's structural adjustment programme. Thereafter, it became a government outfit attached to the office of the president with most of its members and facilities drawn from existing official departments, except that a significant proportion of academics benefitted as directors. At the local level, the Local Government Councils were simply constituted into "Committees for the implementation of...the programme as envisaged in this Decree".⁶⁴

But this anomaly was partly improved upon in a subsequent amendment which provided for the establishment of Area Committees in each local government area with further sub units of Ward and Community Committees. But the latter were also to "work closely with the local government councillors, traditional rulers and other social groups in its areas in the performance of the functions assigned to it".⁶⁵ It should be remembered that the government rejected socialism and most of the schemes for democratising the political economy. Therefore, one can deduce that mobilization was for the government's structural adjustment programme.

Apart from mobilising the people, the second avenue for securing official accountability was the affirmation of the code of conduct for public officers and the ombudsman earlier on recommended by the Constitution Drafting Committee. The mechanism for implementing the former

⁶⁴. Ibid, s.7(2).

⁶⁵. Directorate for Social Mobilisation (Amendt.) Decree, No. 35, 1988. s.4(4-5).

could not come into force in the second republic because inter alia, the National Assembly deliberately refused to enact the relevant Bill into law.⁶⁶ Moreover, the structure and powers of the Code of Conduct Bureau which has responsibility for enforcing the code and the nature of access available to the public to inspect declared assets was vague and uncertain.

However, the PB expressed satisfaction with the position in the 1979 constitution. It only recommended remedial measures to insulate it from the influences and pressures of politicians. Thus, its members were to be appointed during the transition period by the military for a term of five years. The government agreed to all the recommendations except that it thought the president should continue to appoint subject to ratification by the Council of State.

Finally, while the debate was on course in 1986, the government announced the banning of "all past politicians" from seeking or holding any public office for ten years. The PB noted that it transpired in the debate that there were strong views "in support of certain actions to ensure that the former political office holders who looted the nation's treasury and flouted the constitution with impunity must not be allowed to resurface politically in the new order".⁶⁷ But to ensure that its educative and deterrent value was

⁶⁶ Code of Conduct: Transition to Third Republic (Fed. Min. of Information and Culture, Lagos, 1988) p.8.

⁶⁷ The P.B. Report, op.cit.pp217-218.

not lost because of arbitrariness, the PB placed a date on and defined the category of those affected.

Two class of people were either banned or disqualified from any official or party position. First, banned for ten years from the date of lifting of ban on politics were those who held named offices between 1975-85. They included the president, governor and their executive team; legislatures at state and federal levels; political party officials; chairmen and members of parastatals at the state and federal levels; chairmen and supervisory councillors of the local governments; heads of police, National security organization and the Armed forces who held political offices. Finally, in this group were judicial and other public officers removed from office for a cause. The ban extended for life for those found to have breached the code of conduct.

To ensure that properties illegally obtained were recouped, their assets would be investigated and verified, which information would be made public for scrutiny, claims and counterclaims.

In the second group were those disqualified. This was a temporary impediment intended to instil confidence in the electoral system by ensuring impartiality in the transition process and allay any fears the public might entertain in the government recivilianising itself to contest elections. They will be free to contest after 1992. Those affected are officials who have held or are

holding defined positions in the present military government.

Most of the recommendations were accepted less the aspect requiring publication of investigated assets for public scrutiny. However, in the subsequent Decrees ⁶⁸ effecting the ban, major modifications were made. First, the relevant date was extended to 1st October, 1960, Nigeria's independence date. It was made for life for those in the first category. The group was expanded to include all persons in public and private sectors who have been or will be dismissed from office and their accomplices from the relevant date to the transition period. The second group was extended by the inclusion of officials of agencies considered essential to guarantee an acceptable and fairly contested political process.⁶⁹

Subsequently, the ban was strengthened by prohibiting the indirect involvement of the banned persons. Thus, any person banned or disqualified shall not be registered with any of the political parties or sponsor, canvass, campaign, fund or in any way assist any candidate or party. No reference to or display of the photograph or portrait of such persons shall be made in a campaign.⁷⁰

⁶⁸. Participation in Politics and Elections (Prohibition) Decree, no. 25, 1987.

⁶⁹. Participation in Politics and Elections (Prohibition) (Amendment) Decree, no. 9, 1988. The affected agencies are : chairman and members of the Directorate for Mass Mobilisation; National Electoral Commission; National Population Commission; Code of Conduct Bureau; National Revenue Mobilisation Commission; and the Directorate of Food, Roads and Rural Infrastructure.

⁷⁰. Transition to Civil Rule (Political Parties Registration and Activities) Decree no. 27, 1988.

Finally, the PB recommended that its report and the government reaction to it be translated into Nigerian languages and made available at a cheap rate. All the materials should also be kept in four centres well spread in the country for research. None of these was honoured because even the English versions of the report and white paper on it are extremely scarce. Worse still, the materials used by the PB are nowhere to be found including the national library and office of the president which the writer visited.

In conclusion, an exercise begun with an ostensible objective of ploughing power back to the people suffered the same fate as its predecessors, namely, the formal strengthening of the grip the later generation of elites have on the system. The older groups were reduced to a behind the scene role although critical as well since upward mobility in the system is largely dependent on clientage relationships. To be sure, the PB sought to make modest efforts which were either struck down or hijacked by the government for different purposes. But the government established a further constitution commission as we will next consider.

**PAGE
MISSING**

P266

6.A.Appointment And The Socio-economic Category Of The Members.

Like the PB, the CRC was entirely the president's creation.¹ But in contrast to the former, there was a near total swing away from theoretically inclined left of the centre liberal intellectuals to the practical men of business and industry with overwhelming bias for practising lawyers, retired judges and industrialists. This group, comprising serving and retired Supreme Court Justices, Judges of High Courts and industrialists made up over 70% (33 out of 45) of its total membership. The remaining twelve were top serving/retired officers in the public sector including the parastatals (5); other university lecturers (4); private medical practitioners (2); labour(1).²

This obvious radical shift in composition was clearly intended to have the same effect in the substance of its deliberations and recommendation. The intended result was guaranteed by the terms of reference, the materials that would guide them and the probability that given the background of the members, their views will more probably converge with those of the government as reflected in the on going market oriented policies.

6.B. Terms Of Reference And Procedure.

The parameters of the CRC's work were set out in clear terms in some respects, but although foggy in others, the

¹. The list of members are contained in the Federal Republic Of Nigeria, Report of The Political Bureau, Volume II (Fed. Min. of Information, Lagos, 1988) pp.204-205.

². Ibid.

intended general direction was indicated. In his inaugural address, president Ibrahim Babangida enjoined the CRC to produce a document that "will prove acceptable, workable, adaptable, enduring and suited to our particular circumstances, needs and temperament as a people now and in the foreseeable future".³ To achieve this objective, the CRC was to be largely aided by the Government White Paper on the Report of the Political Bureau and the 1979 constitution.⁴ Later, the federal Attorney-General elaborated on other materials to be used.⁵ They were: all military amendments to the constitution since 1983, judicial interpretations of it, and more importantly, only and all the PB recommendations which were accepted by the government. This clarification put to rest earlier debates and uncertainty in the CRC on whether or not it could open afresh matters outrightly rejected or noted by the government.

In addition to these materials, the CRC flung its net much wider. In particular, some of its sub-committees consulted the 1963 constitution, the CDC Report, the Dasuki Report on Local Government and the federal government's views on it, public contributions and the personal experiences of the members in operating the 1979 constitution.⁶ Having determined the relevant materials,

³. FMW, Report of the Constitution Review Committee containing the Reviewed Constitution, Volume I, (Fed. Min. of Information, Lagos) p.xviii.

⁴. Ibid.

⁵. Ibid, p.1.

⁶. See in particular, the reports of the Sub Committee on the Executive and the Federal Capital Territory, Vol.II, op. cit.pp.105 & 181 respectively.

the president then set out or rather reminded the Committee (since most of them were already explicitly stated in the White Paper) of the matters the government had settled for and the general direction which it intended to follow.

6.B.1 Policies Explicitly Determined.

These were proposals the Committee was explicitly required to adopt.⁷ I) The government was committed to the presidential system and federalism. But the Committee was empowered to re-examine the basis of the federalism as it relates to the various nationalities of the country. Thus, the Committee was to examine and provide an acceptable congruence between the apparently contradictory aspects of Nigerians' wish to practice federalism with states as the basic units and its plural society which seems to tend towards ascriptive primordial ethnic groups as the core units. II) The "pragmatic and useful balance between the public and private sectors of the economy" adopted in the fundamental objectives provisions of the 1979 constitution would be retained. This is to enable individuals to realize their latent abilities while allowing government to provide for the welfare of all citizens. Consequently, there was to be no more socialism, partly for this and also because "fundamental issues arise when a transitional corrective regime like ours exceeds its brief and goes beyond correction and imposes a particular ideological

⁷. Vol. I, op. cit. pp. xviii.

commitment which is so fundamental in nature that [it] should be left to successive government".⁸ Obviously, it avoids the reality that the mixed economy is itself an ideological position, broadly a cover for capitalism.

III) The two party structure was to be retained. But the Committee was to develop the criteria in the 1979 constitution on party formation, structure and spread to allay the fears that the parties may become the tool of the elites of the major nationality groups or be organized on religious/regional cleavages.⁹ This and other problems connected with the two party structure will be examined in the next chapter against the background of subsequent decisions by the government on it. IV) The provisions in the 1979 constitution forbidding the adoption of state religion and those providing bill of rights in the Anglo-Saxon fashion will be retained. V) The government was also committed to the separation of powers among the different arms of government. VI) The clamour especially by the press for freedom greater than those of individuals was unacceptable. "No institution should be guaranteed freedom not guaranteed the people is an irreducible principle of all constitutions". But the Committee could consider how, if at all, press freedom could be separated from those of individuals. VII) In recognition of the "need to restore the balance between rulership and

⁸ Ibid, six.

⁹ This anxiety has been consistently held by some academics as well, see Akintola, A.A. (1990) "Manufacturing the Two Party System in Nigeria" in XVIII, The J. of C/wealth and Comparative Politics, 3: 309-327.

responsibility on the one hand, and power and accountability on the other", the Committee may consider that "the best avenue" is the Code of Conduct Bureau. This should be examined.¹⁰

This means the form of official accountability will continue to be through institutions manned by the elite groups with the mainstream of the society scarcely aware of its operations since they are not prepared to consider means that could provide sufficient contact with the people for this purpose.

These specified areas constitute the bedrock of the constitution. In some areas, the government although less regimental, indicated its preferred direction. Thus on the style of drafting, the president noted that some constitutions are "reduced to a short but comprehensive statement of the major principles, ideals and aspirations of the society..." But the general preference in Nigeria has been for a detailed document because there is a direct link between the level of political consensus in a society, which is low in Nigeria, and the size of its constitution. Consequently, this fact must be borne in mind. "Nothing should be taken for granted".¹¹

Similarly, a role for traditional rulers, if any, would be "perhaps the most delicate and intractable matter" the Committee may have to tackle. After an elaborate espousal

¹⁰, Vol. I, op.cit., pp.xxi-xxii.

¹¹, Ibid, p.xix.

of the positive achievements of the institution, the President noted that the problem lies in rationalizing it with constitutional democracy. The 1979 constitution provided them with a purely advisory role. The president enjoined the Committee to examine the possibility of providing them with a "more formal but still advisory function".¹² But they must be insulated from partisan politics, a position agreed to by most of the traditional rulers in the course of the enormous pressure they exerted individually and in concert on those involved in the process.¹³

Finally, the president expressed his wish to adopt in the constitution, some of the bodies it created to achieve its policies. In this way, the Committee's agenda was determined, but the government was cautious to avoid being seen as fundamentally putting the deliberations in a "strait-jacket and force particular view points down [its] throat". Hence the Committee was asked to "consider also any fresh and new ideas that may come to light now".¹⁴ The Committee's chairman seemed to have interpreted this literally and liberally to mean his Committee was not bound to take "the advice" offered by the president.¹⁵

¹². The pressure was admitted by the CBC chairman in a note to his colleagues-Justice Buba Ardo, Note by the Chairman: The Traditional rulers, 1988.

¹³. A memorandum sent by the Emirs and Chiefs of the 21 states of the federation- West Africa, 19. 10. 1987, p. 2067.

¹⁴. Vol.1, op. cit.p.xxii.

¹⁵. See note 14.

However, the Attorney-General's clarifications of the president's real intentions alluded to earlier,¹⁶ completely explodes any view that the Committee had a wide mandate. Its task would seem primarily to rationalize into a single coherent document those areas of the Bureau's recommendations that were accepted by the government and other existing changes introduced by the courts and the government. It is for this reason that some discerning observers viewed the interposition of the Committee between the PB and the subsequent Constituent Assembly as wasteful.¹⁷ The PB Report should have gone directly to the constituent assembly where the entirety of the discussions, the recommendations and possibly, but not necessarily, the government's views on it are considered without incumbrances. Whatever may be agreed upon would then be streamlined by its drafting committee rather than another team as suggested elsewhere.¹⁸

The real purpose of the Committee would seem to have been to place the government's views of the constitutional process and the general direction of the economy beyond further discussions. That explains why the government did not make any attempt to place a formal contact between the CRC and the public. A second reason for the CRC was to remove any element of chance which it entails if left open ended in the constituent assembly where there will

¹⁶. *infra*, p. 3

¹⁷. *Ibid.*, contains a number of such comments.

¹⁸. Dr. Ayo Dunsayo, *Ibid.*

be elected representatives. This is more so given that the debate organized by the PB and some of its recommendations partly informed the public on the vital issues of domination, exploitation and manipulation by the dominant class and other interest groups in the country. For this reason, the Committee was not in a position to introduce fundamental changes. A summary of the issues it tackled are highlighted here.

6.C.Summary Of Substantive Issues.

According to the Committee, from the public contributions, findings of the PB, and government input, "it seems reasonable to conclude that there was nothing fundamentally wrong with the 1979 constitution. However, ambiguities and lacunae in certain of its provisions and difficulties in the operation of some of its institutions have been encountered, thus justifying such changes and attempts at clarification as contained in this Report".¹⁹ Against this background, the main changes introduced are briefly examined. Fortunately, the task is eased by the existence of a table comparing the provisions of the 1979 constitution and the CRC recommendations.²⁰

1). The Executive.

a) Mode of electing the President. In the 1979 constitution, for the president to be duly elected, he had to fulfil the twin requirements of majority of all

¹⁹ Vol.1, op. cit.p.v.

²⁰ Ibid., pp.xviii-xix provides only the titles, but an elaborate scheme including the 1989 constitution is made by Pappia, A.I.(the deputy secretary)-PEB, Constituent Assembly, 1988-89, Draft Constitution Amendments and New Clauses.

votes and its spread over 12 2/3rds of the states of the federation. What amounts to 12 2/3rds was the source of a major constitutional debacle in 1979.²¹ Consequently, the CRC replaced it with a flexible provision to round up any fraction to the nearest whole number.²² b) Term of the executive. The hitherto two term tenure of the president was replaced with a single six year period. It therefore overturned the government's position in its rejection of the single term proposed by the PB.²³ c) Impeachment process. In operating the 1979 constitution, a number of state chief executives were intimidated with impeachment and two actually impeached largely on ideological and other political differences. This was thought possible because the process was entirely handled by the legislators. Consequently, the Committee sought to involve the judiciary by empowering the chief justice and the chief judge to constitute the panel that will investigate the allegations.²⁴ d).Creation of an acting president. The vice president was empowered to perform the functions of the president in an acting capacity if the latter goes on leave or is unable to perform the functions of the office. This is to avoid delay in exercising presidential powers in case of emergency as the occasion arose in the first republic noted earlier on. e) Exercise of nolle prosqui. In the second republic,

²¹. *Awolowo v. Shagari & ors.* Suit No. SMT/1/1979 delivered on 10/9/1979 (Unreported); *Awolowo v. Shagari* (1979) 6-9 S.C.51-55.

²². ss.133 & 135 of the Reviewed Constitution. Vol.I op. cit.

²³. *Ibid.*, s.136.

²⁴. *Ibid.*, s.141.

some Attorneys-General were feared to have compromised in favour of political friends, their enormous power to terminate proceedings in courts at certain stage. The Committee sought to restrain this by subjecting it to the leave of court.²⁵

2).The Legislature.

The legislative arm experienced the least changes. Most of those sought by the Sub Committee on the Legislature were turned down at the plenary session, such as reduction of the size of the national legislature to save cost, staggering of elections on the American model, etc.²⁶ However, the Committee created a Security Fund different from the contingencies fund to meet security needs. The value of this additional fund is doubtful and it is also regrettable that the Committee rejected the Sub Committee's proposal for a limited form of control over its use by requiring any expenditure made thereunder to be communicated to the security committee of the House of Representatives within seven days.²⁷ This was intended to curtail the rampant misuse or corruption in the use of security funds in the second republic.

3). The Courts System.

The judiciary attracted a great deal of discussions mainly because of the on-going controversy about the

²⁵. Ibid. s.171(2).

²⁶. Vol.II, op. cit.p.85.

²⁷. Ibid. p.87.

creation or otherwise of the Federal Sharia Court of Appeal, which need not detain us at the moment as we will treat it below. It was also partly because the Committee itself was overwhelmingly dominated by lawyers and judges. In fact, the Sub Committee on the judiciary comprised entirely of lawyers.

However, the thrust of discussions and aim of recommendations were twofold. First, it wished to insulate the judiciary from partisan political controversy and strengthen its independence. Civil regimes in Nigeria tend to be enmeshed in the judicialization of politics and the corresponding politicisation of the courts. Two schemes were proposed to curtail this phenomena. a) Ad-Hoc Election Tribunals.²⁸ These were provided for and conferred with exclusive original jurisdiction to determine election petitions to all offices. They were also to determine whether the terms of the holders of these positions have ceased. But the Sub Committee's attempt to give them total command of the election process by creating a hierarchy of appeals process outside the regular courts was diluted by the Committee which replaced them with the regular courts to determine appeals. Members of the tribunals would be a mixture of retired judges or practising senior lawyers and non lawyers. b) Funding. All monies for capital and recurrent expenditure due to the judiciary would be transferred to a fund under the

²⁸. Vol. 1, op. cit. s.266.

control of the relevant judicial service commission to avoid the past practice where justice seemed compromised because of executive influence over these matters. Similarly, a strong case was made for upward review of the income and retirement benefits of judges to a level relatively comparable to their counterparts in U.K. and U.S.A as well as a properly guarded tenure.²⁹ However, the more radical recommendation of its Sub Committee which sought to centralize the appointments of all judicial officers in the federation was rejected. So also, the Sub Committee's attempt to take chieftaincy disputes outside the arena of the courts was declined. If they had succeeded, it would have reduced the hold of bureaucrats and politicians over traditional rulers since most of the disputes emanate from official decisions thereby enhancing the powers of the chiefs.

4). Political Parties.

Apart from entrenching the two party structure recommended by the PB and adopted by the government, the Committee conferred discretionary power on the national assembly to limit the maximum amount an individual may contribute to a political party.³⁰ There was no consideration of making allowance for reviewing the two party structure after a specified period of experiment.

²⁹. Vol. II, op cit. pp. 156-158.

³⁰. Vol. I, op. cit. 8.221(n).

5). Fundamental Objectives And Fundamental Rights.

The Committee adopted the 1979 provisions in these areas while the Sub Committee's attempt to convert free primary education to fundamental right was thwarted by the Committee even though it is the declared policy of the government.³¹

A case was made for fundamental rights provisions to be broad and less specific to allow flexibility and adaptation to changing circumstances. But the majority preferred the existing elaborate, specific structure. In several respects, the Committee rejected some positive proposals made by the relevant Sub Committee. For instance, it sought to drop the word "vagrant" from section 32(1)(c) of the 1979 constitution. Vagrancy was one of the exceptions created to the fundamental right to freedom of movement. It has been exploited by the police to harass citizens who go about in search of the means of livelihood. A specific provision requiring the provision of legal aid to enforce these rights was rejected in favour of one that is discretionary and vague.³²

6). Accountability Of Public Officials.

Financial and political corruption, mismanagement and general lack of accountability of state and other officials in the public service have been a major

³¹. Vol. II, p. 41; Vol. I, II.19(3).

³². Vol II, p. 70.

contributing cause for the failure of constitutional democracy in Nigeria since independence. The approach to resolving this disease has been to rely totally on institutions manned by segments of the dominant groups themselves which proved largely unsuccessful. In the second republic, the newly introduced Code of Conduct for public officials and the accompanying Bureau and Tribunal were rendered inoperable for reasons already noted in the fifth chapter.

It is to fill this lacuna that the Code of Conduct Bureau and the Ombudsman were added to the federal bodies that are established by the constitution.³³ They were also conferred with powers which did not require further legislation. This was bolstered by the fact that the executive team at all tiers of government are required to declare their assets before they begin to perform the functions of their offices and at later, specified times. Similarly, the legislators at all levels are required to do the same before they take their seats and at the prescribed intervals. Incidentally, the situation is now clearer at the local government level because the military government has moved them away from their Westminster styled structure to a presidential system with clear differentiation between the executive and the legislature.³⁴ That is, the local government chairmen and their supervisory councillors now constitute the

³³, S.151 Vol. 1, op.cit.

³⁴, West Africa, 18-24 March, 1991.

executive while the rest of the councillors become the legislature. But the substance of the Code remains as it was formulated in 1979.

The only concession made to the people in terms of having a direct control over officials is the endorsement of the recall system which both government and the PB agreed to.

7). Inter-governmental Relationships.

The significant changes introduced on the distribution of powers and resources and the overall relationship of the various levels of government was in respect of local governments. But here too, they were in fact adoptions of an earlier Dasuki Report³⁵ on local government endorsed by the PB and accepted by the government in a modified form. The reform envisaged more functions and resources for local governments. More importantly, they were given a constitutional framework as a third tier of government with its income statutorily fixed, enhanced and paid directly from the centre.³⁶ This is a substantial improvement on the previous position when they were appendages of states.

In contrast to this desire for greater decentralization, the legislative lists as framed in 1979 were left intact with the exception of evidence which was shifted from federal exclusive to concurrent list. Again, the

³⁵. FRM (1984) Local Government, Report by the Committee on the Review of Local Government Administration in Nigeria, The Dasuki Report (Fed. Govt. Press).

³⁶. A new Fourth Schedule, Part II & S. 7 are evidence of this constitutional position. See Vol. I, op. cit.

Committee failed to re-instate the PB's recommendation for the constitutional creation of Development Councils and Ward/Village Committees. Rather it sought to steer an improperly thought out middle course by conferring on states discretionary powers to create a maximum of five development areas for each local government. This of course goes against the new desire for autonomy for local governments as third levels of government.

8). The Federal Capital Territory.

The new Federal Capital Territory attracted considerable discussion for two reasons.³⁷ First, those from the southern part of the country were apprehensive that the territory would not acquire the status of a state with all the consequences of discrimination in services arising from indigeneity. The second group were the inhabitants of the area before it was declared a federal unit, who legitimately felt stranded and disadvantaged partly because the government had not met its commitment to pay compensation and provide alternative land. The former anxiety was resolved by the adoption of a mayoralty for administering the area which ensures equitable access to all citizens. The second issue of course depended on administrative efficiency to quickly honour the rights of those affected.

9). Traditional Rulers.

The lobby and pressure mounted by this group have been mentioned. The CRC chairman personally formulated a set

³⁷. Vol. II, p. 183; Vol. I, p. xv.

of functions to be formalized in the constitution for the emirate and traditional councils in the country. If his proposals as hurriedly agreed to by the relevant sub committee had been entirely adopted, the councils would have gained considerable initiative in formulating and determining policies on a range of areas such as land, religion, chieftaincy matters, customary law and broad policies at the local government level.³⁸ However, they were significantly watered down at the plenary session. Their role , although formally extended to the local government, was still advisory as it is in the Council of State and States' Councils of Chiefs where they had hitherto served in similar capacities.

6.D.Entrenching Existing Institutions And Decrees.

As noted in the inaugural address, the president wished to ensure the continuity of the broad thrust of his policies after handing over to 1992. It is for this reason that constitution making, especially during his regime and other government policies must be considered as a package.³⁹ Some of the institutions are the Directorate for Social Mobilization (MAMSER), the Directorate for Food, Roads and Rural Infrastructure (DFRRI), etc.

³⁸ Vol. II, p. 32, op. cit. See Fourth Schedule, Part II, Vol. I, for the role finally agreed to.

³⁹ This point is misbordered by Uvasurika, P.C. (1990) "Confronting Potential Breakdown: the Nigerian redemocratization Process in Critical Perspective". In 28 The J. of Modern African Studies, 1:55-77; Financial Times, London, 2 & 3 Jan., 1991.

However, the Committee, for the second time (the first being the term of the executive) parted ways with the government by rejecting the plea for entrenchment. Two reasons were offered. First, that they are the political programmes of the government of the day which another may not wish to adopt. Second, because their functions cut across the constitutional areas of competence of the three levels of government, it could be a fertile ground for constitutional bickering. These are undoubtedly strong grounds for apprehension and we will see how government contested them subsequently.

The inescapable conclusion of this chapter is that the CRC was established to put in place a certain constitutional prescription desired by the military. The broad orientation of its framework is capitalistic with welfarist overtones which properly serves the interests of its authors given their vocations. On the whole, changes introduced by the CRC were incremental and matters of detail on the 1979 constitution.

We shall however see whether or not the basic framework was be reviewed in the constituent assembly depending on its composition and wish of the government as we will consider in the next chapter.

CHAPTER SEVEN

7. THE CONSTITUENT ASSEMBLY, 1988-1989.

The CRC as we saw in the last chapter had an extremely narrow agenda, which was to coordinate into a single coherent document those decisions of the Political Bureau accepted by the government. For this, the government chose men from industry, and law, whose backgrounds and orientation probability squared with the kind of market oriented values preferred by the government to form the main thrust of the constitution. Barely two months after the submission of its report, the government established a Constituent Assembly, being the final public body to work on the constitution.

7.A. Establishment, Composition And Background Of Its Members.

The Constituent Assembly (CA) was established by Decree 14, 1988 and inaugurated by President Babangida shortly after.¹ The 567 strong Assembly had three categories of members. The bulk of them, 450, were elected like the previous CA through an indirect electoral college formed by the various local governments in the country.² Even some of the members thought of this procedure as "retrograde".³ Against the background of known government position against extremists, there were some who felt the government should have applied the same restrictions to

1. Official Gazette No. 25, Vol. 75, April 20, 1988-Part A; Also Inaugural Address by General Babangida to the members of the C.A. at Abuja on May 11, 1988 in Federal Republic of Nigeria (FRN), Report of the Constituent Assembly 1988-1989, pp. i-ii.

2. S. 2 of Decree No. 14, "Report..." Ibid.

3. Contribution to the debate by Amb. G.A. Onyegbule in FRN, Proceedings of the Constituent Assembly Official Report, Vol. 1 1988 (Federal Govt. Printer, Abuja) p. 1285.

"pecuniary extremists"⁴, (the wealthy). The difference this time, compared to the 1977 CA was that the unit of representation was federal constituencies rather than states. This course was adopted because, according to the president, federal constituencies "are the closest to what can be called 'grassroots' and they take into account the discernible diversities in Nigeria...and in fact cutting across the narrow ethnic and religious boundaries...Members drawn from this source should see themselves as representing Nigerians at large and not state, ethnic or religious groups".⁵

Apparently, the ideology of popular participation is still being employed even though it is not matched by deeds. The second group of members were those nominated by the government and constituted "not more than one quarter" of the first group. In the end, they were 113. The necessity for them was also explained by the president. They were "distinguished Nigerians to represent important and critical interests in a deliberate effort to further broaden the base of the Constituent Assembly".⁶ For the first time, traditional rulers were brought in not to "intimidate the Assembly", but to guide it. Labour had a token single representative but students had none. However, its bulk were lawyers including retired and serving judges and businessmen.

⁴. A.C. Madueke. *Ibid* p.328.

⁵. President Babangida. "Inaugural Address..."*op.cit*.p.11.

⁶. *Ibid*.

Contrary to its current policy, some of those nominated belonged to the category of officials banned from public office, for instance, Colonel Yohanna Madaki (rtd) was a governor in Babangida's regime. Finally, the CRC chairman and chairmen of its various sub committees were appointed as automatic members. They were to serve as "resource persons" providing the basis for the Reviewed Constitution and "pilot" it in the deliberations. We have already dealt with the background of the CRC members.

Unlike any previous leader, President Babangida made explicit the fact that constitution making is a political process. It was his view that the constitutional evolution of Nigeria had not been subjected to the interplay of political forces. It had "been more or less embarked upon in haphazard manner".⁷ His administration was determined to move away from that approach as this is intended to be the last major constitution making process.

In the light of the discussions in the preceding chapters, it is true that Nigeria's constitutional evolution has been partly haphazard, especially in the period before the 1951 Macpherson Constitution, but certainly not devoid of politics. All governments that controlled the process since 1914 had by diverse means successfully influenced the outcome. The present

⁷ Ibid.

government differs only to the extent that its massaging of the process was manifested both in words and deeds.

In pursuance of the objective of establishing a consensus politics, the president carefully excluded or jettisoned the involvement of those he labelled, "extremists", generally regarded as those holding strong leftist views on the mode of organising the political economy of the country. But of recent, religious extremists have also come into the literature and it was implicit in the president's address.⁸ Thus "from the composition of the CA, it is now abundantly clear to the people of this country what I had in mind". Now "everyone is very cautious not to move too far out on either side of the spectrum".⁹ This attitude of the president was severely criticised by some members who thought of the so called extremists as the guiding lights of progress.¹⁰

The following (Table A) strength of the main interest groups in the given percentage of both the elected and the nominated members on whom information was available completely squares with the government's desire. Out of the 450 elected, information was available on 288, and on

⁸. Diverse religious organisations made enormous and passionate campaigns in the course of all the debates generating alot of anxiety. the main flag bearers were the Christian Association of Nigeria (CAN), especially the Northern zone; The Texas Study group.

⁹. President Babangida, "Inaugural Address..."op. cit, viii-ix.

¹⁰. Garai, S.M. Ibid, p.559; Onyegbula, Ibid.

Table A

i) ElectedOccupational Categories

Clergy %	Business -men	Diplomats /Senior Civil Servants	Lawyers /Judges	Ex- Ministers /Directors	Univ. Lect. /Admin	Other Teachers	Jour- nalists
0.6	33.8	22.5	4.5	4.5	19	14.9	2.4

* Percentage of 288 out of 450 members.

Source: Who's Who in the 1988/89 Constituent Assembly.
(Abaya Post Communications, Nigeria, 1989).

ii) NOMINATEDOccupational Categories

Tradi- tional Rulers %	Business -men	Senior Civil Servants	Lawyers /Judges	Ex- Ministers /Directors	Univ. Lect. /Admin	Labour	Jour- nalists
7.5	30.00	2.5	11.2	10	16.3	1.25	5.00

Percentage of 80 out of 117 members.
Source: ibid.

Inaugural Address to the Assembly. He identified some "agreed political issues" and decreed in no uncertain term that their main structures must not be changed.¹¹ They could only be improved upon in their details.

Like the CRC, there were areas where the decision of the government was final while leaving a small window for innovation in few others. Those in the former category were policies similar to those set out for the CRC, hence need not detain us again. But there were few additions. For instance, the government had pegged the number of states to 21, hence the CA could not create more, or more local governments. The ban on past office holders could not be reviewed.

The President noted a number of grey areas where the CA could have initiative and innovate. First, although local governments have had a firm footing as a third tier of government, the Assembly was asked to critically examine the division of powers among the three levels of government and relate it to the mode of sharing the nation's resources. Inter-governmental relationship in the federation was extensively considered in 1983 by a study team who made a wide tour of the major world federations to study how that kind of relationship works.¹² There is little evidence that its

¹¹. President Babangida, "Inaugural Address..." op.cit.p.iv.

¹². FRN, Report of the Study Team on the Management of Inter-Governmental Relations in Federal Administration Systems (Fed. govt. Printer, Lagos. 1983).

recommendations were utilized by the sponsoring administration or thereafter.

Secondly, the Assembly was enjoined to ensure that only fundamental issues were provided for in the constitution, some of which may already have been provided for in current legislations or judicial decisions. He noted with apparent disdain, the near total absence of habits, customs and traditional practices as means of restraining the behaviour of politicians. To this end, an elaborate code of conduct should be considered rather than a critical examination of some of the restraint mechanisms outside the state sector used by most nationality groups and some of which may still linger on despite pressures. Similarly, the Assembly should examine known conventions in mature democracies which might be popularized and internalized through the Directorate of Social Mobilization and some of which might be embodied in the constitution.

Finally, the president noted the failure of the 1979 constitution to produce a leader who had vision. Therefore, the new system should not only aim to provide for autonomy, energy and unity, but also engender a "visionary realist who can transform vision into action".¹³ This is additional to evolving provisions that should constrain the behaviour of politicians in general. The president sought assistance from the members in providing a transition provision to guide in the gradual

¹³. President Babangida, "Inaugural Address.." op.cit.18.

process of transfer of power as the constitution might come into force and civil government be partially introduced while the central government remained military until 1992.

In the end, the members were warned to desist from writing themselves into power by carving a set of rules in anticipation of themselves as the beneficiaries. The latter must be the "PEOPLE OF NIGERIA", said to be Nigerians in perpetuity in contrast to those in small letters who are only the present.¹⁴ Despite this constant reference to the people, there was to be no referendum because Nigeria is polyethnic and complex. It is for the same reason that in fact there should have been one.

Although there is this constant pre-occupation with the people, in concrete terms, the constitution was expected to concentrate on the leadership. In one respect, this may be excused because its that section that bears sole responsibility for the failure of constitutionalism in Nigeria. But looking at it differently, this neglected section must be mobilized and empowered to determine their own fate and that of the nation by creating participatory structures. This attitude to the popular sector is reflected in the emerging thinking in the literature on the human rights to development.¹⁵ The right of peoples to development has been articulated and

¹⁴. Ibid.

¹⁵. Rich, R. (1983) "The Right to Development as an Emerging Human Right" 23 Virginia Journal of Int. Law 281; Rich, R. (1988) "The Right to development: A Right of Peoples?" in Crawford (ed.) The Rights of Peoples (Oxford); Ravindran, D. International Commission of Jurists, Geneva at the seminar on TOWARDS AN EFFECTIVE HUMAN RIGHT TO DEVELOPMENT IN ASIA, MANILA, 14-16 Oct. 1988.

given official recognition by the General Assembly which on 4 April 1986 adopted the Declaration on the Right to Development.¹⁶ We will come back to this subject later.

The Constituent Assembly, like the CRC had a highly circumscribed agenda. In addition to limiting the substance of its job, the government determined the mode of attaining it. Thus, in furtherance of the consensus politics, the members were exhorted to ensure that motions for amendments met the "geographical spread" of the country. "Contrariwise, motions for amendments which have subscribers mainly from one ethnic, geographical or religious group or even ideological group should be discountenanced by the leadership of the Constituent Assembly".¹⁷

This regimentation of the Assembly was derisively dubbed as "no go areas" by both the press and the members and was one of the major topics that dominated the debates on the president's inaugural address.¹⁸ It was severely attacked by most of them including the establishment candidates. The following outburst by a nominee reflected the mood of the Assembly. "Mr. President has gone to the extent of defining how a decision should be taken on this floor. To go to that detail, I think, is a little too far. But not only that, for him to go to the extent of saying that we should ensure that decisions that are

¹⁶. United Nations: Declaration on the Right to Development (DPI/918-Nov. 1987-4M) reprinted in U.N., N.Y. Oct. 1988-3M).

¹⁷. President Babangida, "Inaugural Address.", op. cit vi.

¹⁸. Contained in Vol. I, op. cit.

going to be taken are based on a wide geographical spread, and then curtail all the means of arriving at that geographical spread, leaving us with no option whatsoever, I am yet to understand how this House is going to arrive at that geographical spread. We are being told here that we should shy away even from ideological polarisation of this country. This is most unfortunate".¹⁹

7.8.1 Procedure In The Assembly.

Initially, conduct and debates in the Assembly were regulated by section 4 of Decree No. 14, 1988. It required them to be guided by the Standing Orders of the House of Representatives as in force on 30 December, 1983 subject to any modifications. The Standing Orders had provided for a number of posts one of which was that of the deputy leader of the House. Quickly, members vied for this post, the main contenders alleged to have had the support of the two major religious camps in the House. This engendered infighting and soured relations with the press which engaged in gossip and speculations. For this and the fact that the Assembly did not need some of the posts provided for, the rules were modified by the government at the request of the Assembly's chairperson.²⁰ Thereafter, the Assembly was regulated by new rules introduced by Decree No. 24, 1988.²¹

¹⁹ Pro. Lombin. G., *ibid* p.1176.

²⁰ *ibid*, pp.636-637.

²¹ C.A.(Amdt.)Decree No.24, 1988, attached as a Schedule.

Schedule 3 of Decree No. 24 set out detailed rules to govern the Assembly including its language, sitting hours, quorum, duties of its officials, mode of conducting business, establishment of some committees and their composition, etc. In particular, it required a fixed percentage of the membership of the two mandatory committees- Standing Orders and Business Committees to go to government nominees-the CRC. Both Committees would assist the chairman to serve as guard dogs as it were, partly to determine the merits and conformity of substantive motions and any proposals to change the standing orders of the Assembly in the light of their agenda.

Again, to ensure that the main thrust of the Reviewed Constitution was not upset, s.40(1) of the Standing Orders required it to be considered in chapters and clauses in chapters serially beginning with the preamble and finally, the schedules. This was followed in the final plenary session where decisions were taken on the proposals of the various sub committees. Prior to that, the debates on the inaugural address and the Reviewed Constitution when presented by the CRC chairman (designated the leader of the House) as a Bill for first reading, were in general terms on the broad outlines of the constitution.

As alluded to, after the general debates, the Assembly divided itself into twenty three committees, its composition based principally on the choice of members

ending with an average of 27 members in a committee.²² Although the nominated comprised a quarter of the elected, they were in charge of 13 out of the 23 committees. Six co-ordinators were appointed by the chairman to link up the work of the committees and were all drawn up from the nominees.

In the course of the general debate, it had become obvious as we will see later that some issues had the capacity to stall the Assembly's work. In anticipation, the chairman wisely appointed a Committee of Elders made up of "few influential and knowledgeable members" which itself later set up its own sub committee of five comprising Christians and Muslims to resolve an impasse on Sharia Courts.²³

Debates in committees were held in camera and in the final plenary session, it was partly open and partly in camera presumably to minimize constituency pressure on the members. It was also because of strained relationship with the press over reportage of issues in the Assembly. One of the committees -committee 3- almost stalled while another, - committee 16-actually did so until the government intervened. We will come back to the controversy later.

It is evident that the CA like the CRC had very little room to manoeuvre, notwithstanding opinions expressed by

²² Vol. 1, op. cit. pp.1085-96.

²³ Chairman's Letter of Presentation in FRN, Addresses by Gen. Babangida and Justice Anigolun on the Occasion of the Presentation of the Draft Nigerian Constitution at Abuja on April 5, 1989. (Fed. Govt. Printer, Lagos, 1989).

some members that there was room for major innovation.²⁴ But the limitations of its agenda did not hamper the emergence of major cleavages in the determination of issues in the Assembly.

7.C.Issues And Cleavage Structure.

During the general debates on the inaugural address and first reading of the Bill, the issues closest to the hearts of the members emerged. This development was partly given a shove by the fact that the President and the CRC chairman singled them out for attention. Broadly, they were the relationship between state and religion, constitutional role for traditional rulers, press freedom, coups and the role of the armed forces, states and local government creation and of course the limitations on the Assembly's powers.

However, the only method of determining the cleavage structures on the issues that were so important as to have led to divisions is to outline the voting structure in the divisions according to states. This was the procedure adopted by Jillson to review the cleavage structure in the Philadelphia Convention of 1787.²⁵ The roll call of votes are in Appendix C

1st Division.

The issue was whether the president needed senate approval before he could deploy the armed forces in a

²⁴. Asiodu, P.C., Vol.I, op. cit. pp.116-117; Williams, L.R.p.132.

²⁵. Jillson, C.C.(1988) "Constitution Making..."op. Cit.Appendix A.

limited combat if the integrity of the nation is under imminent threat. A proposal by Paul Ukpo (nominated) dispensed with the approval so as to provide a leeway to the president to act with despatch and decisiveness.²⁶ In arguing against, it was noted that it would involve the lives of citizens and might in fact eventually involve the country in a full scale war, hence, senate resolution was essential at all times. The ensuing division contained no discernible cleavage. Most members from all states preferred a president who could act unhampered by politics in the senate.

II Division.

This was a motion proposed by Bala Takaya (nominated), an academic, seeking to expunge from the Reviewed Constitution, the provision (S.8(1-4)) which constitutionalized traditional rulers complete with defined functions. The reason was as poetically summarized by him. "Our philosophy of government is republic, not monarchy. Our form of government is democracy, not ascriptive leadership. The status of a Nigerian is a citizen, not subject. The structural arrangement of Nigeria is federalism, not confederation. Our national aspiration is national unity and integration, not tribalism. Our societal attitude should be that of universalism, not primordialism and that of the historical legacy".²⁷

²⁶ Discussions in Vol. II, pp. 2085-2114.

²⁷ Takaya, B. Vol. II, Par. 2228

The resultant cleavage structure upon division showed that the motion was heavily defeated by a combination of states inhabited by nationality groups with a strong history of traditional rulership. They are the predominantly Hausa-Fulani states of the North, Yoruba dominated states, Bendel and Cross Rivers from the South. Supporting the motion were members from states with strong minority groups and who in the past have had grievances against the institution in the North-Benue (BN), Gongola (GG), Kaduna (KD). The Ibo states of the East and other minority areas were divided partly because most of them lack a long history of the institution. The measure of support here was because there is an increasing bid by the elites to reproduce and participate in chieftaincy through acquisition of titles as it seems to provide a short cut to positions of power and influence over the masses. The nominated were in full strength (28:1) against the motion. It was therefore a victory for traditional rulers.

IIIrd Division.

An amendment proposed by Committee 3 sought to reduce the involvement of other states in states creation whose procedure was already stringent-(S.9(1) a-d). Those in opposition were of the view that states creation affects the structure of the federation and therefore, all states must contribute to it at all critical stages.²⁸

²⁸ See Vol. II, pp. 2266-2271.

Two sets of groups favoured the proposal. They were those from states with large minorities agitating for states-Bendel (BD), Rivers (RV), BN, GG. Others were the homogenous Ibo states of Imo (IM) and Anambra (AN) where as the Political Bureau noted, there is a strong political case for creating more states because although they constitute about a quarter of the nation's population, they are lumped in two states only. Those against were a combination of the homogeneous Yoruba, Hausa-Fulani dominated states with less demand for states creation. Most of the nominated voted with this group which secured their victory.

IVth Division.

The amendment introduced by Dahiru Musa (elected-KN) sought to provide a safeguard against the National Assembly exercising its emergency powers to legislate for a state where its legislature is unable to sit, using it as a pretext to remove the governor of the state. Implicit in it was a fear of opportunistic consequences when there is a major strain in the inter-governmental relationship between the centre and other smaller units of government, especially if they belong to different parties.²⁹

Except Bauchi state (BA) for no apparent reason, the motion had the decisive support of most members. It

²⁹. Ibid, pp.2243-2247.

showed alliances as fluid depending on the principle and its direct effect on the members.

Vth Division.

The amendment co-sponsored by Sola Akinyede (N) and Jise Akinmurele (Elected-Ondo-OD) sought to create an exception to the injunction in section 15(3), 1979 Constitution requiring the application of federal character in public offices. They proposed to allow the use of merit and excellence in appointments as an antidote to what they perceived as the lowering of standards due to the wholesale application of the principle. In effect, the elites who see public service as the sharing of positions among themselves were caught in their own net. It was opposed as superfluous arguing that federal character does not in fact derogate from merit.³⁰

In the division that followed, all members from the northern states including those of its minorities (BN & PL) who so far voted differently, in alliance with two minority states from the East, RV & CR combined to defeat it. The nominated, most of whom were past and present beneficiaries were in full strength in support of this position. On the other hand, all the members from the Yoruba and Ibo states combined for the first time to support it. They are actually the groups that consistently complain against the alleged misapplication of the principle. Again, old alliances were partly

³⁰. Ibid, pp.2382-2392.

dissolved and fresh ones made. There were no permanent friends or positions.

Vith Division.

The motion proposed by Committee 4 was on the nation's language policy. The CRC proposed the learning of the three main languages in the country, viz, Hausa, Yoruba and Ibo, which was strongly opposed by the minority groups on grounds of discrimination and domination. Consequently, Committee 4 proposed an omnibus compromise clause simply exhorting the government to promote the learning of indigenous languages.³¹

The ensuing cleavage structure in the division was pluralistic and diffused. First, members from the Hausa-Fulani states were united in opposition. Hausa, the most widely used language in the country was one of the three, therefore, self interest seemed to have been the motivating factor. The second group, supporting the motion, came largely from the five Yoruba dominated states (Lagos, Ondo, Ogun, Bendel & Oyo-LOOBO) in alliance as expected with the states where minorities are clustered- Akwa Ibom, (AI); BN, PL, GG & RV) and majority of the nominated. Although Yoruba was one of the languages affected, the Yoruba members either as a matter of principle or shrewd political calculation showed solidarity with the minorities.

³¹. Ibid, pp.2515-2517.

A third anomalous group are those who were divided. They were the Ibo state of Imo, the largely Kanuri state of Borno and Niger where in the case of the last two, there is also a strong minority politics but usually in alliance with the Hausa-Fulani states. However, the alliance of the largely Yoruba states with the minorities produced a victory for them.

VIIth Division.

An amendment proposed by Olusegun Ajayi & 5 others sought to reintroduce the clause prohibiting discrimination against any citizen because of the circumstances of his birth. The CRC expunged it from the 1979 Constitution as it thought of it as legitimating illegitimate children and therefore immoral, a view shared by most of the women and Muslim members. They opined that illegitimacy must not be constitutionalized as it would present Nigeria in bad light and also encourage promiscuity. But it was contended that there were other circumstances of discrimination such as the Osu class system practiced by the Ibos etc.³²

The largely Hausa-Fulani states allying with Borno (BO) with the coincidence of predominance of Islam, voted solidly against it. They had the support of majority of the nominated members. In its favour were the entirety of the states in the East for the first time. The Ibo states were expected to be influenced by the caste system and

³². *Ibid*, pp.2650-2657.

more importantly, the fact that they are greater in diaspora in the country than any group. They had the support of the Yoruba states who as is now evident tended to vote together in block.

The other states in the north in minority situation were divided. Thus, the coalition of the southern members with their minorities and the division in the minority states of the north let in victory for the supporters of the proposal.

VIIIth Division.

This was a motion by Odili, P.C. & 16 others mostly from the east, seeking to modify the provision which vested all the mineral wealth of the country in the federal government-S.42(3). The idea was to create a joint ownership of the minerals between the central and state governments where the minerals are located.³³

The ensuing division registered a singular polarized north versus south cleavage. The case for the eastern states and Bendel was a clear self interest because all the country's oil is exploited there. On the other hand, the reason for the support given by the Yoruba states is difficult to discern as minerals are not extracted from any of them.

In stark contrast, the members from the north including its minorities were almost undivided in alliance with an

³³. *Ibid.*, pp.2674-80.

overwhelming majority of the nominated in opposing and securing victory. It was in the interest of most of the nominated to so oppose because they have business interests which cut across state boundaries. States participation in the management of sectors which form the nerves of the economy could complicate those business dealings.

IXth Division.

The proposal made by Committee 8 sought to relax the rules regulating the participation of public servants in elective offices. It proposed that a public servant wishing to contest shall be granted three months' leave of absence prior to the election on terms that if he wins, shall resign, withdraw or retire from his job. But if he fails, shall resume his position. The rationale given was partly to give reality to their constitutional rights and partly to reduce the stranglehold of the business community on the country's politics.

It was opposed mainly on grounds of the historical British legacy of the so called neutrality of public servants. But a scare tactics was also used by asserting that judges and members of the armed forces would be drawn into politics.³⁴

The voting pattern was significantly diffused. The LOOBO group maintaining its usual coalition opposed it, but with a significant number of members changing their

³⁴. Ibid. pp. 2749-2756.

position. There was no discernible pattern in respect of members from other areas, with fair distribution for and against. But the nominated, the bulk of whom are in private ventures were decisively against (42:7). Therefore, a logical inference is that together with other members from all states who were in private vocations, they felt threatened and overturned the proposal.

Xth Division.

The amendment sponsored by Elson Awano (GG) was a reflection of the two party system adopted for the country in the new dispensation. In the 1979 Constitution and adopted by the CRC, which involved more than two parties, a person to be duly elected as the president had to secure inter alia a quarter of votes in at least two thirds of all the states in the federation. The proposal sought to upgrade one quarter to one half to ensure that a minority president with a token spread in some states was not elected as there will be two candidates only.³⁵

There was almost absolute support for it. The main snag is that barely a quarter of the Assembly were in session during this particular decision. It was one of the clear instances where a principle, the desire to secure a popular president, prevailed.

³⁵. Vol. 131 pp. 3000-3007.

XIth Division.

This was a proposal made by nine members all from the oil producing states seeking to introduce derivation and enhanced percentage for ecological problems in the distribution of revenue in the federation. This meant greater share of revenue to those states where the wealth of the country is generated. It was proposed despite the existence of a National Revenue Mobilization, Allocation and Fiscal Commission inaugurated during the currency of the Assembly. One of the Assembly's committees complained that its establishment affected their work and greatly reduced some of the recommendations it wanted to make.³⁶

In the ensuing division, the members from all the northern states were united in rejecting it. Correspondingly, all members from the east including its minorities in alliance with those from Lagos were absolutely for it. Except Lagos, they produce oil and rubber and together, constitute the coastal areas of the country where the ports and therefore most custom and excise duties are earned. They also have the heaviest concentration of industries in the country.

For the first time, the Yoruba members were divided. Already, those from Lagos and Bendel were in support being directly affected as dominant producers of the contested wealth. But those from Oyo and Ogun were almost evenly divided because they together with the northern

³⁶. *Ibid.*, pp. 3284-3300.

states contribute little relatively to federal coffers. For the same reason earlier on alluded to, the nominated teamed up with the north to defeat the scheme.

XIIth Division.

An amendment by Committee 13 sought to make the appointment of diplomats the sole prerogative of the president, the senate only to be consulted. This was contested on the ground that the involvement of party officials and pressure groups could prevent the president appointing the best candidates, hence, would be counter productive given that diplomats represent the entire nation abroad.³⁷

The core Hausa-Fulani states--Katsina (KT), Kano (KN), Sokoto (SO), and Bauchi (BA) were solidly in support with majority support from Kaduna, Kwara and Niger and a divided Gongola. The nominated by a large majority gave support. It is instructive that two of the country's three civilian leaders came from this group. This may have some explanatory value as they hoped that they would continue to produce the president who would then be in a position to select his men without having to go through the sometimes unpredictable all party screening process in the senate.

In opposition but in a more diffused form, were the LOOBO states and the easterners including its minorities. The main minority states of the north supported them thereby

³⁷. *Ibid.*, pp.3346-3349

reverting to its pattern of voting with this group but lost out.

XIIIth Division.

In the course of the debate, strong dissatisfaction was expressed regarding the role of the police during civilian regimes and whether the governor rather than the president should have ultimate control over law and order in a state. The demand seemed stronger especially from the north. This crystallized into a demand for state and local government police. Others would have none of it.

In order to reconcile these widely conflicting positions, Committee 14 proposed the localization of the junior cadre of the force. This compromise was meant to resolve the historical fact that in the first republic, Native Authorities had their own police with the reality of the current situation where Nigeria has a very strong central authority and finally, the new approach to federalism by distributing positions in most spheres of public life through the mechanism of federal character.³⁸

The division that followed indicated an overwhelming support from the states that had strong emirates and local police in the first republic (BA, BO, KN, NG, SO) less Gongola, base of the hitherto dominant Adamawa emirate. These states except Borno are incidentally dominated by the Hausa-Fulanis. It may also be noted that the governors of Borno and Kano who were in parties

³⁸. Ibid, pp.3487-3490.

different from the central government with a war type of relationship, had immense difficulties with the police in the second republic.

In favour of central police only even though most of their civilian governments had problems with the central authorities and the police as well, were all the members from all the eastern and western states plus the minority areas of the north (BN., GG., & PL.). They have common grievance in that they had enormous difficulties in the past with the native authorities, and its machinery of justice-police and the courts. The nominated were divided but as expected, had a majority support for central police only. Thus, a combination of all members from the south, northern minorities and a majority of the nominated ensured victory for those who may be called federalists against the localists of the emirate north.

XIVth Division.

The issue here was anxiety especially by the members from the south who feared that Abuja, the new federal capital was being converted into another state by stealth. Consequently, Gabby Nwankwo introduced a motion seeking to delete the clause that provided that it was to be administered "as if it were one of the states of the federation", S.279, 1979 Constitution). For this reason, those members seemed to consider less important the fact that the present residents have neither been compensated nor finally resettled in breach of one of the cardinal injunctions of the constitution which prohibits

expropriation of property without adequate and prompt compensation.³⁹

The ensuing division followed the now familiar pattern of cleavage. The members from Borno and Niger allied with the Hausa-Fulani states (BA.,KN.,KT.,SO.) to vote against it in full strength. Correspondingly, all the members from the south allied with those from the minority areas of the north and a majority of the nominated to carry the motion through successfully.

Discussion.

From the preceding presentation, the motives that influenced members to vote the way they did fall into two broad categories. In three clear divisions, I-III the members seemed to have been affected by a higher value, the wish to see that the integrity of the country is secured by a president who can act with despatch, that the national legislature does not use crises in any state to remove its governor, and a desire to secure unity through a popularly elected president.

However, the bulk of the divisions show a clear voting structure apparently motivated mainly by the group and individual interests of the members. Thus, those from the emirate Hausa-Fulani states allied in many instances with the nominated or minorities especially of the south to produce victory for themselves, for instance by securing a constitutional status and defined functions for

³⁹. Ibid, 3664-3678.

traditional rulers. Also, divisions sometimes followed a polarized north versus south cleavage. For instance, with support from majority of the nominated in most cases, the north combined to defeat the explicit introduction of a nebulous merit as exception to the elite federal character formula, form of ownership of the country's minerals but lost in respect of the status of Abuja as it could not muster the support of the southern nominees and some of the northern minorities.

On the other hand, the members from the minority states had more shifting positions. For instance, they were all united against most members from the Hausa-Fulani block on the nation's language policy. Also states from which most federal resources derive were united in demanding derivation and enhanced percentage in revenue sharing, although they lost out.

The nominated, like the minority but to a lesser extent had no definite ally or position. But on the whole, they stood for measures that favoured the centre and uniformity because of the national character of their business interests and the fact that they represented the interests of their appointor, the federal government. They were overwhelming in rejecting any threat to their eminently predominant positions, for instance they allied with their elective counterparts in business to see off the challenge posed by the public servants and their sympathisers who sought the relaxing of rules governing entry into positions of power.

Finally, it may be noted that two blocks of states generally maintained a common position on most issues. The LOOBO members most of the time voted together like those from the predominantly Hausa-Fulani states, (BA.,KN.,KT.,& SO). Alliances were then drawn from either the minorities or the nominated. On average, most of the nominated voted with the Hausa-Fulani block while the minorities of Benue and Plateau voted with LOOBO. This new coalitions has important implications for the geopolitics of Nigeria. First, it actually confirms the liberalising effect of the break up of the old regional arrangement through states creation which was notable in the second republic coalitions.⁴⁰ Secondly, it also shows that no particular coalition can rely on its own strength to dominate the country which makes the unity of the country dependent on manifold variables.⁴¹ Thus, no particular coalition consistently won or lost out. Finally, differences were broadly on elite participation in the structures of government rather than on primordial differentiation.

However, apart from the issues which led to divisions, there were others which polarized the members forcing the government to intervene.

⁴⁰. Diamond, L. (1982) "Social Change and Political Conflict in Nigeria's second Republic" in Sartman, I.W.(ed.) *The Political Economy of Nigeria* (Praeger, N.Y.) pp.25-84.

⁴¹. See Leitin, D.D.(1982) "The Sharia Debate and the Origins of Nigeria's Second Republic" in *20 The Journal of Modern African Studies*,2:411-430.

7.C.1 State, Religion and the Sharia Controversy.

More than any issue, and like the 1977/78 Constituent Assembly, the dispute over the relationship envisaged between state and the major religions in Nigeria, polarized the members almost absolutely between Muslims and Christians. To be sure, there were some members especially in the nominated camp, the LOOBO states and the whole East who were conciliatory and attempted to exercise moderating influences in their campaign in the case of the 1977/78 C.A.⁴²

The dispute had two aspects to it. First, on the broader issue of the relationship between state and religion, most Christians within the Assembly and apparently in the wider Christian public as represented by the many publications of the disparate Christian organisations wanted at best an ecumenical, secular role for the state, playing no active part. Their demand approximated to the position in America and certainly not Marxian which is hostile to religion. Consequently, the definition offered by de Smith largely encapsulates their position. He defines a secular state as one "which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion".⁴³ It is required to maintain a position

⁴². The factual basis for this categorization is provided by a detailed analysis by Laitin, *ibid.* p.420

⁴³. Smith, A. Donald (1963) *India As A Secular State* (Princeton Univ. Press, N.J.; Bombay, Oxford Univ. Press) p.4.

of transparent neutrality in its conduct with the multiple religions in the country.⁴⁴ This position was later concretely reflected in section 10 of the 1979 constitution, adopted by the P.B and C.R.C. It provided that "the Government of the Federation or of a State shall not adopt any religion as state religion".

However, dissatisfaction with the perceived partisan attitude of government engendered a demand for a specific more prohibitive phrase. Arising from this, the perceived bias, most Christians took strong objections to the bid by Muslims for an appellate federal structure for the states Sharia Courts which had existed since even before colonialism in the erstwhile Northern Region. They also protested against the incorporation into the constitution, of Decree No.6 1989 which enlarged the jurisdiction of the State Sharia Courts. As noted there was unity in the views of the members and the leadership of the organized Christian community outside it.⁴⁵

It is instructive to note that, contrary to the known apolitical, deferential tenets of Christianity to authority, the Christian leadership shifted from this and sought to reinterpret those scriptures to show consistency between the religion and an active political

⁴⁴. See contributions by Dr. Hypolite Adigwe (Rev. Magr.), Vol. 2, pp. 1738-1744; Dr. Iwuoha, B. I., pp. 1820-1825, as representative examples from the numerous comments on it.

⁴⁵. See *ibid*: The Takan Study Group: The Path to a Lasting Constitution, A Memorandum submitted to the Constitution Review Committee, 1978; Leadership in Nigeria Enlightenment Series I (CAM Publicity, Northern Zone, 1988).

life.⁴⁶ This political perception partly begun in the aftermath of the civil war when Christians in the South and the North felt uneasy because lack of unity among them was part of their inability to prevail on the official parties to the dispute, and thus prevent a war in which a part of its victims were Christians.⁴⁷ This was later compounded by some official policies considered detrimental to Christians and the country upon which input from the former was not sought.⁴⁸ The desire for unity and the strength that accompanies it, led to the change in approach to politics and its institutions. Thus, the Church followed on an earlier declaration in Lome by its leaders. The latter declared thus: "Despite the occasional voice crying in the wilderness, the Church...was inclined far too often to conform to the world rather than, to transform it. In thus conforming, the church has weakened its position as the conscience of the nation. IF the Church is to reassert itself effectively and consistently, it must determine never again to be dragged along by the powers that be..."⁴⁹ But the unity remained elusive while arguments on whether clerics or only the flocks could engage in active

46. Relying on the following verses which implies active political life- Romans 13:1-7; Titus 3:1; Acts 4:19 & 5:29.

47. Pro. Eriwo, S.U. (1985) "The Church In A Changing Nigeria: 1960 to Date" in Kayode, M.O. & Usman, F.B. eds The Economic and Social Development of Nigeria (The Panel on Nigeria since Independence History Project, A.B.U, Zaria) pp. 371-400.

48. Notable schemes were the take over control of Voluntary Agency Schools, most of which were missionary schools, and the later Universal Primary Education, whose ultimate goal they complained was "the secularisation of education, which will not do this country any good". Ibid p. 383.

49. Quoted from ibid, p. 380.

politics raged on unresolved until the creation of Christian Association of Nigeria (C.A.N.) in 1976.

The agenda of the latter was broad enough to incorporate both puritanical and political ends, evident in subsequent positions on issues emanating from official actions, investigation and channelling of reported grievances both of individual and corporate Christians, politics, etc.⁵⁰

Later, an appeal was made to all Christians in the country urging that "when the Christian passes from the realm of the church into the political sphere, he is not passing out of Christ's dominion into the political sphere, he is not passing out of Christ's dominion into the dominion of some other lord, and that political affairs no less than the life of the church are within the dominion of Christ."⁵¹

As examples of the gains to be made or inversely past injustices, the Christian Association of Nigeria (C.A.N) published the leadership structure of the country since independence, in government and other public institutions which according to it has been under the monopoly of Muslims because impliedly, they controlled politics. The leadership of C.A.N therefore, urged its flock to be active politically, and resist in any way perceived injustices. To this end, inter alia, it went on to

⁵⁰. A number of these are mentioned in, *ibid*.

⁵¹. "Leadership in Nigeria," op. cit. p.71.

challenge government decisions in respect of allocation of plots of land to religious organizations in Abuja, it went to court over the Decree which established the Pilgrims Commission.⁵² In fact, the Churches begun to express concern from the time the CDC completed its work and contemplated the possibility of establishing Canon Law Courts in Nigeria. Also, fears were expressed even before the C.A. 1977. Thus "we must not allow ourselves to be misled in our response by the false impression...that there is nothing new in the provisions for Sharia in the Draft Constitution..."⁵³

Later, in 1989, it threatened to reject the constitution if it contained provisions on sharia or sanctioned the Sharia Courts.⁵⁴

There are a number of reasons why the secular proposition ignores the reality of the Nigerian situation. First, the use of a religious platform to seek political power is inconsistent with its wish for a secular state since it is one of the areas outside the scope of religion's legitimate aims in truly secular western societies like the U.S.A. whose footpath Nigeria is copying. Second, in Nigeria and most developing countries, where the state is both the "differentiator and distributor" of resources, "the equating of secularity with neutrality even at the

⁵². National Concord of 7/3/1989 12/4/1989; 19/4/1989; 27/4/1989.

⁵³. Memorandum by the Director of Institute of Church and Society to C.A.N. for deliberation in 1978 in Prof. Wriwo, op. cit. p 186.

⁵⁴. W/Concord of 25/4/1989.

theoretical level implies a cast that is too rigid".⁵⁵ Third, in most pre-colonial nationalities in Nigeria, political power was legitimated by myths and religions, which position was scarcely different during colonialism through the preservation of the Emirates in the North whose rationale we saw was Islam, while the setting in the South is generally perceived Christian. Fourth, in contrast to Western experience where debate is conducted against the dominance of one religion, the relative size of the dominant religions in Nigeria is such that neither "can dominate- or be allowed to dominate".⁵⁶

The position of the Muslim community was slightly different. Those in the C.A. wholly supported the demand for the Federal Sharia Court Of Appeal with jurisdiction over limited civil areas only, partly objecting to the idea of a secular state. Rather, they envisaged the state to be supportive of all the religions without adopting any one of them.⁵⁷

But in studied contrast, it was evident from available literature that a notable segment of Muslims outside the C.A. preferred Islam to be presented as an ideology which should replace or at worse run concurrently with the prevailing ideology in the country, so that it could be applied in political, economic and social life.⁵⁸ But so

⁵⁵. Agbaja, A. (1980) "Travails of the Secular State: Religion, Politics and the Outlook on Nigeria's Third Republic" in XVIII The Journal of Commonwealth & Comparative Politics, 3:289.

⁵⁶. Ibid, p.292

⁵⁷. Dr. Yadudu, A.Y., Vol.2 as example of this position.

⁵⁸. Memo addressed by the National Committee on Sharia, Mushin, Lagos, to the CBC, 1988; Memo submitted by the Muslim Community, A.R.U.Sharia, 1988; Justice Usen v

far, no concrete steps have been taken to realize this alternative model of state unlike the Moslem Brotherhood of Egypt who, although not in power, have sought to provide banks, social and educational services, Mosques, etc to the public.⁵⁹

Given this context, the debate in the C.A.s was scarcely conducted in a rational exposition and exploration of the merits and demerits of the situation with a view to winning over opponents. Rather, it sounded like positions taken prior to the C.A. and at the same time articulated, echoed and enlarged the virulent and inciting attacks on aspects of both religions over the radio, television and newspapers. Committee 16 in the case of the 1988 C.A. which had responsibility for the judicature dragged on without settlement in sight despite the mediatory mechanisms employed as in 1977 as noted earlier while the report of Committee three generated tension.

For these reasons, as in 1977/78, the federal government intervened to withdraw the jurisdiction of the Assembly on those items dealing with the Sharia Courts.⁶⁰ In its final decision, the government upheld the 1979 position including the jurisdiction expanded by Decree No.6, 1986. It also deleted the new provision prohibiting the state

Abdullah, Sharia as a Panacea for Nigeria's Socio-economic Problems. Paper presented at the 4th Annual Conference of Islamic Law Teachers, Univ. of Maiduguri, March, 1990.

59. Hussein M. (1988) "Islamic Fundamentalism as a Political Protest Movement" in *Islamic Fundamentalism: A Debate on the Role of Islam Today* (Inst. for African Alternative, London) p.31-33.

60. Address by the Chief of General Staff, Vice Admiral Alkhomu to the members of the CA, Abuja 18/11/1988, Vol.2 op. cit. 21270-2129. Further correspondences between the CA and the government on matters incidental to it are contained in "The Report..." op. cit.

from overtly or covertly assisting any religion. But to mollify the Christians, it removed the option clause which empowered any non Muslim party to a case with a Muslim to opt for the application of Islamic Law to the proceedings.⁶¹

Given the manner the Sharia debate was conducted and what was sought by the official parties to the dispute, the primary objective seemed to have been the creation and consolidation of political constituency by both sides and strengthening of bargaining positions in the subsequent civilian politics. It was part of the continuing exploitation of religion by the dominant elites to inter alia, further a political cause as used during the civil war (1967-1970).⁶² At that time, the war was presented at both domestic and international level as between the Muslim North and the Christian East. Since then, developments in the country such as the splitting of the hitherto emotive highly politicized regional structures into smaller units and the resultant emancipation of its minorities, centralization of power and resources, inter alia, have undermined the efficacy of past cleavage structures and thrown up potential ones on the one hand. This is easily supported by the fact brought out by Laitin where those who held extreme positions were the

⁶¹. SS.261 & 329 of the 1989 Constitution., PEM.

⁶². The history and the incidents of this manipulation including the local and foreign links are traced and examined in Usman, Y.S.(1978), *The Manipulation of Religion in Nigeria, 1977-87*. (Vanguard Publishers Kaduna, Nigeria); *The violent Politics of Religion in Nigeria*, A Press Statement by some lecturers of A.B.U.Zaria-11/3/1987; A similar effort by traditional rulers in the North is reported in West Africa, 20/7/1987.

members from the North (KN, NG, SO, BO, KD & BA-pro-Sharia; BN, PL, GG partly, anti-Sharia).⁶³

The extreme pro-Sharia group were part of the core geo-political areas of the erstwhile Northern region that benefitted from the ideology of "Northernization" used in the past to maintain the North as one political constituency which ideology is no longer viable. The case of BN & PL is explained only partly by the fact that they were seeking to sever ties from communities seeking to maintain authority as Laitin urges, but more importantly, their elites have turned their liberation into a weapon of attack to secure political platform largely using the ideology of religion.

The political, economic and psychological environment is provided by the failure of the extant ideology and its practitioners to address the basic needs of the people. The resultant dissatisfaction has been expressed through the sporadic violence and destruction of property that have taken place in the country since the 1980s described as religious fundamentalism.⁶⁴ These socio-economic issues did not come into the agenda in the fierce debates in the C.A. on this matter contrary to the notion that this C.A. provided for a welfare state despite pious declarations as we will now examine.

⁶³. Laitin, op.cit. 422.

⁶⁴. A critical assessment is made by Ibrahim, J. (1989) "The Politics of Religion in Nigeria: The Parameters of the 1987 Crisis in Kaduna State" in Review of African Political Economy No. 45/46 pp. 61-82. Violence as a part of sectarian competition for supremacy among diverse Islamic organisations is presented by Clarke, P.B. "Fundamentalism in Islam in Nigeria", West Africa, 22/8/1982.

7.C.2 Welfare State and the 1989 Constitution.

The often cited most important difference between the 1979 and 1989 Constitutions is said to be the provision by the latter of a welfare state.⁶⁵ The scheme was first proposed by Committee 4 which was in charge of the Fundamental Objective and Directive Principles of State Policy. But the theme itself in relation to the constitutional process was first raised and canvassed in the C.D.C. without concrete measures while the P.B. sought to provide the latter.

According to the Committee, it is to emphasize "the need for government to be more responsive to the basic needs of the people". But it quickly entered a caveat that no ideology was intended to avoid being misunderstood as introducing socialism by stealth.⁶⁶ This followed its rejection of the justiciability of the chapter on fundamental objectives. But to give some degree of teeth to the welfare idea, it proposed a body to be called Fundamental Objectives Performance Monitoring Commission.⁶⁷

However, the Committee provided no specific content to the declared welfarism, except the hope it placed on the realization of the chapter on basic objectives, assisted by the Monitoring Committee. Committee Four's proposal for welfare provisions were accepted by the Assembly, but

⁶⁵ Justice Anlagolu, "Letter of Presentation..." op. cit. p.16.

⁶⁶ Prof. Abdullahi, Anjo, Cttee. 4 Chairman, Vol.2 op.cit.1712

⁶⁷ ibid, p.1713.

it rejected the Monitoring Committee as well as a spirited effort by few members to provide some content.⁶⁸ Similarly, as a way out of the classical reason of lack of funds used to deny concrete content to the welfare provisions, the sixteen medical doctors in the Assembly proposed for adoption a National Health Insurance Scheme. It was negatived.⁶⁹

In the same vein, an amendment which sought to reinforce the existing legal aid system by providing for a Legal Aid Fund in the constitution to which state and central governments will contribute annually, lapsed for lack of secondment. A related proposal seeking to empower Nigerians to defend each other was refused for fear of floodgate of frivolous actions in the courts.

Some of the Committees attempted to provide concrete meaning to the concept, for instance, Committee 6 made a strong case for upgrading health and education from mere objectives to fundamental rights. But the Assembly could only concede the transfer to fundamental rights of free, compulsory and universal primary education, free secondary education and free adult literacy programme after a prolonged and stiff opposition by some members especially, the nominated camp.⁷⁰ Also on the plus side, the Assembly adopted after a considerable opposition including the chairman on grounds of costs, free medical

⁶⁸. See Abba Dabo, *Ibid* 2374; Gaski, Vol.3 op. cit.pp.3789-3790.

⁶⁹. Dr Henshaw and 15 others-Vol.2, pp.2551-2554.

⁷⁰. Debates at pp.2485-2507, Vol.2 now embodied in s.43 of the 1989 Constitution.

care for children from birth until 18 years of age, aged from 65 and handicapped and disabled. It declined in respect of mothers in pre and post natal conditions on the pithy and mean ground that it is a private affair between couples which the state should not fund.⁷¹

The Assembly's prevarications on these matters contrasted markedly with the speed with which some of the economic aspects of the constitution were dealt with. For instance, it was observed that property rights which one member wrongly claimed as the very basis for the 1948 Covention on Human Rights, should not be a matter for ordinary statutes and implication in the constitution as provided in 1979. Consequently, a motion was made to specifically decree the right to property as a fundamental right. It was adopted with little discussion and without opposition.⁷² Similarly, although the Land Use Act which put land under the control of state officials managed to survive, it attracted a concerted and considerable attack. The common view was that it is confiscatory and at best should be an ordinary statute rather than a constitutional document.⁷³ Therefore, predictably, a motion which sought to ensure that land and water resources be administered without creating a landless class of Nigerians was defeated.⁷⁴ The latter was an expression of concern for the way communities have

⁷¹. Vol.2, pp. 2699-2707, now s.42 *ibid*.

⁷². See *Rev. Adigun and Manshaw* at pp.2683 & 2685 respectively- Vol.2 now s.44 *ibid*.

⁷³. Vol. 1 pp.1229; Vol.2 pp.2448-2464; Vol.2 pp.3749-3758.

⁷⁴. Vol.2 pp.2441.

been dispossessed of large tracts of land for official and individual use without adequate and prompt compensation, resulting in clashes with the previous owners, occasioning loss of life.⁷⁵

Finally, the crucial issue of the management of the economy was never referred to in the definition of the Assembly's agenda. But in the course of the Assembly's work, the government speedily pursued its programme of deregulating the economy. The response in the Assembly was mixed and sporadic. There were those who in fact encouraged the government and urged that the process should be total. On the other hand were members who made strong calls for it to be halted as it is inconsistent with some of the egalitarian provisions of the 1979 and proposed 1989 Constitution. On the whole, the demands of the latter went almost unnoticed and therefore without debate.

The sum total of these is that it is a misnomer to describe the few concessions made as having established a welfare state. In fact most of them are a restatement of what already obtained. On the contrary, the Assembly strengthened the economic aspects of the 1979 Constitution and used the word "welfare" as a ploy to give it a positive outlook, an approach begun by the Macpherson Constitution of 1951. The idea was to make the document less objectionable to the majority of people

⁷⁵, Usman, V.B. ed. Political Repression in Nigeria.

even though its framework and structures bear insignificant links to them.

7.C.3 Military Intervention and the Constitution.

More than any issue, the persistent military intervention in the political economy of the country was one area most members disapproved of. The scene was actually set by the president in his inaugural address. He said "I believe i reflect the growing conviction and awareness among Nigerians that the persistent, destabilising interruption and disruption of our orderly political evolution by bad politics, bad governments and reactive military interventions is a form of national self defeat".⁷⁶

While the military passed the buck to civil politicians, the members excepting a few nominated members thought the military bears almost sole blame for the instability. Following this, suggestions to prevent coups were almost as many as there were members. But the main proposals could be crystallized into three options. First, that the Assembly should define it as a crime punishable at all times. Secondly, Nigerians should refuse cooperation with those who take over government outside the framework of the constitution. This is wide enough to include civilians who rigged elections. Finally, the citizens should oppose such a government and that state immunity, would not apply to their activities.⁷⁷

⁷⁶. President Babangida, "Inaugural Address..." p.1.

⁷⁷. Vol.2 pp.2049-2066.

Obviously, these proposals would not in any way prevent coups and in fact contain seeds for perpetuating military government in the country. As a member rightly noted, if the military were aware that its departure would be followed by trials, they may not leave. Similarly, by passing the buck to the people, "elite..would now use the greater population of this country to test the powers of the rifles of the armed forces...The cooperation that exists in the body governance of this country is normally between the elites and the members of the armed forces who eventually take over control..."⁷⁸ But it could be meaningful to encourage civil disobedience of a sort if there was a responsible, democratic civilian government truly serving the basic needs of the people. The Assembly finally settled for the proposal rendering coups criminal offences, which actually restated the existing position in 1979 Constitution and ordinary statutes.

It was apparently as a fall-out of this distaste for military rule that the Assembly perfunctorily rejected the request by the president for a transition provision in the constitution along with Committee 22's proposals for constitutional dyarchy (mixture of military and civilians in government) of a sort.⁷⁹ They took umbrage partly under the technical fact that the request was not in the Decree establishing the Assembly. It was made during the inaugural address. Also, that the request

⁷⁸. Mustafa, Boss G., *ibid* pp.2062-63.

⁷⁹. The options offered by the sub committee are at pp.1922-1926, Vol.2.

would legitimize dyarchy and might lead to conflict of legitimacy and since the constitution is a composite document, it could not be introduced piecemeal as intended.

Therefore, the Assembly resolved to convey its decision to the government through a letter rather than as part of its recommendations on the constitution, the options open to the government. The latter could decide to introduce the constitution into force progressively by Order beginning in the first quarter of 1989 until 1992 or it could enact a decree bringing the constitution into force and containing all the provisional sections it desired.⁸⁰

7.C.4 Party Structures.

A two party structure was one of the issues taken outside the purview of the Assembly. Consequently, most developments in this sphere were determined by the government. The latter conferred on the National Electoral Commission (NEC) responsibility for the recognition and registration of political parties in fulfilment of an earlier promise.⁸¹

Following elaborate guidelines issued by NEC including a deposit of about £3500 , any association wishing to register as a political party was invited to submit applications. In the end, 13 associations did and after their scrutiny, the NEC in its Report and

⁸⁰. The proposals were largely made by Prof. Ijalaye and Prof. Ango Abdullahi- Vol. 3, pp. 4374-76.

⁸¹. Gen. Babangida, Address to the Nation on the Political Programme for the Country (FPM, 1987) p. 7.; National Electoral (Amend.) (No. 2) Decree No. 37, 1988.

Recommendations, found "foreboding signs".⁸² They were found to have been riddled with factionalism evidence of intolerance and personalization of politics, rigging and falsification of claims, disregard of the main guidelines and poor organization. More ominously but not surprisingly, it found their antecedents deeply tied to the past and the banned politicians and a financial base largely dependent on "charity/donations from undisclosed sources". Their executive committees were filled with wealthy individuals while the manifestos tended to "cluster around the centre of the ideological spectrum, a little to the left and a little to the right".⁸³

Given this structure, orientation and attitude of the associations, the government rejected and subsequently abolished them as "we will not serve our people yesterday's food in glittering new dishes" and that "while we have no intention of succeeding ourselves, we shall not hand over the third republic to money bags either".⁸⁴ Certainly, this result was a direct effect of the government's suppression of politics based on overt ideology evident in its aversion to extremists on the left of the ideological plane. But it is obvious that it plays one, evident in its unpretended adoption of market oriented economic policies and programmes. That explains why everybody sought to occupy a centre position in the

⁸² National Electoral Commission, Report and Recommendations on Party Registration, Sept. 1989, p. 8.

⁸³ Ibid, pp. 8-13.

⁸⁴ General Babangida, THE DAWN OF A NEW SOCIO-POLITICAL ORDER. An Address to the Nation on the Occasion of the Registration of Two Political Parties, Oct. 7, 1988 (FNN, 1989).

ideological spectrum, worsened by the refusal of the Assembly to relax the rules regulating entry into power through elections so that only those in private vocations have a free rein.

In their place, the government after reviewing various options decreed the two parties complete with names (National Republican Party-NRC and Social Democratic Party-SDP), identical constitutions and ideologically "a little to the left and a little to the right" and manifestos only differing in nuances.⁸⁵

But it must be observed that some of the structures of the parties contain ingredients for limited popular democracy if properly explored and popular awareness is fostered. It is to be a "Grassroot Democratic Two Party System" which is intended to have:(i) a mass base and which would throw up leadership on the basis of equality of opportunity. (ii) De-emphasise the role of money in politics, prevent the emergence of old cleavages and chart a new pattern of recruitment and participation as well as institutions.

Frameworks were provided to accomplish at least some of them. First, membership registers will be kept at the ward/local government levels and elections for party leadership and other elective offices will be conducted through series of elections by electoral colleges which

⁸⁵. Transition to Civil Rule (Political Programme) (Amendt.) Decree No.26,1989.

begin from the ward level.⁸⁶ At the formation period and partly subsequently, they were to be administered and funded by the government. Recently, the government decreed that elections will be conducted by open ballot thus minimising the chances of rigging and manipulation, subject to the possibility of intimidation of voters to cast ballots one way or the other.⁸⁷

In recognition of the fact that the elites bear almost sole responsibility for the problems of the country, the government decreed a Centre for the Study of Democratic Institutions. Its task would be to "seek out and identify sources and types of anti-democratic attitudes, beliefs and behaviour in Nigerians and devise measures to correct them through our educational, bureaucratic and political institutions..[It will]..homogenise the bureaucrats of political parties using short term training, workshops, seminars and conferences" in the values of representative democracy, republicanism, fundamental rights, secularity of the state, etc.⁸⁸

The snag here is its reliance on existing institutions to undertake the reorientation. It is these institutions which reproduce those negative values associated with the political class and other leaders of the country. Therefore, any reform has to start with them. However, although the government conceded too little and mainly on

⁸⁶. Ibid, ss.10-11; Also FW. 52 p.19.

⁸⁷. West Africa, 8-14 April, 1991.

⁸⁸. General Babangida, "The Dawn of a new Era..." op.cit.14-17.

electoral matters only, it indeed provided a window of opportunity which might enable a minimum popular participation if thoroughly implemented.

The available evidence on the composition of the Assembly and their attitude on basic issues shows little to suggest that they could have fared better than the government in the direction of providing for the people. They shied away from most developmental and issues of popular democracy. For instance, the creation of "Development Areas" recommended by the P.B., watered down by the government was described by the Committee which dealt with local government as containing "a booby trap" which ought to be removed.⁸⁹ Hence, it was further mutilated by empowering only the states to create a prescribed number for a local government. The latter would no longer participate in its creation.

The Assembly preoccupied itself with clamour for the creation of more local governments and greater financial autonomy which, although legitimate, was handled with little consideration for its structure and especially how its activities relate to the people. The structure was marginally touched by the military later by introducing presidential system whereby the chairman and the supervisory councillors would form the executive and other ordinary councillors, the legislature.⁹⁰ Similarly, the chairmen were empowered to appoint their secretaries,

⁸⁹. Vol.2, p.1952; See s.7(1) 1989 Const.

⁹⁰. W.A. 18-24 Feb.s 18-24 March, 1991.

hitherto appointed by state governments from within the civil service.

Finally, although the government created a siege situation for the members which they generally lamented, their attendance of the Assembly was extremely poor and generally less than the minimum prescribed quorum of 300 most of the time. It was a constant source of tension within the Assembly itself and as a result had to be reduced to 200 at the instance of the chairman.⁹¹ He was anxious that the Assembly may be dismissed unceremoniously if it did not complete its work on schedule for lack of attendance. Later on at the end of the exercise, fearing that decisions arrived at without the prescribed quorum may be tampered with or go down unwell in posterity, the chairman sought to retrospectively legitimate it by requesting members to give assent to those decisions. It was rightly declined.⁹²

Against this background and the general supervisory role the military ascribed to itself, it was not a surprise that after the submission of the Assembly's Report, the government did some retuning. First, it was clearly irritated by the pre-occupation with the perceived negative role of the military and rightly described the anti-coup provisions as tautology.⁹³ In the sphere of the

⁹¹ Vol. 3, pp. 3254-3255.

⁹² Ibid, p. 4277.

⁹³ This and the following government decisions are drawn from the National Concord, May 5, 1989.

executive, the number of advisers to the president were pruned from 7 to 3. Also, limitations placed on the president in negotiating foreign loans which required involvement of the National Assembly was removed while the provision establishing Security Fund was deleted. Finally, the president must go to the senate for confirmation of his ministers and not just to consult them as was originally provided.

In the legislative arena, legislators will now serve on part time, partly to save cost but also to encourage independent minded citizens to become law makers "without any disadvantage to the pursuit of their legitimate livelihood" , a thinly disguised reference to those in private vocations.⁹⁴ The President actually adopted a similar recommendation made earlier on by an official body whose reason was to make politics less lucrative.⁹⁵ Also to save cost, the size of senate was reduced from 95 to 64.

In respect of the judiciary, the changes on the Sharia Courts have already been noted. The new provisions granting some measure of financial autonomy to superior courts was removed because separation of powers does not mean water tight compartments. Finally, five newly proposed commissions were deleted⁹⁶ but the government

⁹⁴ Ibid.

⁹⁵ FAW, Report of the Judicial Commission of Inquiry into the Affairs of Federal Electoral Commission, 1979-1983, Summary of Findings and Recommendations, Nov. 1986, p. 156.

⁹⁶ The commissions were: the Armed Forces Services Commission, National Assembly Service Commission, National Environment Protection Commission, Police Service Commission and Science and Technology Commission.

evidently did not contest the rejection of some of the institutions it wanted constitutionalized. Following this amendments and like its 1979 counterpart, the constitution was enacted by the Federal Military Government, with the constitution attached as a schedule.⁹⁷ It comes into force on the 1st October, 1992 (S.331), subject to the provision in the Decree empowering the President to by Order appoint an earlier date for the coming into force of any of its provisions.

Meanwhile, since the transition process begun in 1989 with the local government elections to be followed by that for governor and legislatures at states level, their powers, functions and duties and relationship with the central authorities will be regulated by decree to be promulgated by the Government (S.1 of Promulgation Decree).

In conclusion, the substance and procedure of the exercise was riddled with protectionism. On the one hand, the military was anxious to protect the values it believed in or it thought are agreed ingredients of Nigerian politics. On the other hand, there was little to suggest the C.A.s constituted would have come up with serious alternatives. Already, even in those areas it had elbow room, they were more pre-occupied with matters which affected them individually or as a group defined geographically, economically or primordially.

⁹⁷. The Constitution of the Federal Republic of Nigeria (Promulgation) Decree, 1989.

The real intention of the exercise was to provide a semblance of popular legitimacy to a constitution whose main structures and philosophy were decided by the government against the background of free market orientation and the broader transition process given the government's rejection of referendum. It was not really intended that the Assembly would provide substantial concrete alternative arrangements.

CONCLUSION.

This research set out to determine primarily the principal beneficiaries of the constitutional evolution of Nigeria largely based on the background of the major participants. For this purpose, a certain periodization was made both for clarity but more importantly, to reflect the increasing complexity of the process due to the enlargement of the contending elements who sought protection by constitutional provision, and their relative strengths.

Constitution making in the first period, 1900-1946, reflecting the Governor's constitutions, was a relatively straightforward affair, made primarily for the convenience of officials in the field (the most obvious being the creation of Nigeria in 1914), economy for Britain in administration (notable in indirect rule) and exploitation of resources. Increasingly however, the governors had to contend with the emerging but small pressures from within, which were reacted to mainly through cooptation and subtle repression. The former was by nominations as unofficials into the legislature initially, and later the executive.

However, between 1947 and the period leading to independence, against the background of the decision in the Whitehall to decolonize, the constitution became the main instrument for channelling that decision which resulted in the modification of strategy and tactics by colonial officials. First, guided by the lessons learnt

from the precipitate retreat from India and some degree of violence in Ghana, the strategy was to remain in firm control of the process by anticipating demands, grooming heirs and generally cultivating goodwill. In this way, the colonial structures such as an uncritical system of education, bureaucracy, organisation of the economy and trading partners remained unchanged.

The objectives and strategies were fully realized in the making of the Macpherson Constitution, 1951 which refined the Richards' Constitution. Through further reforms, it subsequently became the pillar of the independence and republican constitutions of 1960 and 1963 respectively. Contrary to the perspectives presented in the main writings on this period,¹ and a widely held view that the Macpherson Constitution was the product of an elaborate process of consultation at the grassroots level, it was in fact a totally manipulated process. In the process, local leaders identified as militants such as Azikiwe and others were shoved aside. They in turn submitted as reluctant victims, while others, especially the traditional rulers in both North and Western regions, and the Lagos based elites who were engaged in commerce and the professions, collaborated and connived in the imposition and adoption of institutions.

The instrument used to tie the hands of those reluctant to connive was largely the lethal and effective ideology

¹. Oduwusu, O.I. (1963) *The Nigerian Constitution: History and Development*. (London, Sweet and Maxwell); Eze, E. (1960) *Constitutional Developments in Nigeria* (Cambridge Univ. Press, London); Eke, P.O. (1967) *Nigeria: the Development of its Laws and Constitution* (London, Sweet & Maxwell).

of consultation and power to the people. Under the resulting constitutional framework, independence was handed to regionally based "select circle of heirs" and "within the largely unaltered framework of the colonial system".² The "flag independence" was therefore at best "a battle won in a war lost overall"³ by the nation and the majority of its population.

Unsurprisingly, the constitutional schemes conjured up primarily to carve spheres of influence in terms of regions and resources for the feuding dominant groups failed to secure the requisite trust the system needed to survive. It collapsed and led to a costly three year civil war which itself introduced a new element into the structure of the political economy-the military. Henceforth, the latter became first among equals, played the role of the colonial ruler viz-a-viz other internal groups (at the same time feathering its own nest) without the stigma of alien rule. More seriously, by usurping and waving the banner of patriotism, it determined the rules of entry to power and access to resources.

The constitutional instruments which ushered in the second republic and those in place for the putative third republic were fashioned in periods when much of the theoretical environment but less of practical politics had shifted. Beginning with the latter, the excitement

². First, R. (1970) *The Barrel of a Gun* (London, Penguin) p.55

³. Turok, B. (1991 Reprint), *Africa: what can be done?* (London & N.Jersey, Ted Books) p.9

and hope of the flag and anthem independence has been replaced with uncertainty, gloom and soul searching and groping for new institutions largely to resolve intractable intra-elite squabbles.

Thus, the CDC of 1976 was established for this purpose. Its membership reflected people who have been over-used and immensely benefitted from the economic and political administration of the country. Contrary to a widely held view,⁴ the most spectacular achievement of the CDC was not the switch to the presidential system, although itself important. Rather, it was the constitutionalization of what informally obtained in the private sector since the economic nationalism of the 1960s onwards but especially magnified since the indigenisations of the 1970s whereby the main individuals of the dominant class were fused and largely united in the boardroom of the local subsidiaries of MNCs, public sector parastatals, etc and generally socially cohesive. This now goes under the slogan of "federal character".

Its cardinal principle was not a broad distribution of services, or economic and political participatory structures for the majority of the population. Rather, it aimed to regulate access to power, resources and patronage among the dominant class of the population, being the culmination of a process initiated by colonial

⁴ This is especially espoused by Wabunse, B.O., a leading positivist writer on constitutional law in Africa, who was a member of the CDC. Wabunse, B.O. (1982) *The Presidential Constitution of Nigeria* (C. Hurst & Co. London); Wabunse, B.O. (1985) *Nigeria's Presidential Constitution, 1979-1983, the second Experiment in Constitutional Democracy* (Longman, London); Ojo, J.O. (1985) *The Development of the Executive under the Nigerian Constitutions, 1847-1981*.

regimes. In attempting to constitutionally-widen the scope of patronage, some aspects of bourgeois values and first generation rights were re-emphasized to ensure that those interests were secured, a struggle akin to the development of these values in Europe in the first place.

The Constituent Assembly that followed it overwhelmingly adopted most of its prescriptions with changes that were only matters of detail. The cleavages that appeared disclosed a number of interests defined economically, geographically and at times primordially but the basic structures remained unaltered. Thus, the notable departure from the previous constitutions was not so much the creation of new institutions as the willing refinement of old ones to coopt and accommodate as widely as possible the same historically determined heirs, their wards and clients and some of those who due largely to an open education system acquired formal qualifications but remained at the periphery of the power structure.

Unlike the first part (1975-1979) of the second phase of the constitutional process (1975-1989), the second part (1986-1989) which came up during another period of military intervention was conducted in the thick of emerging concern for the lot of the impoverished and marginalized majority of the population in the third world. This concern is reflected especially at the international level through the ongoing intense debates on the concept of the right to development, the research activities of legal pluralists and ethnographers who

possibility of adopting social welfare schemes based on the social solidarity obtaining in the societies of the third world. We shall come back to these later.

What is notable in the analysis and prescriptions of the Political Bureau comprising overwhelmingly of apparently liberal minded intellectuals was the lack of reflection of these debates in its work even if to serve as a future guide for the constitutional development of the country although it evinced honest concern for the neglected groups. Its overall aim, similar to those advocated by present day Marxists, was to install socialism, empower the people to weaken neo-colonialism and imperialism and turn the economy away from capitalism.⁵ But this was undermined by the choice of strategy, largely statist measures in pursuance of socialism now even though a common view among Marxists now is that the material and political preconditions for implementing socialism do not obtain at the moment.⁶

It is in fact the absence of these elements and an alternative popular power base that partly enabled the government to unilaterally overturn limited redeeming features in the recommendations of the Political Bureau and impose on the country economic policies and institutions in the constitution which were clearly

⁵ Turak, op. cit. part 1.

⁶ Ibid: A lucid summary of the debates among the socialists and Marxists and the obstacles confronting them is made by Beckman, Bjorn (1988) Whose Democracy? Bourgeois versus Popular Democracy in Africa. Paper presented to the 1988 Conference of the Review of African Political Economy: Taking Democracy Seriously- Socialists and Democracy in Africa, 22-24 Sept. University of Warwick. These are evident in the prescriptions made by the Human F.B. Osoba Minority Submissions.

beneficial to the dominant groups. Similarly, the government, dispensing with the subtleties of its colonial predecessors, in the later period shoved aside people who did not believe in its kind of constitution and political order, guided apparently by theories of liberals within and external to the constitutional process.⁷

These elements sought to "roll back the frontiers of state" in the management of the economy and the administration of the country. The former was pursued with vigor through the government's Structural Adjustment Programme (SAP) while the constitution was being debated. In the constitutional sphere, what emerged in substance was a mix of grains of liberal principles, especially in the provisions for first generation rights-civil and political.⁸ But the substance was heavily developmental. Developmentalism, used as an ideology for one party and other authoritarian regimes in Africa and Asia seeks to jettison and suppress plural forces and other centres of power in the society because it is said to be a luxury of the West which other societies can not afford given the hierachical structures of their society and especially the urgency of the tasks of development.⁹

7. For theorizations outside, see Diamond, L., Lion, J.J., Lipset, S.M. eds (1988) *Democracy in Developing Countries*. Volume Two: Africa, (Boulder, Lynne & Rienner); Diamond, L. (1987) "Issues in the Constitutional Design of a Third Nigerian Republic" 86 *African Affairs*, pp.209-226; Dent, M. (1977) 1st ed. *Improving Nigeria's Draft Constitution* (Bark Horse, London). For a criticism, see Graf, W. (1989) "Issues and Substance in the prescription of liberal-democratic forms for Nigeria's Third Republic" 88 *African Affairs* 350, pp.91-100.

8. These classification of rights was first made by Vasek, Pavel in 1977-see Rich, E. (1988) "The Right to Development: A Right of Peoples" in Crawford, J. (ed.) *The Rights of Peoples*. (London, Clarendon)

9. For a short and critical overview of this concept and its use, see Mamdani, M. (1990) "The Social Basis of Constitutionalism in Africa" 28 *The Journal of*

Its manifestation in the constitution was the adoption of the two party structure justified in those terms by the Political Bureau and when later established by the government, with one a little to the left and the other a little to the right. Others were introduction of part time legislators, rigid requirements for contest for office and power as it relates to those in the public service, exclusion of so-called extremists and the mainstream of the society in framing the constitution and for whom structures for participation were not provided.

Insofar as there was greater regimentation and exclusiveness in the process of and the institutions created in the 1989 Constitution it was a negative development compared to its largely liberal based 1979 counterpart. In both, no serious efforts were made beyond pious declarations to dismantle the inherited colonial structures as attempted in Ghana during Nkrumah's regime and Tanzania since the Arusha declaration of 1967 although the former was a failure while the latter had only very marginal successes.¹⁰. Both Nigerian constitutions were however interest based, the predominant being economic especially in setting the agenda but substantively preserved in more subtle ways than other cleavages which emerged. The latter tended at times to blur the social cohesiveness and real unity

Modern African Studies, 3 pp. 359-374; Shivji, I. (1989) State and Constitutionalism in Africa, Keynote Paper for the African Regional Institute of the American Council of Learned Societies Comparative Constitutionalism Project, Harare, May 22-25.

¹⁰. Hyden, Goran (1980) Beyond Ujamaa in Tanzania: underdevelopment and an uncaptured peasantry (London). Also Hyden, G. (1983) No Shortcuts to Progress: African development management in perspective (London, Berkeley)

enjoyed by the dominant groups in the economic structures of the country.

On their part, the CRC and the CA played minor roles, the latter mainly to legitimate the constitutional process and the larger transition programme. However, the apparently non economic cleavages that manifested in the C.A. did draw attention to the existence of diverse, competing and effective centres of power in the country which actually have stunted the development and practice of obvious class politics. These cleavages also largely contributed to the fragility of the nation itself (now 31 years since independence), so much that the concretization of liberal values such as the rule of law, first generation rights, etc would have been an achievement by itself. They could then be available to progressive elements and those genuinely sympathetic to the mainstream of the population as tools to organize alternative popular power base apart from jettisoning the militarization of society, inevitable in having military regimes.

However, the most notable feature in the constitutional evolution of the country since its creation is the exclusion and passivity of majority of the people. This "failure to democratise the overall development process has...grossly undermined the mass participation of the [country's] most important resource-its people".¹¹

¹¹. The Lagos Plan of Action, quoted in Turok, op. cit. p.11

Although concern for the majority of the population entered the constitutional agenda only tangentially and as an ideological weapon, an object rather than as partner, these marginalized people were the subject of emerging theoretical debates and discussions (with huge practical potential) in the international fora and in some legal-ethnographic studies as noted. The aim here is not to plunge into the ongoing debates on the right to development as a human right nor advocate its immediate provision in the constitution given that its essence and contours are still the subject of debate and discussions. But the constitution makers manifested lack of foresight in not noting as a useful path for the future constitutional progress of the country given that a constitution has to be a living law and adaptable to changing climates to maintain relevance to its community. Their immediate relevance is in the fact that they draw attention to the failure of governments and extant system to tackle the pathetic situation of those marginalized by them and who form the bulk of the population.

The Constitution And The Right To Development.

The case for a right to development as a human right was first pointed out by the former president of the Senegal Supreme Court, Keba Mbaye.¹² The central theme of his argument was that all other rights, including the right to existence has no value without the right to development, and that this right needed no further

¹². Hestdagh, Marcel de Vey, (1981) "The Right to Development: From evolving Principles to 'Legal Right': In Search of Substance" 28 *Netherlands International Law Review*, pp.30-53.

instrument pointing to Articles 55 and 56 of the UN Charter where the joint responsibility of the international community for the welfare and respect for human rights is a central aim. He also noted Articles 22-27 of the Universal Declaration of Human Rights 1948 concerned with social and economic rights.¹³

Acting on the resolution of the UN Commission on Human Rights in 1977, the Secretary General prepared and submitted a report in 1979 which was endorsed by the Commission and the UN General Assembly.¹⁴ However, the final work produced by a Committee of experts appointed to elaborate a more precise formula did not save it from a minefield of controversy regarding its legal foundations, substance and the beneficiaries whether individuals, collectives or the state.¹⁵

Despite the current inadequacies, it is an extremely significant development all the more so as it is presented as third generation rights emerging from the third world as a response to the effects of colonialism and imperialism.¹⁶ The first generation rights are said to be the political and civil rights being the product of American and French revolutions. The second generation

¹³. Ibid.

¹⁴. 41/128 of 1986, Reprinted in UN Copy-DPI/916, NOV.1987, Declaration on the Right to Development.

¹⁵. A very staunch case is made for it by Rich, J. op.cit.; Alston, P. (1985) "The Shortcomings of a 'Garfield the Cat' Approach to the Right to Development" 15 California Western International Law Journal, 510.; a very critical comment is made by Brownlie, I. "The Rights of People in Modern International Law" in Crawford, op.cit.

¹⁶. See note 8.

rights are the economic and welfare rights which emanated from the revolutions in USSR and ertswhile Eastern bloc.

The concept stresses the centrality of the human being as a participant and beneficiary of development. For this purpose, all human beings bear responsibility for development and states have a duty to cooperate with each other. In concrete terms, states have responsibility to "eliminate the massive and flagrant violations of human rights" and to "eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights" (Arts.5-7).

These declarations could in the near future provide sound legal and ethical foundations for :i) Careful scrutiny of national legal systems in structuring electoral process, criminal and preventive legislation including law enforcement policies and personnel and providing the basis for challenging extra legal measures.¹⁷ ii) The removal of obstacles to human rights and freedoms including the structures of government if they constitute impediments by non-observance. Moreover, violators need not be state officials. They may include holders of social status like traditional rulers in Nigeria and holders of economic power.iii). The strategy for attacking injustice can then be modified to pointing to cases of injustice rather than concentrating on sterile

¹⁷. Basl, Upendra (1988) "The Development of the Right to Development" in Venkatesh, E.C.(ed.) Human Rights in a Changing World (International Law Association, Delhi) pp.1-11.

debates on the definition of injustice. iv) The role of non-governmental organizations both internally and externally could become more important as oversight mechanisms for assessing and reporting on implementation or otherwise. Finally, but by no means the least, at the international level, they could provide basis for examining the entire structure of the international economic order and international law which serves as its legal foundation.

Undoubtedly, there are enormous practical obstacles to realising these aims, the objections of positivist lawyers apart. But looking at it from an optimistic viewpoint, it is a formula that could operate beyond the inhibitions of the charade of national sovereignty which in the third world has been used as a sword against citizens but not to prevent intervention from outside mostly for baser aims.

Social Welfare For The Larger Population.

We have noted the rejection of state social welfare schemes by the constitutional bodies except the Political Bureau. Their reason mainly was lack of funds which we noted is spurious. However, a number of ethnographic researches and studies on the practical administration of state welfare schemes in some third world countries have showed the futility of such approach in relation to the

state welfare schemes in some third world countries have showed the futility of such approach in relation to the larger segment of the population due to structural obstacles in their society and economy.¹⁸

In industrialized nations where state welfare schemes obtain, the requisite conditions which obtain and conduce to it are: i) The family is structured on a compact nuclear base with discernible clear division of roles, although the growth of feminism is increasingly seeking to modify the old scheme.ii) The economy is organised with most people in wage employment relating to employers as individuals earlier on, but now largely through trade unions in respect of terms of employment.iii) A certain minimum set of living conditions and a fairly ascertainable average income which the state tries to maintain. If subnormality sets in, in both cases, the measures aim to prevent it from degenerating to misery and starvation. Finally, but not the least, it requires a minimum level of national economic prosperity and organisational structures.

Clearly, most of these conditions are not met on the scale required to successfully dispense state social schemes covering all segments of the society in most third world countries. First, most of its population live in rural communities and engage largely in subsistence

¹⁸ These are discussed in detail in Benda-Beckman, P. et al (1988) "Introduction: Between kinship and the State" in Benda-Beckman, P., Woodman, G.B. et al. *Between kinship and the State: Social Security and Law in Developing Countries* (FORIS-Nordland & U.S.A.); Zacher, M.P. "Traditional Solidarity and Modern Social Security: harmony or conflict" *Ibid* pp.21-38; Fuchs, M., "Social Security in third World Countries" *Ibid*, pp.39-51.

sectors on the one hand and the lower echelon of the strata employed in these organisations or engaged in petty trade as craftsmen, tailors, etc.

For these reasons a strong case has been made to consider and build social security on the traditional social solidarity of these groups. In any event, there is a lot of interdependence between what the state offers to the smaller segment of the population and the larger population due to the continuity of the symbiotic relationship between urban wage earners and their rural relations which we noted, stunts the development of full fledged proletarians. The idea is not to dispense with formal social security but rather to adopt a system of "social security pluralism" where the former is only one element. That is, a mix of "externalising" and "internalising" solutions. The latter "solve problems by acting in the areas in which they arise" that is, relying on the norms and mechanisms generated and used in that environment while the former "solve problems by acting outside those areas".¹⁹

Obviously, internalising solutions are best suited to the problems of rural populations as such schemes would stabilize and bolster community solidarity endeavours. For instance, in the event of shortage of rains or loss of livestock due to "epizootic disease", etc provision of seed, replacement of livestock, etc. Similarly,

¹⁹. Zacher, *Ibid* p.25

cooperative structures may be fostered to stabilize breakdown in ertswihle solidarity structures or engender new values such as equality of women, emancipation of individuals from oppressive norms such as the Osu caste system among the Ibos and other communities in Nigeria.

However, externalising solutions are required to dispense formal education, medicare as well as applying them to those in wage employment, etc. But, despite the continued injunction to the constitution makers to evolve schemes unique to Nigeria or not practised anywhere in the world, these aspects in concrete terms were conspicuous in their absence from the deliberations or prescriptions. That it is practicable is evidenced by the fact that the Nigerian Folklore Society established in 1980 was active and influenced the formulation of cultural policy for Nigeria in 1988. More importantly, it is reported to have made vital contributions towards the promulgation of Decree No.47 of 1988 on Nigerian Copyright Law.²⁰ The Society also noted the potency of folkways as a tool to reach out to the rural majority in the transition programme which emphasized mass participation. To be sure, during the constitutional debates, there were constant references for a return to the old days. An objection to these schemes would be that Nigeria is huge, pluralistic and with complex social structure and the adoption of any one of them would pose political difficulties.

²⁰. *West Africa*, 10-16 June, 1991.

This objection may be met by noting that their unsuitability is not due to the size of the country. Rather, it is lack of authority on the part of the leader of the particular community to dispense it to those external to it²¹ and the lack of reciprocity of a sort by the latter that poses the problem. This is easily overcome by governments that have authority and responsibility for the entire country. In any case, those who will oppose schemes that are beneficial to the common man on the ground only that it emanates from other societies would not be the ordinary man, but the elites who exploit such sentiments for base, personal aims and who in fact import most of their values and institutions from alien societies without regard to their utility.

The real reason for the refusal to consider these schemes lies in their incompatibility with the development of capitalism.²² The latter atomises society dealing with people as individuals in the dispensation of reward and hardship. Informal social security on the other hand is based on group solidarity and continuity of kinship whose maintenance is a drawback to capitalism. That is why in some third world countries, formal social security was attempted principally to stabilize the labour force to prevent the practice where workers employed in MNC

²¹. Benda-Beckman, F., et al, "Introduction..." op.cit.p.14

²². Woodman, G.B. (1988) "The decline of folk-law social security in common-law Africa" in Benda-Beckman, F., Woodman, G., et al op.cit.p.85

recurrently went back to their preserves in the rural areas thereby destabilising services.²³

In this light, the makers of Nigeria's constitutions the largest group of whom were drawn from private concerns found it convenient to ignore, consequently indirectly participating in the continued collapse of existing non state social solidarity schemes. Thus, as the final phase of another constitutional process ends, the lot of the majority of the population seems to hang on non governmental institutions.

²³. Puche, M. "Social Security..." *Ibid* pp.39-51.

BIBLIOGRAPHY.

A. PRIMARY SOURCES.

1. Unpublished Documentary Sources.

i. Foreign Office Files at the Public Records Office, London.

CO 583/5/32311, of 1913: Nigeria, Political Development.
CO 583/5/164460
CO 583/3/164601
CO 583/4/28338
CO 583/5/16460
CO 583/261/30560
CO 583/244/30453
CO 583/261/30453
CO 583/286/30453
CO 537/3556/307727 of 1948: Nigeria, Political Summaries.
CO 537/4625/30453
CO 537/4625/30453/49
CO 5375786/30453, Part I
CO 537/7167B/30453/11
CO 537/7167B/11/51
CO 537/5789/30453/11 of 1950, European Interests.
Despatch No. 464A of 15th July, 1950
Despatch No. 147A of 15th April, 1951.
Despatch No. 17A of 15th May, 1951
Sessional Paper No. 4 of 1945.
Sessional Paper No. 3 of 1963.

ii. Published Official Reports.

Cmdnd. 207- Nigerian Constitutional Conference, 1957
Cmdnd. 505- The Willink Commission on Minorities.
Cmdnd. 51- Tribunal of Inquiry into the conduct of some Officials of the Government of Eastern Nigeria
Cmd. 6598- Proposals for the Revision of Nigerian Constitution, 1945
Cmd. 8934- Constitutional Conference, 1953
Cmd. 9059- Resumed Conference, 1954
Cmdnd. 1214- Federation of Nigeria, International Rights and Obligations: Exchange of Letters between the Government of the U.K. and the Government of the Federation of Nigeria, Nov. 1960
Declaration on the Right to Development, U.N. 41/128 of 1986, Reprinted in U.N. Copy-DPI/918, Nov. 1987.
Federal Republic of Nigeria (FRN) Second National Development Plan, 1970-1974 (Lagos, 1970).
Federal Republic of Nigeria: Government's Views and Comments on the Findings and Recommendations of the Political Bureau, 1987. (Fed. Govt. Printer, Lagos.)
Federal Republic of Nigeria, Report of the Constituent Assembly, 1988-89.
Federal Republic of Nigeria, Proceedings of the Constituent Assembly 1988-1989, Vols. I-III (Fed. Govt. Printer, Abuja).
Federal Republic of Nigeria, Proceedings of the

Constituent Assembly 1977-1978, Official Report Volumes I-II (Fed. Min. of Information, Lagos, 1978).
 Federal Republic of Nigeria, Report of the Study Team on the Management of Inter-Governmental Relations in Federal Administration Systems (Fed. Govt. Printer, Lagos, 1983).
 Federal Republic of Nigeria, Addresses by General Ibrahim Babangida and Justice Aniafolu on the Occasion of the Presentation of the Draft Nigerian Constitution at Abuja on April, 5th, 1989 (Fed. Govt. Printer, Lagos, 1989).
 Federal Republic of Nigeria, Report of the Judicial Commission of Inquiry into the Affairs of the Federal Electoral Commission, 1979-1983, Summary of Findings and Recommendations, Nov. 1986 (Fed. Govt. Printer, Lagos).
 Federal Republic of Nigeria, Structural Adjustment Programme for Nigeria, July 1986--June 1988. (Fed. Govt. Printer, Lagos).
 Final Report of the Constitutional Planning Committee, Pt. I (Papua New Guinea, 1974).
 Federal Republic of Nigeria, Report of the Political Bureau, Vols. I & II (Fed. Min. of Information, Lagos, 1988).
 Guidelines for Local Government Reform, 1976 (Fed. Min. of Information, Lagos).
 Hansard, 1945-46, Volume 416 (U.K.)
 Hansard, Volume 515 (U.K.)
 National Electoral Commission, Report and Recommendations on Party Registration, Sept. 1989 (Fed. Govt. Printer, Lagos).
 Report of the Judicial Commission of Inquiry into the Affairs of the Federal Electoral Commission, 1979-1983 (Main Report) (FRN, 1986).
 Report of the Constitution Drafting Committee, Volumes I & II (Fed. Min. of Information, Lagos, 1976).
 Report of the Political Bureau (Fed. Printer, Lagos, 1987).
 Report by the Committee on the Review of Local Government Administration in Nigeria, the Dasuki Report (Fed. Govt. Printer, Lagos, 1984).
 The Public Debate on the Draft Constitution, 1976 (Cabinet Office, Lagos)

iii. Constitutions and Legislations

Constitution (Suspension and Modification) Decree No. 1 1966.
 Constitution of the R.S.F.S.R., 1918.
 Constitution of the U.S.S.R. 1936.
 Constitution of the Socialist Federal Republic of Yugoslavia, 1963.
 Constituent Assembly, Decree No. 50 of 1977.
 Constituent Assembly (Special Provisions) Decree No. 60, 1977.
 Constituent Assembly (Amend.) Decree No. 52, 1977
 Constituent Assembly Decree No. 14 1988.
 Constituent Assembly (Amend.) Decree No. 24, 1977.
 Directorate of Social Mobilization Decree No. 31, 1987.
 Directorate for Social Mobilization (Amend.) Decree No. 35, 1988.

Federal Electoral Commission Decree No.41, 1977.
 Letters Patent of diverse dates from 1850.
 Northern Nigeria Order in Council, 1899.
 National Electoral Commission (Amendt.) (No.2) Decree
 No.37, 1989.
 Order in Council No.1172 of 1951 (The 1951 Constitution).
 Participation in Politics and Elections (Prohibition)
 Decree No.25, 1987.
 Participation in Politics and Elections (Prohibition)
 (Amendt.) Decree No.9, 1989.
 Statutory Instruments (SI) No.1653 of 1960, The Nigeria
 (Retirement Benefits) Order in Council.
 The Constitution of the Federal Republic of Nigeria
 (Promulgation) Decree, 1989.
 The Constitution of the Federal Republic of Nigeria
 (Enactment) Decree, No.25, 1978.
 The Constitution (Amendt.) Decree No.104, 1979.
 Transition to Civil Rule (Political Parties Registration
 and Activities) Decree No.27, 1989.
 Transition to Civil Rule (Political Programme) (Amendt.)
 Decree No.26, 1989.

2. CASES

Awolowo v. Shagari (1979) 6-9 S.C.
 Lakanmi v. Attorney-General of Western State, 1971 Univ.
 of Ife Law Reports.

B. SECONDARY MATERIALS.

1. Books

- Abba, A. et al eds (1985) The Nigerian Economic Crisis, Cause and Solutions (ASUU, Nigeria).
 Ake, C. (ed.) (1985) The Political Economy of Nigeria (Longman, London, Lagos).
 Akeredolu-Ale, (1976) "Private Foreign Investment and the Underdevelopment of Indigenous Entrepreneurship in Nigeria" in Gavin Williams, (ed.) Nigeria: Economy and Society (Rex Collins, London).
 Alderson, L. (1975) YEA OR NAY? referenda in the U.K. (Cassell, London).
 Alhaji Sir Ahmadu Bello (1962) My Life (Cambridge Univ. Press, London).
 Aliyu, A.Y. (1978) "As Seen in Kaduna" in Panter-Brick, (K.ed.) Soldiers and oil: the Political Transformation of Nigeria (Frank Cass, London).
 Amir, S. (1976) Unequal Development as translated by Brian Pearce (N.Y.).
 Almong, G. (1987) "The Development of Political Development" in Weiner M. & Huntington eds Understanding Political Development (Little, Brown, London).
 Al-Shaeir (1988) "Commentary" in Goldwin R.A. & Kaufman A. eds Constitution Makers on Constitution Making: the Experience of Eight Nations (American Enterprise Inst. for Public Policy Research, Washington, D.C.).

- Awolowo, O.(1968) The Peoples Republic (Oxford, London, Ibadan)
- (1960) Autobiography (Cambridge, London).
- Ayua, I.A. (1985) "Constitutional Developments in Nigeria since the Colonial Era" in Atanda, J.A. & Aliyu, Y.A. eds Proceedings of the National Conference on the Nigeria Since Independence, Vol. I (Zaria, 1983).
- Baxi, Upendra, (1988) "The Development of the Right to Development" in Venkatarmiah, E.G. (ed.) Human Rights in a Changing World (International Law Ass., Delhi).
- Beard, C.A. (1913 & 1935) An Economic Interpretation of the Constitution of the United States (The Free Press, Collier-Macmillan, N.Y., London).
- Benda-Beckman, F. et al (1988) "Introduction: Between Kinship and the State" in von Benda-Beckman, F., Woodman, G.R. et al Between Kinship and the State, Social Security and Law in Developing Countries (FORIS, Holland and U.S.A.).
- Bienen, H. and Fitton, M. (1978) "Soldiers, Politicians and Civil Servants" in Panter-Brick, Soldiers and Oil (Frank Cass, London).
- Biersteker, T.J. (1983) "Indigenization in Nigeria: Renationalization or Denationalization?" In Zartman, I.W. (ed.) The Political Economy of Nigeria (Praeger, N.Y.).
- (1987) Multinationals, the State and Control of the Nigerian Economy (Princeton, N.Jersey).
- Bohannan, L. and Bohannan, P. (1953) The Tiv of Central Nigeria (London).
- Brewer-Carias, A.R. (1988) "Commentary" in Goldwin and Kaufman eds. Constitution Makers on Constitution Making: The Experience of Eight Nations (American Enterprise Inst. for Public Policy Research, Washington, D.C.).
- Brownlie, I. (1981) Basic Documents on Human Rights (Oxford, London).
- (1988) "The Right of People in Modern International Law" in Crawford, J. (ed.) The Rights of Peoples (Clarendon, London).
- Buchanan, J.M. and Tullock, G. (1962) Calculus of Consent: Logical Foundations of Constitutional Democracy (An Arbor, MI: Univ of Michigan Press).
- Coleman, T.N. (1963) Nigeria, Background to Nationalism (Univ. of California Press, Berkeley).
- Crowder, M. (1966) The Story of Nigeria (Faber and Faber, London).
- Dahl, R.A. (1976) Pluralist Democracy in the United States: Conflict and Consent (Rand McNally, Chicago).
- Decalo, S. (1976) Coups and Army Rule in Africa (Yale Univ. Press, New Haven).
- de Smith, S.A. (1964) The New Commonwealth and its Constitutions (Stevens, London).
- Derbyshire, I. (1987) Politics in the Soviet Union: from Brezhnev to Gorbachev (Chambers, U.K.).
- Diamond, L. (1988) "Nigeria" in Diamond, L., Linz, J. et al eds Democracy in Developing Countries, Volume Two: Africa (Lynne and Rienner, Boulder).

- (1988) Class, Ethnicity and Democracy in Nigeria: the Failure of the First Republic (Macmillan, London).
- Dike, K.O. (1956) Trade and Politics in the Niger Delta, 1830-1885: An Introduction to the Economic and Political History of Nigeria (Oxford Clarendon Press, London).
- Djordjevic (1988) "The Creation of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia" in Goldwin & Kaufman eds, Constitution Makers On Constitution Making: The Experience of Eight Nations (American Ent. Inst. Washington).
- Ecstein, H. (1963) "Constitutional Engineering and Problem of Viable Representative Government" in Ecstein, H. and Apter, D.E. eds Comparative Politics: A Reader (The Free Press of Glencoe, London).
- Ekundare, R.O. (1973) An Economic History of Nigeria (Methuen, London).
- Elias, T.O. (1967) Nigeria: the Development of its Laws and Constitution (Stevens, London).
- Erivwo, S.U. (1985) "The Church in a changing Nigeria: 1960 to date" in Kayode, M.O. and Usman, Y.B. eds The Economic and Social Development of Nigeria (The Panel on Nigeria since Independence History Project, A.B.U. Zaria).
- Ezra, K. (1960) Constitutional Developments in Nigeria (Cambridge, London).
- Falola, T. and Ihonvbere, J. eds. (1985) The Rise and Fall of Nigeria's Second Republic, 1979-1983 (Zed Books, London).
- Panon, F. (1978) The Wretched of the Earth (Penguin, London).
- First, R. (1970) The Barrel of the Gun (Penguin, London).
- Forrest, T. (1987) "State Capital and Class Formation in Nigeria" in Lubeck, P.M. (ed.) The African Bourgeoisie: Capitalist Development in Nigeria, Kenya and the Ivory Coast (Boulder, Colorado; Rienner).
- Friedgut, T.H. (1979) Political Participation in the USSR (Princeton, N.J. Jersey).
- Fuchs, M. (1988) "Social Security in Third World Countries" in Benda-Beckman, F., Woodman, G.R., et al eds Between Kinship and the State: Social Security and Law in Developing Countries (FORIS, Holland and the U.S.A.).
- Galley, H.A. (1978) "Sir Hugh Clifford, 1866-1941" in Gann, L.H. and Duignan, P. eds African Proconsuls: European Governors in Africa (The Free Press, London).
- Gboyega, A.E. and Oyediran, O. (1978) "A View from Ibadan" in Panter-Brick, K. Soldiers and Oil (Frank Cass).
- General Ironsi, (1971) "Terms of Reference of the Constitution Review Group" in Kirk-Greene, A.H.M., Crisis and Conflict in Nigeria, A Documentary Source Book, 1966-1969, Volume I (Oxford, London).
- Ghai, V.P. (1988) (ed.) Law, Politics and Government in the Pacific (Inst. of Pacific Studies, Univ. of South Pacific).

- Goodhart, P.(MP) (1971) Referendum (Tom Stacy, London).
- Graf, W. (1983) "African Elite Theories and Nigerian Elite Consolidation : A Political economy Analysis" in Barongo, Y.(ed.) Political Science in Africa , A Critical Review (Zed Press, London).
- (1988) The Nigerian State: Political Economy, State, Class and Political System in the Post-Colonial Era (James Currey, London).
- Gutkind, P.C.W. and Waterman, P.eds (1977) African Social Studies, A Radical Reader (Monthly Review Press, N.Y., London).
- Hawgood, J.(1939) Modern Constitutions Since 1787 (Macmillan, London).
- Helleiner, G.K.(1970) "The Fiscal Role of the Marketing Boards in Nigerian Economic Development" in Eicher, C.K.and Liedlom, C.eds Growth and Development of the Nigerian Economy (Michigan State Univ.).
- Hindess, B.(1987) Politics and Class Analysis (Basil Blackwell, N.Y.).
- Hopkins, A.G. (1973) An Economic History of West Africa (Longman, London).
- Horowitz, D.L.(1985) Ethnic Groups in Conflict (Univ.of California Press, Berkeley).
- Hussain, M.(1989) "Islamic Fundamentalism as a Political Protest Movement" in Islamic Fundamentalism: A debate on the Role of Islam Today. (Inst. for African Alternative, London).
- Irving, R.Forthsyth, (1916) Titles to Land In Nigeria (Stevens, London).
- Jillson, C.C.(1988) Constitution Making: Conflict and Consensus in the Federal Convention of 1787 (Aqathon Press, N.Y.).
- Kirk-Greene, A.H.M.(1965) (ed.) The Principles of Native Administration in Nigeria, Selected Documents (Oxford, London).
- Lewis, J.W.(1963) Leadership in Communist China (Greenwood, Connecticut).
- Loewenstein, K.(1963) "Reflections on the Value of Constitutions in our Revolutionary Age" in Ecstein, H. and Apter, D.E.eds Comparative Politics: A Reader (The Free Press of Glencoe, London).
- Lundberg, F.(1980) Cracks in the Constitution (Lyle Stuart, N.J.).
- Mahadi, A.(1985) "The Jihad and its Role in Strengthening the Sarauta System in Hausaland in the 19th Century: The Case of Kano" in Ade Ajayi, J.F. and Ikara, B.eds Evolution of Political Culture in Nigeria (Univ. Press, Zaria).
- Manrique, G.P. (1988) "The Making of the Venezuelan Constitution" in Goldwin and Kaufman eds Constitution Makers on Constitution Making: The Experience of Eight Nations (The American Enterp, Washington, D.C.).
- Marenin, O.(1963) "Essence and Empiricism in African Politics" in Barongo, Y.(ed.) Political Science in Africa, A Critical Review (Zed Press, London).

- (1985) "Class Structure and Democracy in Nigeria" in Oyovbaire, S.E. Democratic Experiment in Nigeria, Interpretative Essays (Omega Publishers, Benin).
- Markovitz, I.L. (1977) Power and Class in Africa: An Introduction to Change and Conflict in African Politics (Prentice-Hall, Englewood Cliffs, N.J.).
- McWhinney, E. (1981) Constitution-Making: Principles, Process, Practice (Univ. of Toronto Press, Toronto).
- Meyer, A.G. (1970) "Historical Development of the Communist Theory of Leadership" in Farrell, R.G. (ed.) Political Leadership in Eastern Europe and Soviet Union (Butterworth, London).
- Morel, E.D. (1911) Nigeria, Its Peoples and Problems (Smith, Elder and Co., London).
- Morris-Jones, W.H. and Fischer, G. eds (1980) Decolonization and After, the British and French Experience (Frank Cass, London).
- Mosca, G. (1936) The Ruling Class, translated by Hannah D. Kahn (Toronto, London, N.I.).
- Mullin, C. (ed.) (1981) Tony Benn: Arguments for Democracy (Penguin, London).
- Nduka, O. (1976) "Colonial Education and Nigerian Society" in Williams, G. (ed.) Nigeria: Economy and Society (Rex Collins, London).
- Nicolson, I.F. (1969) The Administration of Nigeria, 1900-1960, Men, Methods and Myths (Clarendon Press, London).
- Nigeria Company Handbook, Information on Major Companies in Nigeria (Research and Data Services Ltd., Lagos, 1988).
- Noxon, R.N. (1970) "The Role of the Marketing Boards in the Political Evolution of Nigeria" in Elcher, C.K. and Liedlom, C. eds Growth and Development of the Nigerian Economy (Michigan State University).
- Nwabueze, B.O. (1973) Constitutionalism in the Emergent States.
----- (1974) Presidentialism in Commonwealth Africa (London).
- (1982) A Constitutional History of Nigeria (C.Hurst, London).
- (1982) The Presidential Constitution of Nigeria (C.Hurst, London).
- (1985) Nigeria's Presidential Constitution, 1979-1983, the second Experiment in Constitutional Democracy (Longman, London).
- Nzimir, I. (1985) "Class and Power in Post-Independence Nigeria, 1960-1975" in Kayode, M.O. and Usman, Y.B. eds The Economic and Social Development of Nigeria (Gaskiya, Zaria).
- Odomoso, O.I. (1963) The Nigerian Constitution, History and Development (Sweet and Maxwell, London).
- Ojo, O. (1985) The Development of the Executive under the Nigerian Constitutions, 1960-1981 (Univ. of Ibadan Press, Ibadan).
- Ojo, A. (1987) "Federal Character and National Integration" in Ukwu, I.U. (ed.) Federal Character and National Integration (NIPSS, Kuru-Jos).

- Oni, O. and Onimode, B.eds (1975) Economic development: The Socialist Alternatives (The Nigerian Academy of Arts, Sciences and Technology).
- Omsowski, S. (1963) Class Structure in the Social Consciousness, translated by Sheila Paterson (N.Y.).
- Paden, J.N.(1986) AHMADU BELLO, SARDAUNA OF SOKOTO:Values and Leadership in Nigeria (Hodder and Stoughton, London, Toronto).
- Panther-Brick, K.(1978) "The Constitution Drafting Committee" in Panther-Brick, (ed.) Soldiers and oil (Frank Cass, London).
- Pearce, R.D.(1982) The Turning Point in Africa, British Colonial Policy, 1938-1948 (Frank Cass, London).
- Perham, M.(1960) LUGARD, the Years of Authority 1898-1945 (Collins, London).
- Post, K. and Vickers, M.(1973) Structure and Conflict in Nigeria, 1960-1966 (Univ. of Wisconsin Press, Madison).
- Przeworski, A. (1988) "Democracy as a Contingent Outcome of Conflict" in Elster, J. and Slagstad, R.eds Constitutionalism and Democracy (Cambridge, London).
- Rich, R.(1988) "The Right to Development: A Right of Peoples?" in Crawford, (ed.) The Rights of Peoples (Oxford, London).
- Roberts, S.(1969) Kingdoms of the Yoruba (Methuen, London).
- Saleh, I.(1988) "The Writing of the 1971 Egyptian Constitution" in Goldwin and Kaufman eds Constitution Makers on Constitution Making: the Experience of Eight Nations (American Enterp. Inst. Washington, D.C.).
- Schott, R.(1988) "Traditional Systems of Social Security and Present day Crisis in West Africa" in Benda-Beckman, F., Woodman, G.R.et al eds Between Kinship and the State, Social Security and Law in Developing Countries (FORIS, Holland and U.S.A.).
- Shenton, R.W.(1986) The Development of Capitalism in Northern Nigeria (James Currey, London).
- Sklar, R.L.(1963) Nigerian Political Parties, Power in an emergent African Nation (Princeton, N.Jersey). Univ.Press, N.Jersey; Bombay: Oxford Univ. Press).
- Sokol, S. (1980) "Introduction" in Simmons, W.B.(ed.) The Constitutions of the Communist World (Sijthoff and Noordhoff, The Netherlands; Maryland U.S.A.)
- Townsend, J.R.(1969) Political Participation in Communist China (Berkeley).
- Toyo, E.(1977) "The Mixed Economy as Fundamental Objectives, A Study of the Ideological Proposals of the Draft Constitution" in Political Issues in the Nigerian Draft Constitution (Nign. Political Sc.Ass., Sept.).
- Tseyayo, J.I.(1976) "The Emirate System and the Tiv Reaction to Pagan Status in Northern Nigeria" in Williams, G.(ed.) Nigeria: Economy and Society (Rex Collins, London).
- Turo, B.(1991) Africa: What can be done? (Zed Books, London, N.Jersey).

- Usman, Y.B.(1979) For the Liberation of Nigeria (New Beacon Books, London). -
- (1978) The Manipulation of Religion in Nigeria, 1977-1987 (Vanquard, Kaduna).
- (1982)(ed.) Political Repression in Nigeria: A Selection of Basic Documents, 1979-1981 (Bala Mohammed Memorial Committee, Gaskiya-Zaria).
- Verney, D.V. The Analysis of Political Systems (Routledge and Kegan, London).
- Vile, M.J.C.(1967) Constitutionalism and the Separation of Powers (Clarendon, Oxford, London).
- Whitaker, C.S.Jr.(1970) The Politics of Tradition, Continuity and Change in Northern Nigeria, 1946-1966 (Princeton Univ.Press, N.J.).
- Williams, F.R.A. (1988) "The Making of the Nigerian Constitution" in Goldwin and Kaufman, eds Constitution Makers on Constitution Making: the Experience of Eight Nations (American Enterp. Inst., Washington, D.C.).
- Who's Who in Nigeria, 1983 (Daily Times Of Nigeria).
- Who's Who in Africa, 1982 (Daily Times of Nigeria).
- Woodman, G.R.(1983) "How State Courts Create Customary Laws in Ghana and Nigeria" in Pinkler, H.W.(Compiler) Papers of the Symposium on Folk Law and Legal Pluralism, XIth International Congress of Anthropological and Ethnological Sciences, Vancouver, Canada.
- (1988) "The decline of folk-law social security in Common law Africa" in Benda-Beckman, F., Woodman, G.R., et al eds Between Kinship and the State: Social Security and Law in Developing Countries (FORIS, Holland and U.S.A.).
- Zacher, H.P.(1988) "Traditional Solidarity and Modern Social Security: harmony or conflict" in Benda-Beckman, F., Woodman, G.R., et al eds Between Kinship and the State: Social Security and Law in Developing Countries (FORIS, Holland and U.S.A.).
2. Journals.
- Agbaje, A. and Adisa, J.(1988) "Political Education and Public Policy in Nigeria: the New war Against Indiscipline (WAI)" XXVI The Journal of Commonwealth and Comparative Politics, 1.
- Agbaje, A.(1990) "Travails of the Secular State: Religion, Politics and the Outlook on Nigeria's Third Republic" in XXVIII The Journal of Commonwealth and Comparative Politics, 3.
- Akande, O.(1969) "Reflections on Some Recent Constitutional Issues" in Nigerian Law Journal, 102.
- Ajani, G.F.(1982) "The 1979 Somali Constitution: The Socialist and African Patterns and the European Style" in 3 Review of Socialist Law.
- Akinola, A.A.(1988) "Nigeria: the Quest for a Stable Polity, Another Comment" in 87 African Affairs, 348.
- (1990) "Manufacturing the Two Party System in Nigeria" XXVIII, The Journal of Commonwealth and Comparative Politics, 3.

- Alston, P.(1985) "The Shortcomings of a 'Garfield the Cat' Approach to the Right to Development" in 15 *California Western International Law Journal*, 510.
- Amir, S.(1987) "Democracy and National Strategy in the Periphery" in 9 *Third World Quarterly*, 4.
- Bangura, Y.(1988) "The Crisis of underdevelopment and the Transition to Civil Rule: Conceptualising the Question of Democracy in Nigeria" in *The Review of African Political Economy*.
- Baxi, U. "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" in 29 *I.C.J. Review*.
- Cell, J.W.(1980) "On the Eve of Decolonization : the Colonial office's plans for the transfer of power in Africa, 1847" in 3 *The Journal of Imperial and Commonwealth History*, 3.
- Chazan, N.(1982) "The New Politics of Participation in Tropical Africa" in 14 *Comparative Politics*, 2.
- Collins, P.(1976) "The Political Economy of Indigenization: the case of the Nigerian Enterprises Promotion Decree" in 4 *African Review*, p.493.
- (1977) "Public Policy and the Development of Indigenous Capitalism: the Nigerian Experience" in XV *The Journal of Commonwealth and Comparative Politics*, 2.
- Cooke, J.S.(1980) "Sir Hugh Clifford as Governor of Nigeria: An Evaluation" in 79 *African Affairs*.
- Creech-Jones, A.(1949) "The Place of African Local Administration in Colonial Policy", 3-5 *The Journal of African Administration*, 1.
- Crowder, M.(1987) "Whose Dream was it Anyway? Twenty Five Years Of African Independence" in 86 *African Affairs*, 7.
- Diamond, L.(1987) "Issues in the Constitutional Design of a Third Nigerian Republic" in 86 *African Affairs*.
- (1987) "Class Formation in the Swollen african State" in 25 *The Journal of Modern African Studies*, 4.
- Eker, V.(1981) "On the Origins of Corruption: Irregular Incentives in Nigeria" in 19 *The Journal of Modern African Studies*, 1.
- Fatton, R.(1988) "Bringing the Ruling Class Back" in 20 *Comparative Politics*, 3.
- Flint, J.(1983) "Planned Decolonization and its Failure in British Africa" in 82 *African Affairs*.
- Fyfe, C.(1988) "African Horton as a Constitution maker" in XXVI *The Journal of Commonwealth and Comparative Politics*, 2.
- Ghai, Y.P.(1987) "Law, Development and African Scholarship" in 50 *The Modern Law Review*.
- (1972) "Constitutions and the Political Order in East Africa" in 21 *International and Comparative Law Quarterly*.
- Graf, W.(1989) "Issues and Substance in the Prescription of Liberal-Democratic Forms for Nigeria's Third Republic" in 88 *African Affairs*, 350.
- Hayward, M.F.(1973) "Political Participation and its Role in development: Some Observations Drawn from the

- African Context" in 7 *The Journal of Developing Areas*.
- Ibrahim, J.(1989) "The Politics of Religion in Nigeria: The Parameters of the 1987 Crisis in Kaduna State" in 45/46 *Review of African Political Economy*.
- Imam, A.(1946) "The Constitutional Proposals" *African Affairs, January*.
- Jeffries, R.(1982) "Rawlings and the Political Economy of Underdevelopment in Ghana" in 81 *African Affairs*, 324.
- Joseph, R.A.(1983) "Class, State and Prebendal Politics in Nigeria" in XXI *The Journal of Commonwealth and Comparative Politics*, 3.
- Kasfir, N.(1983) "Relating Class to State in Africa" in XXI *The Journal of Commonwealth and Comparative Politics*, 3.
- Koehn, P.(1983) "State Land Allocation and Class Formation in Nigeria" in 21 *The Journal of Modern African Studies*, 3.
- (1989) "Competitive Transition" in 27 *The Journal of Modern African Studies*, 3.
- Laitin, D.D.(1982) "The Sharia Debate and the Origins of Nigeria's Second Republic" 20 *The Journal of Modern African Studies*, 3.
- Lapenna, I.(1972) "Main Features of the Yugoslav Constitution, 1946-1971" in 21 *International and Comparative Law Quarterly*.
- Mamdani, M.(1990) "The Social Basis of Constitutionalism in Africa" in 28 *The Journal of Modern African Studies*, 3.
- Marenin, O.(1988) "The Nigerian State as a Process and Manager" in 20 *Comparative Politics*, 2.
- Mawhood, P.(1983) "The Place of Traditional Political Authority in African Pluralism" in 31 *Civilizations*, 1.
- Mestdagh, Karel de Vey (1981) "The Right to Development, from evolving Principle to 'legal Right': In Search of Substance" in 28 *Netherlands International Law Review*.
- Molutsi, P.P.and Holm, J.D. (1990) Developing Democracy when Civil Society is Weak: the Case of Botswana" 89 *African Affairs*, 356.
- Nolutshungu, S.M.(1990) "Nigeria: fragments of democracy" in 12 *Third World Quarterly*.
- O'connell, J.(1967) "The Inevitability of Instability" in 5 *The Journal of Modern African Studies*, 5.
- Ojo, A.(1971) "The Search for Grundnorm in Nigeria - the Lakanmi Case" 20 *International and Comparative Law Quarterly*.
- Ollman, B.91984) "Toward Consciousness, Next time: Marx and the Working Class" in III *Politics and Society*, 1.
- Osoba, O.(1979) "The Nigerian Constitution and the Working Class" in I *Positive Review*, 3.
- Othman, S.(1984) "Class, Crises and the Coup: the Demise of Shagari's Regime" in 83 *African Affairs*, 333.

- Owusu, M.(1979) "Politics without Parties: Reflections on the Union Government Proposals in Ghana" in I *African Studies Review*, 22.
- Pearce, R.D.(1981) "Governors, Nationalists and Constitutions in Nigeria" in 9 *Journal of Imperial History*.
- Read, J.S.(1979) "The New Constitution of Nigeria, 1979: the Washington Model?" 23 *The Journal of African Law*, 2.
- Rich, R.(1983) "The Right to Development as an Emerging Human Right" 23 *Virginia Journal of International Law*.
- Rimlinger, G.(1973) "The Indigenization of Industry" in 7 *Quarterly Journal of Administration*.
- Sklar, R.L.(1979) "The Nature of Class Domination in Africa" in 17 *The Journal of Modern African Studies*, 4.
- (1988) "Postimperialism, A Class Analysis of Multinational Corporate Expansion" in 9 *Comparative Politics*, 1.
- (1988) "Beyond Capitalism and Socialism in Africa" 261 *The Journal of Modern African Studies*.
- Taylor, C.(1961) "The Independence Constitution of Federal Nigeria" in 60 *The South Atlantic Quarterly*, 1.
- Therban, G.(1977) "The Rule of Capital and the Rise of Democracy" in 103 *The New Left Review*.
- Wallerstein, I.(1975) "Class Formation in the Capitalist World System" in V *Politics and Society*, 3.
- Warren, B.(1973) "Imperialism and Capitalist Industrialization" in 81 *The New Left Review*.
- Whitaker, C.S.(1965) "Three Perspectives on Hierarchy: Political Thought and Leadership in Northern Nigeria" in III *The Journal of Commonwealth and Comparative Studies*.
- Williams, Gwyn, (1960) "The Concept of Egeomnia in the Thought of Antonio Gramsci" in 21 *Journal of the History of Ideas*.
- Usman, Y.B.(1966) "Nigeria: Shortcomings of Military Rule" in 26 *African Communist*.
- Uwazurike, P.C.(1990) "Confronting Potential Breakdown: the Nigerian redemocratization in Critical Perspectives" in 28 *The Journal of Modern African Studies*, 1.

3.Theses Consulted.

- Bowden, J.H.(1980) Development and Control in British Colonial Policy with reference to Nigeria and the Gold Coast, 1935-1948. Unpublished PH.D Thesis, University of Birmingham.
- Diamond, L.(1980) The Social Foundations of Democracy: The Case of Nigeria. PH.D dissertation, University of Stanford.
- Ismaila, M.(1985) The Nigerian Enterprises Decrees, 1972 and 1977 and Indigenization in Nigeria. PH.D Thesis submitted to the University of Warwick.

Nordman, R.C.(1976) Prelude to Decolonization in West Africa: the Development of British Colonial Policy, 1938-1947. Unpublished Thesis, Oxford.

4. Newspapers and Magazines.

African Guardian (Nigeria) of various dates.

Financial Times of London.

National Concord (Nigeria) of diverse dates.

New International (1987).

New Nigerian Newspapers (Nigeria) of various dates.

West Africa of diverse dates between 1925-1991.

5. Unpublished conference papers, monographs and other unclassified sources.

Badejo, B.A.(1989) "The Economic Ideology of the Babangida Constitution", Paper presented at a National seminar on the New Constitution and Transition to Civil Rule on 24/7/1989, Lagos.

Beckman, Bjorn (1989) "Whose Democracy? Bourgeois versus Popular Democracy in Africa", Paper presented at the 1989 Conference of the Review of African Political Economy: Taking democracy seriously - Socialist and Democracy in Africa, 22-24th Sept., University of Warwick.

Code of Conduct: Transition to Third Republic (Fed. Min. of Information, Lagos, 1989)

Dent, M.(1977) Improving Nigeria's Draft Constitution (Dark Horse, London).

General Ibrahim Babangida, Address to the Nation on the Political Programme for the Country (FRN, 1987).

General Ibrahim Babangida, THE DAWN OF A NEW SOCIO-POLITICAL ORDER, An Address to the Nation on the Occasion of the Registration of Two Political Parties, October 7th, 1989 (FRN, 1989).

Ghai, Y.P.(1989) "Challenges Religion, Pluralism and Nationhood" A Working Paper for the Asian Regional Institute of the American Council of Learned Societies Comparative Constitutionalism Project, held at Chiangmai, Thailand, February.

Haynes, J.(1989) "Inching Towards Democracy: the Ghanaian Revolution, the I.M.F. and the Politics of the Possible" Paper presented at the 1989 Conference of the Review of African Political Economy: Taking democracy seriously - Socialist and Democracy in Africa, 22-24th Sept., University of Warwick.

Justice Ustaz Abdullah,(1990) "Sharia as a Panacea for Nigeria's Socio-Economic Problems" Paper presented at the 4th Annual Conference of Islamic Law Teachers, University of Maiduguri, March.

- Kirk-Greene, A.H.M. (1989) "The Nigerian Constitution as Prophylaxis and Panacea" Paper presented at a Conference on the 1989 Nigerian Constitution, University of Birmingham, 3th June.
- Leadership in Nigeria, Enlightenment Series I (CAN Publicity, Northern Zone, 1988).
- Mamdani, T. et al eds (1988) Social Movements, Social Transformation and the Struggle for Democracy in Africa. CODESRIA, Working Paper No.1.
- Memoranda submitted by the National Committee on Sharia, Mushin, Lagos to the Constitution Review Committee, 1978.
- Osoba, O. and Usman, Y.B. (1976) A General Report on the Work of the Constitution Drafting Committee, A Minority Submission.
- Palley, Claire, (1978) Constitutional Law and Minorities (MRG Report, No.39).
- Proehl, P.O. (1970) Fundamental Rights under the Nigerian Constitution, 1960-1965, Occasional Paper No.8 (African Studies Centre, Univ. of California, L.A.)
- Rimmer, D. (1989) "Economic Implications of the Nigerian Constitution", Paper presented at a Conference on the 1989 Nigerian Constitution, University of Birmingham, 3th June.
- Sandbrook, R. and Arn, J. (1977) The Labouring Poor and Urban Class Formation: The Case of Greater Accra. Monograph No.12, (Center for Developing Area Studies, McGill Univ. Montreal).
- Shivji, I. (1989) "State and Constitutionalism in Africa", Keynote Address to the African Regional Institute of the American Council of Learned Societies' Comparative Constitutionalism Project, May 22-25, Harare, Zimbabwe.
- Speech by President Ibrahim Babangida at the 10th Graduation Ceremony of the National Institute for Policy and Strategic Studies (NIPSS), 1989.
- Toyo, E. (1977) "The Draft Constitution for Nigeria" in Proceedings of the Workshop on the Draft Constitution, University of Maiduguri, May 23-27.
- The Tekan Study Group: The Path to a Lasting Constitution, A Memorandum submitted to the Constitution Review Committee, 1978.
- Usman, Y.B. (1983) "Karl Marx and the Analysis of the Politics of Contemporary Africa" Paper presented at the Centenary Conference on Marx and Africa, Ahmadu Bello University, Zaria, March.

THE PUBLIC SERVICE AND THE SUBSIDIARIES OF MULTINATIONAL CORPORATIONS IN NIGERIA:
RETIREMENTS INTO DIRECTORSHIPS: 1970-1985

Name	Highest Position/s in the Public Service	The Nigerian Subsidiary	The Multinational Firm
1 Simon Adebo	1) Chief Secretary and Head of Civil Service of Western Nigeria 1957-62 2) Permanent Representative in the United Nations 1962-68	1) Nigerian Tobacco Company 2) U.A.C (Nig) Ltd 3) Palm Line Agency	1) B.A.T Industries Ltd of U.K 2) Unilever of U.K and Holland 3) Unilever of U.K and Holland
2 Michael Ani	1) Chairman of FEBOO 1977-79	1) Flour Mills Ltd	1) Ecclesior Shipping Company of U.S.A
3 Phillip Asiodu	1) Federal Permanent Secretary (Industries, Mines and Power and Housing) 1966-75	1) Beecham (Nig) Ltd 2) Dumez (Nig) Ltd 3) G.T.E (Nig) Ltd	1) Beecham Group of U.K 2) Societe Dumez Afrique of France 3) G.T.E Inc. of U.S.A
4 Allison Ayida	1) Federal Permanent Secretary (Economic Planning and Finance) 1963-1975 2) Secretary to the Federal Military Government and Head of Service 1975-1977	1) Lever Bros. (Nig) Ltd 2) Phillip Morris Ltd 3) Berger Paints (Nig) Ltd 4) B.R.G.M Ltd 5) Bescac Ltd	1) Unilever of U.K and Holland 2) Phillip Morris Inc. of U.S.A 3) Lewis Berger Holdings of U.K 4) Dumez Afrique of France 5) Inchaup Properties of U.K
5 Musa Bello	1) Federal Permanent Secretary (Finance) 1975-1978	1) ICON Merchant Bank	1) Morgan Guaranty Trust of U.S.A 2) Baring Brothers of U.K

6 Liman Cirwa	1) Federal Permanent Secretary (Industries) 2) Secretary to the Federal Military Government and Head of Service 1977-1979	1) Tate and Lyle (Nig) Ltd 2) U.T.C (Nig) Ltd 3) G.T.E (Nig) Ltd 4) First City Merchant Bank	1) Tate and Lyle of U.K 2) U.T.C of Switzerland 3) G.T.E Inc. of U.S.A 4) Citl Bank of U.S.A
7 Maman Daura	1) Managing Director of New Nigerian Newspapers 1974-1978	1) Dunlop (Nig) Ltd 2) Boots (Nig) Ltd 3) Blackwood Hodge (Nig) Ltd 4) Hagemeyer (Nig) Ltd 5) Bank of Credit and Commerce International	1) Dunlop of U.K 2) Boots Company of U.K 3) Blackwood Hodge of U.K 4) Hagemeyer N.V. of Holland 5) B.C.C. of Luxembourg
8 Ibrahim Dawacida	1) Federal Permanent Secretary (Trade and Defence) 1966-1975	1) Glaxo (Nig) Ltd 2) Nigerian International Merchant Bank	1) Glaxo of U.K 2) First National Bank of Boston, U.S.A
9 Silas B. Daniyan	1) Managing Director of Nigerian Industrial Development Bank 1966-1976	1) Metal Box (Nig) Ltd 2) International Paints Ltd 3) Palm Line Agency 4) Phillip Morris (Nig) Ltd 5) John Holt Investments	1) Metal Box of U.K 2) Courtaulds of U.K 3) Unilever of U.K & Holland 4) Phillip Morris of U.S.A 5) Iorin Group of U.K
10 Babatunde Jose	1) Managing Director of Daily Times of Nigeria 1962-1973	1) Boots (Nig) Ltd 2) Blackwood Hodge (Nig) Ltd 3) Hagemeyer (Nig) Ltd	1) Boots of U.K 2) Blackwood Hodge of U.K 3) Hagemeyer N.O Narden of Holland

11 Mahmud Tukur	1) Director of Institutes of Administration, A.B.U 1970-1975 2) Vice-Chancellor of Bayero University Kano 1975-1977	1) Cadbury (Nig) Ltd 2) Alcan (Nig) Ltd 3) Associated Electronic Products Ltd 4) Van Leer Containers 5) ICON, Merchant Bank	1) Cadbury of U.K 2) Alcan of Canada 3) National Trust of Canada 4) Van Leer of U.K & Holland 5) Morgan Guaranty Trust of U.S.A and Barig Brothers of U.K
12 Tukur Usman	1) Federal Permanent Secretary (Works) 1970-1975	1) Julius Berger 2) Agip (Nig) Ltd 3) International Beer and Beverages Ind. Ltd 4) National Cash Registrar (Nig) Ltd 5) National Cereals Production Company Ltd	1) Bilfinger and Berger Ben AG of W. Germany 2) E.N.I of Italy 3) Kronenbourg of France 4) National Cash Registrar of U.S.A 5) National Cash Registrar of U.S.A

- Sources:
- i) INCH: ICON Nigeria Company Handbook and Guide to Operating Business in Nigeria: 1982 & 83, Lagos, 1982, 1983
 - ii) Whose Who in Nigeria, 1981-1982, Biographical Centre for Nigeria Ltd, Lagos, 1981
 - iii) Whose Who in Nigeria, 1983, Daily Times, Lagos, 1983
 - iv) Nigeria Yearbook 1977/78

SOME NIGERIAN CHIEFS WHO ARE MAJOR DIRECTORS OF NIGERIAN
SUBSIDIARIES OF MULTINATIONAL COMPANIES

<u>Foreign Multinational</u>	<u>Nigerian Subsidiary</u>	<u>Nigerian Chief</u>
Tate and Lyle of U.K	Tate and Lyle (Nig) Ltd	Solomon Akenzusi, Oba of Benin
Unilever of U.K	U.A.C. (Nig) Ltd	Shahu Idris, Emir of Zaria
Mobil Inc. of U.S.A	Mobil (Nig) Ltd	Alphonso Ofala Okagbue, Oba of Onitsha
Inchape Holdings of U.K	Bewac (Nig) Ltd	Abu Bayero, Emir of Kano
Degremont of France	Degremont (Nig) Ltd	A.A. Sijuwade, Ooni of Ife
Hankel of W. Germany	Hankels Chemicals (Nig) Ltd	Umaru Ndayako, Etsu Nupe
Lennards of U.K	Lennards (Nig) Ltd	Nelson Asigbaro Nene-Afejuku, Eson of Warri
Glauber of U.S.A	Glauber Enterprises (Nig)	Sulu Gembari, Emir of Ilorin
Hoechst of W. Germany	Nigerian Hoechst (Ltd)	Abali Muhammadu, Emir of Fika

Source: The Analyst, Vol.2, No.5, 1987.

Appendix A.3

v

Foreign MNC	Nigerian Subsidiary	Names of Local Directors
1. Inchcape Overseas Ltd	Bewac Ltd	1) Chief Mrs. Kuforiji-Olubi 2) Alh Ado Bayero (Emir of Kano) 3) Alh K.O. Shuaibu 4) Mallam S.D. Umar 5) S. Adeniji 6) A.A. Ayida
2. Habib Bank Ltd Karachi	Habib Bank Ltd	1) Major General Shehu M.Yar'Adua 2) M.K.O. Abiola 3) Dr. Ismaila B. Jose 4) Alh. Tanko Kuta 5) Ademola Bello 6) Ali Abubakar Koko
3. G.E. U.S.A	I.G.E. of Nig Ltd	1) A. Ayida 2) Alh. Mammen Daura 3) Alh. Ibrahim Dasuki (Sultan of Sokoto) 4) Alh. U.S. Birme 5) M. Omsada 6) A.A. Desalu
4. Unilever, U.K	A.G. Leventis (Nig) Ltd	1) Alh. Nuhu Bamali 2) S. Ada John 3) H.S.A. Adedaji 4) J.E. Iriabe 5) C.C. Ifeanyi 6) Hon. Justice Okigbo Savage 7) H.R.H. Muhammadu Basha (Emir of Katsina)
5. Not named. But 10% foreign owned	Mercury Assurance Co Ltd	1) Alh. Waziri Ajuji 2) Lt. Col. H. Abdulkadir 3) B.A. Nwoku 4) H.R.H. Do Ogugue (Trad. ruler) 5) Alh. Ahmadu Habibu
6. Mobil, U.S.A	Mobil Oil (Nig) Ltd	1) G.T.S. Adokpaye 2) Major Gen. I.B.M. Haruna (rtd.) 3) H.R.H. A. O. Ofala Okagbue (Obi of Onitsha) 4) P.O. Akinyelure
	Nigerian Agric. & Co-op Bank Ltd	1) Grp. Captain U. Jibrin (rtd.) 2) H.B. Mohammed 3) Umaru Imam 4) Prof. M.B. Ajekaleye 5) Mohammed Umar 6) E.E. Enayio 7) Abu Ibrahim 8) Ali Bilyaminu Usman 9) J.S. Tarka, Jnr. 10) C.M. Nwogu

7. Singer Sewing Machine & Singer Intern. Security	Nigerian Sewing Machine Manufacturing Co. Ltd	1) Mallam A. Coomassie 2) Major Gen. R. Adeyinka Adebayo 3) Olufemi O. Aliyeyomi 4) Joseph B. Olaiya 5) Chief M.N. Ugochuluwa 6) Chief Chris Ogunbanjo
8. British American Tobacco Co. Ltd	Nigerian Tobacco Co. Ltd	1) Pius N.C. Okigbo 2) P.A. Adegbesan 3) O.I. Akinkugbe 4) C.A. Atoki 5) I.M.O Eronim 6) H.R.H. Alh Shehu Idris (Emir of Zaria)
9. Leyland, U.K	Leyland (Nig) Ltd	1) Chief Olu Akinkugbe 2) J.N.E. Oryiwes 3) Lt. Colonel O. Anifowese (rtd.) 4) Captain F.O. John 5) Caleb Yaro

Source: Nigeria Company Handbook
(J.M Services Ltd, Lagos, 1988); Rediesel's Companies of Nigeria (Research and data
services Ltd; London, Lagos).

Table I - STATES AND VOTING STRUCTURE

States	Total of Delegates	Members Present & Voting	
		Ayes	Noes
AM	11	1	8
BA	10	10	0
BD	10	0	6
BN	10	0	5
BO	11	11	0
CR	12	0	11
GG	10	4	1
IM	13	0	13
IO	13	7	4
KN	16	13	0
KM	8	6	1
LG	8	0	7
NG	7	6	1
OG	8	0	7
OD	10	0	7
OY	15	0	13
PL	9	1	6
RV	8	0	5
SD	14	8	0
N/CDC	27	7	13

Proceedings of the Constituent Assembly Official Report, 1978.
Source: Vol.II, Par.1926-1928.

Table II - STATES AND VOTING STRUCTURE

States	Total of Delegates	Members Present & Voting	
		Ayes	Noes
AM	11	5	5
BA	10	0	7
BD	10	1	6
BN	10	4	6
BO	11	4	5
CR	12	1	6
GG	10	2	6
IM	13	2	11
IO	13	1	12
KN	16	6	3
KM	8	1	6
LG	8	0	7
NG	7	0	4
OG	8	1	5
OD	10	0	9
OY	15	2	13
PL	9	6	2
RV	8	5	2
SD	14	0	9
N/CDC	27	3	16

Source: Vol.II, *ibid*, par. 2018-2021.

Appendix B

Table III - STATE REPRESENTATIVES AND VOTING STRUCTURE

States	Total of Delegates	Members Present & Voting	
		Ayes	Noes
AN	11	0	10
BA	10	8	0
BD	10	0	7
BN	10	1	8
BO	11	9	0
CR	12	0	9
OG	10	6	3
IM	13	0	12
KD	13	8	3
KN	16	10	1
KW	8	2	4
LG	8	0	5
NG	7	5	0
OG	8	0	7
OD	10	0	8
OY	15	0	14
PL	9	0	6
RV	8	0	8
SO	14	8	0
N/CDC	27	3	10

Sources: Vol.II, Par. 1986-1988.

Appendix B

Table IV - STATE REPRESENTATIVES AND VOTING STRUCTURE

States	Total of Delegates	Members Present & Voting	
		Ayes	Noes
AN	11	0	10
BA	10	5	0
BD	10	0	6
BN	10	0	8
BO	11	4	3
CR	12	1	8
OG	10	3	3
IM	13	0	13
KD	13	4	4
KN	16	11	1
KW	8	3	2
LG	8	0	7
NG	7	5	2
OG	8	0	6
OD	10	0	9
OY	15	0	15
PL	9	2	5
RV	8	0	7
SO	14	5	1
N/CDC	27	2	12

Sources: Vol.II, ibid, par. 2035-2038.

Table V - STATES REPRESENTATIVES AND VOTING STRUCTURE

States	Total of Delegates	Members Present & Voting	
		Ayes	Noes
AN	11	3	2
BA	10	1	3
BD	10	1	6
BN	10	4	3
BO	11	0	7
CR	12	1	3
GG	10	2	5
IM	13	5	4
KD	13	4	4
KN	16	0	7
KW	8	0	8
LG	8	0	5
NG	7	2	5
OG	8	2	4
OD	10	3	3
OY	15	4	8
PL	9	6	1
RV	8	2	4
SO	14	1	9
N/CDC	27	1	9

Sources: Vol.II, *ibid*, par. 5747-5750.

Appendix B

Table VI

States	Total of Delegates	Members Present & Voting	
		Ayes	Noes
AN	11	8	0
BA	10	4	0
BD	10	4	2
BN	10	1	4
BO	11	2	3
CR	12	4	0
GG	10	3	2
IM	13	6	1
KD	13	4	4
KN	16	2	4
KW	8	6	2
LG	8	0	1
NG	7	3	3
OG	8	1	2
OD	10	3	3
OY	15	5	5
PL	9	3	3
RV	8	4	0
SO	14	5	1
N/CDC	27	7	2

Sources: Vol.II, *ibid*, par. 6107-6109.

Appendix B

Table VII - STATES REPRESENTATIVES AND VOTING STRUCTURE

iv

States	Total of Delegates	Members Present & Voting	
		Avgan	Nase
AN	11	0	7
BA	10	5	0
BD	10	1	3
BN	10	4	2
BO	11	6	1
CR	12	0	6
GG	10	2	2
IM	13	1	6
KD	13	0	8
KN	16	5	0
KW	8	4	2
LG	8	3	0
NG	7	6	0
OG	8	3	0
OD	10	5	2
OY	15	5	2
PL	9	3	0
RV	8	0	3
SO	14	7	0
N/CDC	27	6	5

Source: Vol.II, *ibid*, Par. 6850-6852.

Appendix B

Table VIII - STATE REPRESENTATIVES AND VOTING STRUCTURE

States	Total of Delegates	Members Present & Voting	
		Avgan	Nase
AN	11	4	2
BA	10	6	0
BD	10	1	5
BN	10	5	1
BO	11	6	0
CR	12	4	4
GG	10	5	1
IM	13	4	3
KD	13	11	0
KN	16	9	0
KW	8	7	0
LG	8	1	3
NG	7	6	0
OG	8	3	2
OD	10	2	5
OY	15	6	5
PL	9	6	0
RV	8	1	3
SO	14	8	0
N/CDC	27	8	0

Source: Vol.II, *ibid*, Par. 6507-6509.

APPENDIX C

1

Div. I, Par. 2134-37, vol.3.

Station	Total of Delegates	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	14	0	0
AN	29	18	3	0
BA	20	1	1	0
BD	20	13	4	0
BN	19	12	1	0
BO	24	3	0	0
CR	8	6	0	0
GG	21	8	3	0
JM	30	22	3	0
KD	13	6	0	0
KN	46	1	0	0
KT	20	0	0	0
KW	14	6	0	0
LG	12	4	1	0
NG	10	0	0	0
OG	12	8	3	1
OD	22	6	0	0
OY	42	16	5	4
PL	16	7	1	0
RV	13	10	0	0
SO	37	0	0	0
PCT	1			
N	113	33	4	1
Total		194	29	6

Div. II, P.2237, Vol.3.

Station	Total of Delegates	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	4	3	1
AN	29	3	6	3
BA	20	1	11	0
BD	20	0	7	0
BN	19	3	0	0
BO	24	2	17	0
CR	8	1	3	0
GG	21	12	5	1
JM	30	9	5	0
KD	13	6	3	1
KN	46	2	30	0
KT	20	0	11	0
KW	14	1	7	0
LG	12	1	4	0
NG	10	1	3	0
OG	12	0	6	0
OD	22	1	7	0
OY	42	0	17	0
PL	16	1	9	1
RV	13	4	1	0
SO	37	1	28	0
N	113	9	43	1
Total		62	226	8

States	Total of Delegation	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	2	8	0
AN	29	18	0	0
BA	20	1	1	0
BD	20	11	1	0
BN	19	11	2	0
BO	24	0	14	0
CR	8	3	2	0
GG	21	7	4	0
JM	30	18	0	0
KD	13	0	4	0
KN	46	0	26	0
KT	20	0	8	0
KW	14	2	5	0
LG	12	0	6	0
NG	10	0	3	0
OG	12	0	7	0
OD	22	1	12	0
OY	42	1	18	1
PL	16	2	2	0
RV	13	6	1	0
SO	37	0	24	0
PCT	1	1	0	0
N	113	34	11	0
		95	182	1

States	Total of Delegation	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	9	0	0
AN	29	19	1	0
BA	20	3	4	0
BD	20	10	2	0
BN	19	11	2	1
BO	24	9	4	1
CR	8	3	1	0
GG	21	13	1	0
JM	30	19	1	0
KD	13	2	1	0
KN	46	25	5	3
KT	20	8	2	1
KW	14	5	1	0
LG	12	4	1	0
NG	10	6	0	0
OG	12	9	0	0
OD	22	16	2	0
OY	42	21	0	1
PL	16	2	1	0
RV	13	4	0	1
SO	37	13	6	0
PCT	1	1	0	0
N	113	32	14	2
		244	C-49	C-10

States	Total of Delegates	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	5	3	0
AN	29	14	0	0
BA	20	0	7	1
BD	20	8	3	0
BN	19	0	5	0
BO	24	0	17	0
CR	8	0	4	0
GG	21	1	10	1
JM	30	8	0	0
KD	13	0	5	1
KN	46	0	36	0
KT	20	0	10	0
KW	14	1	2	0
LG	12	7	0	0
NG	10	0	4	0
OG	12	4	0	0
OD	22	12	1	0
OY	42	12	3	0
PL	16	0	4	1
RV	13	0	3	0
SO	37	0	22	0
PCT	1	0	0	0
N	113	8	35	0
Total		81	186	4

States	Total of Delegates	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	13	0	0
AN	29	18	3	1
BA	20	2	13	0
BD	20	13	1	0
BN	19	16	1	0
BO	24	6	6	2
CR	8	7	0	0
GG	21	13	2	0
JM	30	13	11	0
KD	13	7	3	0
KN	46	0	35	1
KT	20	1	18	0
KW	14	6	2	0
LG	12	6	1	0
NG	10	2	2	0
OG	12	9	0	0
OD	22	14	0	0
OY	42	25	2	0
PL	16	10	1	0
RV	13	9	0	0
SO	37	0	32	0
PCT	1	1	-	-
N	113	35	23	2
Total		239	165	6

States	Total of Delegates	Members Present & Voting		Abstentions
		Averse	Present	
AI	20	10	2	0
AN	29	13	2	0
BA	20	0	13	0
BD	20	14	0	0
BN	19	11	1	0
BO	24	1	9	0
CR	8	3	1	0
GC	21	7	2	0
IM	30	8	2	0
KD	13	7	3	0
KM	46	0	29	0
KT	20	0	12	0
KW	14	3	3	0
LG	12	1	1	0
MG	10	1	2	0
OG	12	8	0	0
OD	22	15	0	0
OY	42	23	5	0
PL	16	6	3	0
RV	13	7	2	0
SO	37	0	27	0
PCT	1	0	1	0
N	113	20	31	0
Total		165	161	0

States	Total of Delegates	Members Present & Voting		Abstentions
		Averse	Present	
AI	20	10	0	0
AN	29	21	0	0
BA	20	1	17	1
BD	20	11	0	0
BN	19	2	7	1
BO	24	1	12	0
CR	8	7	0	0
GC	21	2	11	1
IM	30	22	0	0
KD	13	0	8	0
KM	46	0	35	0
KT	20	0	14	0
KW	14	0	5	0
LG	12	5	1	0
MG	10	0	6	0
OG	12	7	1	0
OD	22	18	0	1
OY	42	22	6	3
PL	16	0	9	1
RV	13	10	0	0
SO	37	0	34	0
PCT	1	0	0	0
N	113	23	43	3
Total		169	218	13

Station	Total of Delegation	Members Present & Voting		Absentees
		Ayes	Noes	
AI	20	1	1	0
AN	29	3	6	0
BA	20	0	4	0
BD	20	3	8	0
BN	19	9	5	0
BO	24	5	6	1
CR	8	2	4	0
GG	21	10	4	0
JM	30	3	15	0
KD	13	0	2	0
KM	46	16	14	0
KT	20	7	3	0
KW	14	3	5	0
LG	12	0	6	0
NG	10	0	3	0
OG	12	4	5	0
OD	22	6	12	0
OY	42	7	17	1
PL	16	0	3	0
RV	13	4	1	0
SO	37	20	4	0
PCT	1	1	0	0
N	113	7	42	1
		118	180	3

Station	Total of Delegation	Members Present & Voting		Absentees
		Ayes	Noes	
AI	20	3	0	0
AN	29	8	0	0
BA	20	1	0	0
BD	20	6	0	0
BN	19	2	0	0
BO	24	4	0	0
CR	8	1	0	0
GG	21	9	1	0
JM	30	12	0	0
KD	13	2	0	0
KM	46	0	0	0
KT	20	0	0	0
KW	14	2	0	0
LG	12	5	0	0
NG	10	1	0	0
OG	12	8	0	0
OD	22	7	0	0
OY	42	13	0	2
PL	16	1	0	0
RV	13	6	0	0
SO	37	0	0	0
PCT	1	1	0	0
N	113	16	2	0
Total		117	3	2

Station	Total of Delegation	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	14	0	0
AN	29	22	0	0
BA	20	1	16	0
BD	20	10	0	0
BN	19	2	11	0
BO	24	0	15	0
CR	8	5	0	0
GG	21	1	7	1
JM	30	13	0	0
KD	13	1	9	1
KN	46	0	29	0
KT	20	0	15	0
KW	14	0	12	0
LG	12	11	1	0
NG	10	0	4	0
OG	12	2	2	0
OD	22	13	1	0
OY	42	9	10	0
PL	16	0	8	1
RV	13	12	0	0
SO	37	0	24	0
FCT	1	0	1	0
N	113	20	37	1
Total		129	205	4

Station	Total of Delegation	Members Present & Voting		Absentions
		Ayes	Noes	
AI	20	0	13	0
AN	29	5	11	0
BA	20	14	1	0
BD	20	2	11	0
BN	19	4	12	0
BO	24	7	10	0
CR	8	0	3	0
GG	21	9	4	0
JM	30	1	17	0
KD	13	8	0	0
KN	46	16	0	0
KT	20	14	0	0
KW	14	5	1	0
LG	12	1	3	0
NG	10	3	1	0
OG	12	0	7	0
OD	22	4	7	0
OY	42	0	18	0
PL	16	2	6	0
RV	13	1	6	0
SO	37	25	2	0
FCT	1	1	0	0
N	113	34	25	0
		181	162	0

Station	Total of Delegates	Members Present & Voting		Abstentions
		Ayes	Noes	
AI	20	2	8	1
AN	29	0	18	0
BA	20	4	2	0
BD	20	1	10	0
BN	19	0	9	0
BO	24	14	1	0
CR	8	2	2	0
GG	21	4	11	0
JM	30	0	20	0
ED	13	4	3	0
EN	46	18	0	0
ET	20	12	0	0
HM	14	1	4	0
LG	12	0	7	0
MG	10	5	1	0
OG	12	0	8	0
OD	22	0	14	0
OV	42	1	20	1
PL	16	1	2	0
RV	13	1	6	0
SO	37	21	0	0
PCT	1	1	0	0
M	113	23	30	1
Total		117	184	3

Station	Total of Delegates	Members Present & Voting		Abstentions
		Ayes	Noes	
AI	20	17	0	0
AN	29	25	0	0
BA	20	2	10	1
BD	20	12	0	0
BN	19	8	2	1
BO	24	2	12	2
CR	8	4	0	0
GG	21	12	5	0
JM	30	28	0	0
ED	13	7	2	0
EN	46	0	39	1
ET	20	0	16	0
HM	14	2	5	0
LG	12	7	0	0
MG	10	0	8	0
OG	12	9	0	0
OD	22	16	0	0
OV	42	26	0	0
PL	16	7	3	0
RV	13	8	0	0
SO	37	0	25	0
PCT	1	0	1	0
M	113	36	34	3
Total		235	160	8

A Note on Methodology, Assumptions and Sources.

The choice of the subject matter of this thesis was largely influenced by the absence of a complete and coherent study and analysis of the making of Nigeria's constitutions. Most of the current books are limited to the precolonial developments but also had the severe handicap of lack of access to official records.

On the other hand, the discussions on the post independence period are haphazard and limited to some of the constitutional bodies only. However, more importantly, the interplay of political forces and interests has been little discussed, particularly against the background of the heavy discussions and arguments on the interest based nature of the U.S.A. Constitution of 1787. Most Nigerian lawyers who write on the subject seem to come heavily under the influence of positivist approach to law. For this reason, they largely concentrated on the constitutional documents themselves.

This project is therefore an attempt to fill in these important gaps. To this end, the methodology is overwhelmingly analytical following the footsteps of Charles Beard, Calvin J. Jillson, etc who adopted this approach in respect of the constitution of the U.S.A. Inevitably, the data and other resources are documentary. This is based on the assumption that it is futile to conduct an interview to determine the personal interests (whatever it may be but more so if economic) of the interviewee.

Moreover, it is a near impossible exercise to interview the large number of people who participated in the constitutional process. But even if samples may be used, the latter to be credible for analytical purposes must take into account the "federal character" of the country, an enormous obstacle.

For these reasons, the author considered documentary evidence entirely sufficient. The documents were, in respect of the colonial period, official records of communications of key officials as documented and are available to the public in the Public Records Office, Kew and the Commonwealth Office Library, London. For the post independence era, the proceedings and official reports of the various constitutional bodies, communications of key officials and relevant legislations were obtained during a field work trip to Nigeria.

The materials for the economic biography of the members proved more difficult to obtain for the reason that such documents are treated with a great deal of secrecy in Nigeria, apart from the lack of culture of maintaining a comprehensive and up to date information in the libraries. From my experience in the field, only the libraries in the Office of the President and the Nigerian Institute of Policy and Strategic Studies, Kuru (access to both is highly restricted) maintain a measure of comprehensive and current materials. This is mainly because top government officials patronize these libraries. The one in the Presidency was of immense help as it had some current information on the directorships of companies in Nigeria, apart from the Companies Registry, the latter, a very

difficult office to deal with although supposedly a public office.

It must also be noted that not all the participants had such economic background given the practice in the country where directorships/chairmanships are accumulated in few individuals, who it is assumed wield great influence in the political economy. But for analytical purposes, there were enough of these patrons or their wards in the constitutional process to draw credible conclusions.

D96478