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### Lawyers' Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960: 'The Fighting Brigade of the People'

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**Lawyers' Professionalism, Colonialism, State Formation and National Life in Nigeria, 1900-1960:  
'the fighting brigade of the people'**

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A common conceit of organized legal professions has it that lawyers play central roles in state formation, state re-formation, and nation building. The fact that lawyers imagine their profession in such a fashion approaches a universal truth as closely, perhaps, as most social observations. Lawyers tend to think of their profession as operating as a kind of social “glue”, serving as an indispensable conduit of values, and binding societies and countries together. Simultaneously, the legal profession thinks of itself as a key agent in the cause of liberty.

Arrogant though it may be, such self-perceptions are indeed grounded in a reality of sorts. Lawyers, indeed, *are* always "there", serving, variously, the causes of independence movements, revolution, authoritarian rule, sovereign statehood, or colonial administrations. Law is Janus-faced, promising both liberty and order. Because "law" is conventionally thought to play essential roles in constituting a desirable, perhaps, *necessary* uniformity of governance across state territory, lawyers have often emphasized their own roles in state formation. The lawyers' professional work includes bringing law equally to all portions of state territory (eg., Price, 2001) *and* active involvement in the myriad cultural projects by which central legal values are transmitted to all of the state's peoples and cultures. Law, in a word, "civilizes" provincials. Lawyers often, perhaps always, view themselves as key agents in this civilizing mission.

This is certainly a viable interpretation of the work of lawyers and the organized legal profession in the mainland United Kingdom and also in Ireland (Thompson, 1991; Hay, et. al., 1975; Hay, 1975). Projects of state formation connote rather different things, however, in diverse contexts. When we think of “Ireland,” for example, rather than the English homeland, projects of "nation building" or "state formation" take on different colorings. Processes viewed with equanimity at home form part and parcel of “colonization” or “colonialism” abroad. Such words carry rather different series of connotations than the more neutral-sounding languages of state integration that seem appropriate descriptors of the lawyerly role "at home".

Surprisingly, perhaps, these cultural or political processes and the associated self-images advanced by organized legal professions have been obscured in much scholarly writing on the profession. Most scholarship about lawyers produced in the last third of the twentieth century was cast in a form that placed primary emphasis on “market control” or “monopoly” theory. Dictated by a paradigm generated within a larger body of scholarship on the sociology of professions, this approach assumes that people become professionals so as to become rich and, further, that they *organize their*

*profession* in such a way as to advance this goal through collective action. Unsurprisingly, researchers committed to this paradigm have been able to find confirming evidence. Viewed through such lenses, all of the conventional ‘traits’ of professionalism appear to have been developed in the cause of monopoly. The development of entry standards, educational requirements, qualification procedures, and practice rules, the promulgation of ethical codes, and the very notion of self-regulation itself can all be reduced so as to fit the interpretive frame (Pue, 1991b).

More recent scholarship has begun to loosen the grip of market control theory, opening scholarship about professions to a significantly widened range of insights. One new approach offers instead a more or less functionalist understanding of lawyers’ roles in relation to liberal politics (Halliday & Karpik, 1997a). It avoids the extreme reductionism of market-control theory and develops important historical perspectives on the origins of constitutionally bound moderate states in post-Enlightenment European traditions. It suffers, however, from overlooking the dark side of liberalism more than it ought. Research in this vein has tended, too, to look more to the work of lawyers or to their specific causes rather than to the organizational principles of the legal profession *as a profession* (Karpik, 2004 and Ledford, 1996 are notable exceptions). In the result, the lawyers’ agency in larger cultural projects has been missed in this stream of research, even as intense debate around the “politics” of lawyers has emerged (Scheingold, 1999; Abel, 1998; Karpik & Halliday, 2001).

Oddly, though scholars have chosen to ignore it, the centrality of cultural projects vis-à-vis state integration or colonial governance has not been treated as a closely guarded secret on the part of legal professionals. The importance of these missions is apparent *on the face* of professional apologetics in many places and at many times. By and large, it is only by *reading past* what professionals have said and written in articulating their professional vision that we can avoid perceiving the pervasive moral vision at the heart of professionalism. The involvement of legal professionals in advancing the cause and course of colonial state formation is apparent in the cases of South Africa, Australia, Canada and British Palestine, no doubt amongst many others (Sachs, 1973; Chanock, 2001; Pue, 1995, 1999a, 1999b, 2001, 2003).

In Palestine one of the first acts of the British Empire focused on the task of imposing “new laws and new legal institutions” along with

...educating the ‘native’ lawyers, be they Arabs or Jews, and regulating their activities. Beginning in the early 1920s, the colonial state launched a quite assertive

programme of professionalisation in law. The Jerusalem law-school, the first and only such school in the country, was inaugurated by the colonial government in 1920, when the British civil administration of Palestine barely began to function. (Shamir, 2001: 111-112)

The legal education provided was carefully calibrated according to the future role and tasks imagined for the student. A basic curriculum, taught in Hebrew or Arabic, was intended to prepare students for work as lawyers, but not to a law degree as such. The degree programme, taught only to English speakers, included core common law subjects, international law, and jurisprudence. Educational developments such as these, combined with a number of elements in the 1922 Advocate's Ordinance, establishing the jurisdictional boundaries of the profession, helped to establish a two-tiered legal profession which privileged 'gentlemanly' knowledge of the British sort. The result was a form of professionalisation that

set the conditions for legitimate juridic participation in the Palestinian politico-legal sphere on the basis of the commitment of lawyers to English law and on the basis of their ability to develop expert-based ties to the institutions and officialdom of the colonial state.

The advent of the professionalisation project is key to understanding the *habitus* of Jewish lawyers, particularly their attitude towards the place of law in the nation-building project. (Shamir, 2001: 112)

India, the jewel of the Empire's Crown, raises a series of difficult questions regarding both the colonial state and the nation-building project which displaced it. British Imperialism carried peculiar burdens of history and practice in relation to the many diverse local cultures of that sub-continent. The longevity of British rule in India combined with the more or less complete absence of "settlers" (as such) produced a cultural context quite distinct from both Palestine and the "Statute of Westminster" colonies (Newfoundland, South Africa, New Zealand, Canada and Australia). Even the category of "Indian lawyer" is complexly layered, for we need to distinguish, at a minimum, between "Indian Lawyers" (barristers or solicitors), expatriate lawyers working in India, and Indians working in traditional roles that western secular law denotes as "legal". It is an untidy fact that "Indian lawyers" in the first sense simultaneously played important roles in two aspects of Congress Party politics at the turn of the last century. They were legendary figures who struggled against British rule and *also* served the cause of internal state consolidation, 'modernization', and secularization, seeking to bind the

huge territory and diverse peoples of “India” into one (eg. Gandhi; Chandra; Sharafi). Elsewhere, processes such as these might be termed “internal colonization”. Moreover, as Ronen Shamir reminds us, drawing on Partha Chatterjee’s account of “the trajectory of Indian nationalism under British imperialism, . . . bourgeois opposition to colonialism has always been ambiguous. There is a history of collaboration between the colonial state and the educated classes, he writes, “sealed by the marriage of law and literacy’.” (Shamir, 2001, 109)

In this paper we explore a few key questions relating to the relationships between lawyers and colonialism in Nigeria during the period of British governance. What role did lawyers play in relation to colonialism or decolonization in Nigerian history? How did they conceive of their job and themselves as a profession and as professionals? What professional self-images did they subscribe to as they went about their work? What peculiar modalities did they employ in advancing cultural and political causes dear to their hearts? What circumstances and opportunities did they exploit in the process? Following Omaoniyi Adewoye (1977), we treat British colonial Nigeria’s histories in two “phases”.

## **EMPIRE**

Between 1880 and 1939 the British sought to establish effective governance over diverse national and ethnic configurations that later became Nigeria. A form of culturally and spatially segregated legal pluralism was constructed as Imperial authorities sought to contain Nigerian issues to “native courts”, while shielding British commercial interests from indigenous legal challenge. “Native” involvement in the legal profession was discouraged. Following patterns similar to those playing out in India in the same period, many Nigerians sought to establish a pan-Nigerian nationalism *within* the British Empire. Nigerian lawyers became agents for both westernization and for self-determination. “Law” carried tremendous symbolic power in the myriad cultural and political struggles that emerged. From one side, British rule imposed law’s majesty on colonial subjects. Law’s promise of justice, however, dramatically empowered the colonized who invoked their Masters’ tools, the British law, in resistance to the Empire. As early as the first decade of the twentieth century, legal practitioners in Lagos were politically active, “being looked upon for leadership and as ‘the fighting brigade of the people’” (Editorial, 1907, as quoted in Adewoye, at 153).

## **DECOLONIZATION**

Starting in the 1930's, but accelerating dramatically after 1945, British colonial policy in Nigeria shifted focus from maintaining Empire to establishing the groundwork for Nigerian national independence. Independence came much quicker than earlier generations had anticipated, in 1960. The fading Empire's officialdom scrambled, making desperate haste to launch the processes of state-formation and to establish durable western institutions in the soon-to-emerge colony. The British took steps to instantly create a westernized local elite, dramatically reversing their own earlier policies. In the result, larger numbers of indigenous lawyers appeared. Many became agents for a western style of pan-Nigerian nationalism.

### **Empire and Liberal Nationalism**

Two moments of colonial Nigeria's history provide valuable insight into the relationships between lawyering, culture, and Empire, illustrating the transformative consequences that political trials can have on processes of cultural formation. In both the Eleko of Lagos' case in the south (*Eshugbayi Eleko v. Officer Administering the Government of Nigeria and Another*, hereafter "the Eleko's case") and litigation affecting the Emir of Kano in the north traditional authority figures found themselves enmeshed in forensic battles constructed within British imperialism. Amongst Europe's imperialisms, the British variant exceeded all others in seeking to justify their rule through an ostentatious embrace of the rhetoric, languages, and political ideologies of the Rule of Law. Just as Doug Hay, E.P. Thompson, and Greg Marquis have found in England and Canada (Hay; Thompson; Marquis) an announced commitment to the rule of law actually constrains Power. If "law" permits the subaltern to speak (Spivak; Ghazoul), it also provides tools, fora, and languages through which local elites can vent their resistance to colonial subjugation. The appropriation of the Masters' tools for one's own ends is, however, never an innocent project. Colonized peoples' *legal* resistance to colonialism is most often at once a project *without* European liberalism and deeply imbricated *within* western liberalism. Struggles to resist Europe's Imperial pretensions, through law, coexisted with an overlapping project which, cast as rights-claims *within* western liberalism's classic legal form, sought to secure a single Nigerian nationalism binding diverse and far-flung peoples into a sovereign, Westphalian-style, state.

Recognizing this draws us toward the vision of lawyers and politics close to that which emerges from the collaborations of French scholar Lucien Karpik and New Zealand / United Stateser, Terence Halliday. Their subtle, historically grounded model of professionalism posits a legal professionalism which *tends*, because of the representative function that lies at the heart of lawyering, toward rights

consciousness, participation in public discourses, and the constitution of a “public” through legal engagements. The rituals and sanctity of the courtroom render it a privileged place in which powerful discourses of resistance, appropriately cast in the ‘languages of state’ (Cain, 1979: 335) not only *can*, but *must be* expressed. Lawyers, protected by the privilege that attaches to the forum itself and to their profession, are free to speak to the audience immediately present, of course. Through their role in that venue, they address the larger audiences of the “public” at large. What happens in the courtroom can reverberate throughout society, echoing loudly and long as events are reported in the media, dissected, analyzed, and debated in other public venues, and discussed in pepper soup joints, village squares, market places, coffee houses, pubs, homes, and other gathering places. The courtroom combines the language of rights, privileges of expression that may not be enjoyed elsewhere, and high visibility in the community at large. It is, in a word, entirely political. What’s more, the nature of the forensic contests pits rights against power, employs the language of justice, and, where state power is involved, begins down the road of constituting the subjects of state power as rights-bounded citizen.

Where foreign Imperialisms are challenged, the mix is all the more explosive, for Empire is anchored in perceptions of prestige and infallibility on the part of the Imperial authorities as much as in the image of the rule of law. When Imperial authority is questioned in courts of law one or other anchor will slip. Ironically, the traditional political institution, symbolized by traditional rulers, who had been co-opted by Empire, provided the site for challenging the Imperial authority. This was demonstrated in the cause celebre that involved the traditional ruler of Lagos, Eshugbayi Eleko, and the colonial Officer Administering the Government of Nigeria. A man with strong personality, the *Eleko* was not the typical sort of native ruler in whom the Colonial Master would be well pleased. It was, however, only when he resisted the colonial authority’s efforts to have him curtail one of his prominent subjects, an individual who was the symbol of a rising professional and political class opposed to the colonialism, that the Empire reacted. The *Eleko* case sparked the early fire of Nigeria’s decolonization. Lawyers both as professionals and politicians were central to the process. This conflict, in one region of Nigeria, between the Empire and an icon of its own indirect rule, demystified the colonial establishment, simultaneously rallying local folks and bolstering their confidence in traditional indigenous authority.

### **Primacy of Traditional Authorities and Indirect Rule**

In traditional Nigerian societies the social structures of family, kinship, religion, traditional institutions and belief systems perform many of the sorts of functions involved in adjusting claims or



settling disputes that take place through “law” in western state structures. Colonial authorities in Nigeria knew full-well that traditional rulers played key roles in all of this, and that the people of Nigeria’s accustomed recourse in times of conflict or social stress was not to law *per se* (Adewoye: 16). Having learned elsewhere that British dominance was secured most rapidly, most effectively, and at the lowest cost by governing-at-a-distance, Britain’s colonial administration preferred to work through traditional rulers, institutions, and modalities of justice wherever possible. Successful Empires are not, however, uncertain as to their objectives. In the final instance, the preservation of indigenous traditional authorities, depended on their willingness to adapt and mould themselves to British ends. Local authority insufficiently aligned with the colonial agenda could be dangerous and, in such situations, the Empire viewed the sacrifice of a traditional institution as the lesser of two evils.

Moreover, while “indirect rule” vested enormous powers upon the village chiefs, and local heads or emirs (especially in Northern Nigeria), two peculiar features of the institutions of indirect rule need to be noted. First, there were limits on what could be delegated. “Framework” political and judicial powers were not up for grabs and, whatever might be “ruled” indirectly from place to place, the British Resident and District Officers’ ultimate authority in these areas was never in question. As regards judicial functions, the British did not at first seek to substitute their own legal system for those already in place in Nigeria. What emerged in most of the territory was a type of a quasi-judicial arrangement working in alliance with the traditional establishment emerged in the form of the Native Courts, operating without a professional bar.

Secondly, “indirect rule” could never work through authentically traditional power structures, rulers, or offices, for the “traditional” was profoundly altered when it became enmeshed in the ends of Empire. Even where it was most successful, indirect rule warped the character of traditional institutions, creating fractures along new social or political fault lines, distorting native confidence in the institutions, and weakening cultural and social cohesion generally (cf. Anderson, 2005).

The success of indirect rule as a governance strategy varied widely in the different territories that later became Nigeria. A huge success in the North and somewhat successful in the Southwest (the Lagos area), indirect rule failed totally to take hold in the Southeast. The peoples of that region were essentially republican in their political outlook, and lacked strong centralized traditional institutions of the sort “indirect rule” relied upon. That British efforts to fill the need by creating so-called “warrant chiefs”, failed to take hold was demonstrated dramatically in the Aba women’s riots of 1929. This amounted to a two-month insurrection (Dec. 1929-Jan 1930) by some 25, 000 women of the south-

east's Aba area (including the present Abia and parts of Cross River and Akwa-Ibom States) against, the colonial imposition of "warrant chiefs", their corruption and their burdensome taxation practices. Over 50 women were killed during this period of resistance (OnWar.com). Even in the protectorates of Southern and Northern Nigeria and the Lagos colony, where indirect rule worked better, the Empire's romancing of traditional institutions could alienate ordinary people from traditional rulers who, from one perspective, could appear as conspirators, collaborators, and *de facto* agents of the British administration. Traditional rule balanced on a razor' edge, teetering precariously between tradition and Empire.

Two pivotal moments reveal the foundational incoherence involved in structuring Imperial rule through traditional leaders and also the different relationships which the North and South of Nigeria had with the colonial administration. The knock-on effects were felt powerfully in the post-independence era and the craft management of North-South relations remains a delicate matter to this day.

### **British-Style Judicial System**

A British-model style legal system did however take root, first in the commercial capital and then extending outwards across the Nigerian space. The increasingly cosmopolitan nature of the colony of Lagos, including the development of thriving commercial concerns by both colonialists and returning slaves (mainly from Sierra-Leone), made the establishment of English-styled courts a compelling need. Colonial administrators were determined, however, not to allow the full operation of British justice. Apart entirely from questions of cultural "fit", British justice was simply too risky in the context of colonial Nigeria. 'In far-off England ... robust judicial independence [and rule of law] might be welcome, so the colonial administration seemed to think, but not in a colony where British authority was as yet not fully established' (Adewoye, 72).

Initiated as an urban affair dealing mostly with commercial matters, an English-modeled legal system took form around the establishment of the Supreme Court system in Lagos, followed, in due course, by its extension into other urban and commercial centres in the Southern Provinces. Colonial policy, however drew a sharp line delineating a geography of law. British law was "zoned" to commercial centres only and barristers were prohibited from going into hinterland regions out of fear that lawyers and the law they imported might undermine the peace in areas governed by indirect rule. In such regions law came in the form of British officials presiding over *Native Courts*. Ironically, perhaps, it was the Supreme Court system, where lawyers were allowed to practice, not the "Native

Courts”, which proved more credible to Nigerians. Though favoured by the colonial administration, Native Courts were widely disdained as both corrupt and tainted by their association with traditional rulers who were increasingly seen as overly compliant with the demands of Imperial authority.

### **Lawyers as ‘Incongruous’ Elements**

In all probability, British fear of an independent bar was well founded. When confidence in traditional authority was eroded, non-elite natives were inclined to look to lawyers as a counterpoise of sorts to the alien administration. Lawyers could enjoy popular support and a high media profile, filling the vacuum left when the legitimacy of traditional authorities was corroded. Sometimes popularly imagined to be more powerful than the British political heads themselves, lawyers seemed threatening to hinterland colonial officials. ‘The fear that lawyers might bully political officers administering justice without formal training ... underlay much of the antagonism toward members of the legal profession’ (Adewoye: 179) but there was more cause for concern than that alone. The political damage lawyers might work in a colonial context was dramatically illustrated in 1913. In that year a Southern Nigerian expatriate lawyer ‘strayed’ into the peaceful enclave of Kano, a region where traditional institutions and colonial administration had struck a rhythm in the practice of indirect rule.

In 1913 Nigeria was, for all practical purposes, administered as two entities: the Northern and Southern groups of provinces. The two provinces had, however, come under one colonial administration the year before in a step preparatory to unification. At ease in the mainly Islamic regions of Northern Nigeria, the colonial administration capitalized on strong traditional authority to perpetuate the system of indirect rule. Here, the British sought to shield traditional authorities from *untoward* anxieties, including the difficulties that might be wrought by southern lawyers (expatriate and indigenous) who might seek to introduce elements of a British-style justice system into the region. The south was another matter, and Adewoye reports that before the start of the Great War, “the legal profession, properly so called, was establishing itself in Southern Nigeria” to such an extent that “there were about twenty-five qualified legal practitioners, concentrated mainly in Lagos and Calabar” (Adewoye: 34).

### **Daring To Subpoena the Emir of Kano**

A significant legal and political test of colonial arrangements came to a head in 1913. In April of that year the Northern Nigerian Government sought to acquire a piece of property owned by Messrs

L & K (Kano), an expatriate company. The company retained the services of a Lagos based expatriate lawyer, Sir William Geary, who duly moved from Lagos to Zungeru Divisional Court to represent his clients. Geary and his junior, Joshua John Peele took on the case. Peele was an English Solicitor living in Kano. He had enrolled to practice law in Nigeria in December, 1912, and was the only legal practitioner in the whole of Northern Nigeria at the time. Their main objective was to establish the firm's title to the land, and the value of the firm's real and personal property at the particular location. These were non-contentious matters and the Chief Justice of Northern Nigeria had in fact proposed arbitration as a means of determining the amount of compensation due to the company. On the substance of the matter Geary succeeded in getting a satisfactory deal for his client. He secured a new trading site for the company and, in addition, a payment of Two Thousand Naira Compensation for the site acquired by the government.

The course of Nigerian legal history turned sharply, however, when Geary dared to subpoena the revered traditional ruler, the Emir of Kano to give evidence in an open court. The Emir was said to have leased the property to the company (Geary). The colonial administration was outraged. The lawyers had not consulted the British Resident before taking this dramatic step which simultaneously caused affront to British Resident and offended the dignity of a revered traditional ruler on whom the British relied. Fearing that the peace and tranquility of the potentially volatile Islamic North was threatened by the 'rude interference' of lawyers and other foreigners from the South, colonial authorities reacted with sweeping judicial reforms aimed at circumscribing the nascent legal profession's scope of activity and influence. These came into effect just as the amalgamation of the two Nigerias came about in 1914. Ironically, these reforms enhanced the popular opinion of lawyers, and, contrary to intent (as seems the rule in Imperial over-reactions), spurred the development of anti-colonial sentiments. "The people," indigenous lawyers, and anti-imperialism, fed off each other.

### **Baring Colonial Fangs Against Lawyers: The Unintended Consequences**

In 1900 there was little scope for legal practice in Northern Nigeria. Provincial Courts were presided over by the provincial commissioners (the political heads of the colonial administration) and operated without the services of trained lawyers. British commerce had not yet intruded much, and local life continued to be governed in accordance with long established patterns of regulation and dispute resolution, largely without regard to British law. Not surprisingly, there were almost no

lawyers in the North and legal work (in the western sense) was mostly confined to commercial matters in the urban centers - and mostly undertaken by southern-based lawyers.

In 1913 Northern Nigeria's colonial administration reacted to the Emir incident by seeking to prevent Southern lawyers from straying into the 'native' towns of the Northern Provinces. With Federation of the two Nigerias in 1914 the Provincial Courts systems had been extended to Southern Nigeria. As a result, for almost two decades from that time lawyers were prevented from providing advocacy services anywhere in Nigeria other than in cases before the Supreme Court in Lagos and a few other commercial centres (Supreme Court Ordinance no. 6, 1914). In Adewoye's view:

The judicial reforms were triggered by colonial panic over the now evident role of lawyers in public affairs, which tended almost always to cast the administration in a negative light. Lawyers penetrated even the traditional chiefs who appeared to enjoy the confidence of the colonial masters, some of them were their legal advisers....If the educated elite were the *bete noire* of the colonial administration, the lawyer in particular seemed like a menace. Not only would he make a living independently of his white overlords, his position in [and out of courtroom] ... touched on sensitive aspects of colonial administration... (Adewoye: 67)

Curiously, it was the status accorded legal professionals by British law that made them so dangerous. When lawyers criticized colonial power, they did so from a position of privilege and authority: "The esteem in which lawyers were generally held was bound to affect the position of colonial authorities" (Adewoye: 71). The colonial administration failed, however, to appreciate the weight their Nigerian subjects accorded to the promises of "British Justice" and the "rule of law". These particular cultural transplants took root quickly, providing rallying points for opposition to colonial authority in Nigeria, and giving colonials a language of resistance that was intelligible, palatable, and persuasive "at home". Local colonial administrators were surprised by the magnitude of opposition and resistance to its anti-lawyer judicial reforms. Indigenous and non-Nigerian lawyers worked together, mobilizing powerfully to create a sustained protest against the anti-lawyer reforms which ultimately provoked a crisis of colonial rule. On his return to England, William Geary was instrumental in bringing the question of judicial reforms in Nigeria before the House of Commons, leading to the lawyer-friendly reforms that came to prevail from 1933 to 1962. It was precisely because Empire's legitimacy rested so much on the ideology of the rule of law that "no other measure" in the history of colonial Nigeria "aroused so much opposition and protest as the judicial reorganization" (Adewoye: 76). The attempt to deny Nigerians en masse access to professional legal services sparked wider ripples of resistance as lawyers mobilized other professional and elite groups in

Nigeria against the colonial administration. In a pattern found elsewhere, lawyers took steps toward professional organization in this period.

In this wider series of struggles, one incident provided a flashpoint. Nothing did so much to entrench the image of lawyers as the ‘fighting brigade of the people’ as the Eleko’s case.

### **The *Eleko* Case: Lawyers’ Political Opportunism**

The Emir of Kano invoked his traditional and religious authority in a fashion that ensured the political tranquility desired by Nigeria’s colonial masters. The traditional ruler of Lagos, however, *Eshugbayi Eleko*, was another matter. The *Eleko* did not fit into the stereotype of the traditional authority of the sort that could be easily hijacked by the colonialists. Highly distrusted for his perceived unwillingness to cooperate with the colonial rulers, the *Eleko* was correspondingly popular among his constituents, while the local elite, lawyers, and other professionals, held him in high regard as a symbol of uncompromised traditional authority. The oppositional stance was well ingrained in colonial relations within the Eleko’s domain for conflict characterized the relationship between the Eleko’s Ruling House of Dosunmu and the colonial administration from 1908-1931. Eshugbayi Eleko’s independence on a variety of issues including, notably, lack of support for the administration’s imposition of water rate on his subjects in 1915, made him unpopular with the colonial administration.

In a move widely perceived as ‘an affront to native custom,’ the colonial administration reacted to the on-going conflict by purporting to suspend the Eleko from office in 1916 (Adewoye: 159). His humiliation ‘stung’ Britain’s colonial subjects, many of whom wondered by what right an alien power arrogated to itself the power to alter a *traditional* institution, to appoint or remove the peoples’ natural ruler and the symbol of the traditional authority. Indigenous law recognized the removal of an Eleko only by the action of a majority of the representative members of the families in the House of Docemo-Oyekan, the Royal House of Lagos. As the Lagos’ elite rallied to the support of their traditional ruler the *Eleko Question* became the most pressing political issue in Nigeria. Leading indigenous lawyers such as Joseph Eagerton Shyngle, Adeyemo Alakija, and Bright Wilson, worked with prominent politicians and other educated Nigerians in delegation to the Colonial Governor, Sir Hugh Clifford. Through their intercessions, the suspension order was withdrawn (Adewoye: 159). This victory, though it proved momentary, boosted the popular influence and esteem of lawyers enormously. The Empire had been made to bow.

Accommodation between the *Eleko* and the British was short-lived. In 1920 one of his subjects and staunchest supporters sparked another round of controversy while visiting London. Sir Herbert Macaulay, Nigeria's foremost nationalist politician, and a highly valued subject of the *Eleko*, made remarks during the course of an interview that were highly critical of the colonial administration. Macaulay carried the *Eleko*'s official staff, and Nigeria's colonial administration understood him to have spoken in a quasi-official capacity on behalf of the traditional leader. The colonial authorities again withdrew their recognition of his status and role when the *Eleko* refused British demands to denounce Macaulay publicly. Relations deteriorated further still. In 1925, the *Eleko* was sent into internal exile at Oyo.

The colonial administration had purported to link their *Eleko* problem to a crisis internal to the Lagos ruling house, claiming that they had merely sanctioned "the deposition of Esugbayi from his position as the head of the House of Docemo" and consequently, authorized his removal from the office of *Eleko* (*Eleko* case: 666). Exile, in their view, was more generous than the traditional means of removing the *Eleko*: death. The *Eleko* did not submit willingly, however. He was detained and exiled to Oyo by force where he was put on a government stipend conditioned on good behaviour. Deportation was deeply humiliating for a man who was an uncompromising symbol of indigenous traditional authority and who enjoyed the confidence of all sectors of his Yoruba nation, including professional elites.

Indigenous lawyers took up the *Eleko* cause in defence of the institutional autonomy of traditional authority, native custom, and the rule of law. The *Eleko*'s legal battle took shape around an application for *habeas corpus*. The battle was played out over a sustained period, and was continually before the courts between 1925 and 1928 (Elias). Two indigenous Nigerian lawyers, Eric Moore and Shyngle:

appeared for the *Eleko* at the initial hearings of what was to become the most celebrated political case of in the colonial era. At this point lawyers as professionals took over from lawyers as politicians. The case [twice] reached as far as the Privy Council in London, but the *Eleko* Question was ultimately settled politically. *Eleko Eshugbayi* did not reign long after he was allowed to return in Lagos. He died in October 1932. (Adewoye: 160)

The political vacuum created when traditional institutions were suppressed (the *Eleko*) or warped to Imperial ends (the Emir) was filled by lawyers. Lawyers were feared by Imperial authorities

in equal proportion to their status as heroic figures amongst colonial subjects. The Empires' fear of indigenous lawyers, manifest in sustained antagonism to the legal profession and formal restrictions on their professional activities, worked against the colonial administration. By seemingly revealing hypocrisy at the heart of Britain's much-vaunted commitment to the rule of law, anti-lawyer actions corroded the legitimacy of Empire. The *Eleko* question dramatized a powerful symbolic degradation of both local authority and local culture in the minds of ordinary people and Nigerian elites alike. The case demonstrated the excesses of a colonial administration that operated with neither check nor balance. The moral tale of unaccountable colonial authority was reiterated and reinterpreted time and again as developments in the case were reported, discussed and assessed in all quarters. Lawyers, more than any other group, rose to the occasion, helping to define the issues, participating in strategic mobilizations, feeding interpretations of events and issues to the media, and of course, joining battle directly in the courtroom.

There, they fought on the terrain of British law, using the rhetorics, languages and promises of Empire to contain it. In popular conception lawyers became "fighting heroes", larger than life characters who, with impunity, tweaked the nose of an Empire on which the sun never set. Muttering law's unusual incantations, embodied simultaneously as native and British, covered with the full dignity conferred by the wig and gown, dark suits and immaculate white bibs, lawyers demonstrated that the component parts of the Empire's majesty were rather underwhelming: the enemies they engaged in forensic battle were revealed as more or less ordinary, fallible, human beings. A lawyer 'could put the white official in the dock and cross-examine him', and could use court proceedings to "challenge the administrative acts of the colonial rulers" (Adewoye: 40). Precisely because Britain said – *and believed* – that it was fully committed to the rule of law, lawyers who played within the rules enjoyed immunity from Imperial retribution. Consequently, they came to assume a mythical and enigmatic status in the reckoning the majority of Nigerians. The lawyer challenged arbitrary power, asserted local values, played to, but also promoted, the development of Nigeria's incipient "public", in all of these, with active collaboration of a vibrant indigenous press.<sup>1</sup> The *Eleko* case cast lawyers in a

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<sup>1</sup> The first major indigenous newspaper was the West African Pilot which was established by Nigeria's foremost nationalist and US-trained journalist, Dr. Nnamdi Azikiwe. Popularly called "Zik of Africa", he was to become Nigerian's first president in 1960. The West African Pilot was a pro-independent and anti-colonial newspaper with a blend of radical politics and firebrand nationalism.



heroic role like no other. It positioned them as dependable defenders of cultural institutions and authority and worthy champions of independence and decolonization struggles that were unfolding.

### **Summary and Conclusions**

It is apparent, then, that the legal profession in Nigeria, like its counterparts elsewhere, played key roles in the development of political liberalism and in advancing cultural projects considered foundational to political and constitutional order. Though their roles took on particular features in colonial Nigeria, they are recognizably of a kind with the roles played by the Paris *avocats* and the English bar (to pick but two well-studied examples), in establishing government within the framework of the rule of law and, importantly, a politics committed to this. In an overseas colonized land, all such issues were refracted through the lens of Imperialism. The defining struggles were about the principles of constitutionalism that should be operative within the framework of a far-flung Empire, rather than governance principles “at home”.

Two consequences flowed. First, constitutionalism required a defense of traditional and local nodes of power in a way that was not characteristic of the kindred movements in Europe or in settler colonies. Secondly, and somewhat paradoxically, native lawyers played on a new terrain. Their roles were played out on a Nigerian “national” stage that itself was a product of Empire. In so doing, they helped to foster a degree of pan-Nigerian nationalism beyond anything the colonial administrators could have desired.

The Emir of Kano incident triggered sweeping judicial reforms, which revealed how very resentful the colonial administration had become of indigenous lawyers and, indeed, of any indigenous agency unconstrained by officially sanctioned channels. More importantly, it demonstrated the lengths that the administration could go to ‘preserve at least the outward façade of the authority of the indigenous traditional authorities’ (Adewoye: 62) when they were content to do imperial bidding. Conversely, the *Eleko* case and other politically ripe legal causes (see Adewoye: 181, discussing in particular *Amodu Tijani*) highlights the peculiar strategic position lawyers assumed in the absence of an indigenous political leadership. This gap in leadership presented an opportunity for lawyers as professionals, politicians, and cultural agents to take on the role of the ‘fighting brigade of the people’. The case provides Nigerian history’s “classic example of African lawyers taking the leading part in defence of their traditional institution against rude assault by alien rulers” (Adewoye: 158). Empires are built on the illusion of omnipotence one crucially important consequence of legal interventions was

that the 'the aura of unassailability' that surrounded whites in colonial Africa began to give way to the growing prestige of the local elite (Adewoye: 158). Lawyers, more than any other group, revealed the illusion and made the most of that revelation.

The period following the *Eleko* case was foundational for the struggle for political independence, which came about only three decades later. The case mobilized the support of educated Nigerians in many walks of life, including the press, in support of lawyer-friendly judicial re-organisations in the period from 1933 to 1962. In this period authorities reversed the changes triggered by the Emir of Kano case, expanded the jurisdiction of the Supreme Court, and abolished the Provincial Court system. The unfettered legal profession that emerged was well-positioned to advance the political struggle that culminated in Nigeria's independence in October, 1960.

### **Post-script**

Ironically, it was only when they were most circumscribed professionally, that Nigerian lawyers came most fully into their own. Politically mobilised and professionally effective, indigenous lawyers were a Frankenstein of colonial creation, doing much to dislodge the colonial establishment that gave them their profession life.

The same is true to some extent in the Nigerian legal profession's relationship with military dictatorships in the post-independence period.

In the post independence period, lawyers have often remained surprisingly faithful to their historic commitment to the rule of law, tackling now the different kind of enemy of military dictatorships. The results are at present difficult to gauge. A mixed body of evidence reveals lawyers playing the roles of both defenders of civil liberties and rule of law, in many cases, *and* willing accomplices of the military in others. The Nigerian legal profession struggles constantly for its collective soul, not infrequently seeking to rediscover itself through reconnecting with its glorious history.