

# I: CONTEMPORARY COLONIALISM AND THE NIGERIAN CONTEXT

*Viviane Saleh-Hanna*

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In order to present information about the Nigerian penal system, it is first necessary to present the context in which Nigeria exists. A long history of colonialism and the slave trade are major tenets in the recent history of the country. In terms of contemporary demographics, the picture is complex.

## **NIGERIAN DEMOGRAPHICS: OFFICIAL AND UNOFFICIAL “FACTS”**

Nigerian demographics are generally presented in a highly political and complex manner. Depending on the source, numbers change. The nation’s population is officially reported at 133,881,703 (<http://www.cia.gov/cia/publications/factbook/>) but while living in Nigeria, I heard unanimous unofficial reports estimating the population to be closer to and most likely exceeding 200 million. CIA documents do accurately report that Nigeria is “Africa’s most populous country” and stated that it is composed of more than 250 ethnic groups. Unofficial records suggest that more than 515 African ethnic groups are currently living in Nigeria, “but the Hausa, Yoruba and Fulani make up the majority” (<http://www.startagain.org/Nigeria.htm>). According to official records, international politics, and CIA statistics, “the following are the most populous and politically influential [Nigerian tribes]: Hausa and Fulani (29%), Yoruba (21%), Igbo (18%), Ijaw (10%) Kanuri (4%), Ibibio (3.5%), Tiv (2.5%)” (<http://www.cia.gov/cia/publications/factbook/>).

According to mainstream politics in Nigeria, and according to numerous discussions I had with Nigerians (from various segments of the governmental and non-governmental sectors), the three most influential and recognized tribes are the Yoruba, the Igbo, and the Hausa. This is best represented in the geographical divisions in the country, with the vast majority of Nigerians (including those with whom I came in contact during my two years in the country) recognizing that the North is Hausa land, that the West is Yoruba land, and that the East is Igbo land. The oil region, referred to as “south-south” unofficially and officially referred to as the Niger Delta region, is known to belong to several influential tribes, the most influential, according to the people I spoke to, being the Ijaw and Ogoni tribes. Also worth noting is

what was unofficially referred to as the “middle-belt,” an area between Igbo land and Hausa land that was recognized as home to many of the minority tribes, the Tiv being the majority of that minority. It becomes clear, as I attempt to present the basic demographics of this nation, that it is a complex region with many official uncertainties and unofficial rich traditions. There *is* unanimous agreement and recognition of the fact that Nigeria is one of the continent’s most prosperous nations “due in large part to its rich oil and gas deposits” and due to its size and population, dwarfing all other West African Nations (<http://www.startagain.org/Nigeria.htm>).

When presenting the religious demographics of the Nigerian population, CIA statistics state that Muslims make up 50% of the population, Christians 40%, and that 10% of the population officially practise Indigenous beliefs. Many Christians in the country would dispute these numbers, claiming that it is a fifty-fifty split. Many Muslims have told me that they comprise more than 50% of the population; and in reference to the 10% who practise Indigenous beliefs, it became clear to me that the taboo attached to such practices has forced many into secrecy. I often felt that such taboos were remnants of colonialism and missionary ventures into the region. In trying to understand the religious dynamics in Nigeria, I found myself researching the official statistics, but listening very closely to the unofficial records passed on orally. Politically and socially, I found that tribal affiliations and loyalties transcended religious ones, especially within the context of violent confrontations. These political and tribal clashes were often referred to in Western mainstream media as “religious clashes.” The tribal and political contexts that overshadowed almost all clashes and transcended religious divisions felt much like a nationally understood phenomena but an internationally kept secret.

Historically, the British first came to Nigeria “in the late 1800s and by 1906, they controlled the entire country. Nigeria attained independence in 1960” (<http://www.startagain.org/Nigeria.htm>). Olusegun Obasanjo is the current (and officially first but unofficially second) democratically elected president, as of May 29, 1999. Because each tribe has its own language, culture, and traditions, the people of this former British colony communicate with each other in English, emerging in various forms throughout the country, commonly referred to as “pidgin or broken” English. The officially recognized languages in Nigeria, according to the CIA research are English, Hausa, Yoruba, Igbo, and Fulani. The unofficially recognized national languages are British English for the educated and broken or pidgin English

spoken by most of the masses, with Lagos having a specific dialect of broken English encompassing many Yoruba words. My experiences in northern states did not bring me in contact with a lot of people who spoke any form of English. Hausa is predominant in the North, Yoruba in the West (mainly south West), and Igbo in the East (mainly mid-east).

As one travels throughout West Africa, it becomes apparent that the national boundaries were not designed according to tribe or already existing African nations (or empires as oral tradition records), but according to colonial interests and access to shores for trading and commerce purposes. As I travelled along the coast of West Africa, starting in Nigeria and moving west into Benin Republic, I found that the Yoruba nation extended beyond the boundaries of Nigeria, along the southern coast, and that the Hausa nation also extended beyond Nigerian national boundaries and spanned the northern regions of neighbouring countries. The official lines had been drawn vertically by colonialists allowing access to the coast for trade purposes, but the unofficial nations still exist and are illustrated through language and practised traditions of people who live horizontally across several “national” colonial boundaries.

The official legal system in Nigeria is based on “English common law, Islamic Shariah law (only in some northern states), and traditional law” (<http://www.cia.gov/cia/publications/factbook/>). My work and experiences in West Africa brought me into contact with all three segments of the legal system.

Administratively, on a level of implementation, the criminal justice “situation” in Nigeria is best described as inhumane, highlighted through the visible injustices occurring through both official and “unofficial” (yet highly visible) criminal justice procedures. During my time in Nigeria, there were 142 prisons holding approximately 55,000 prisoners, 62.4% of whom had never gone to court (these statistics were gathered by PRAWA). Police brutality was visible daily on the streets, ranging from monetary extortion to physical abuse and mental degradation. The court procedures were not only slow (hence the high awaiting trial population) but in the majority of cases, were not understood by the average person (right down to words like “acquitted”). Officially the penal structures existed, officially “justice” was sought; unofficially, the infrastructure was not efficient, and unofficially, the people who work for the system as well as those being oppressed by it knew that it is something to be feared rather than a source of safety and security.

## CONTEMPORARY COLONIALISM

In attempting to study or formulate an understanding of colonialism, I find myself asking questions and facing conceptual barriers that are vague, difficult, and invisible yet so strong and real to me. These questions and conceptual barriers arose primarily during my time in West Africa, where I came to the realization that colonialism is live and well, and in control of so many visible and invisible social structures. The contradiction for me lies in a widely accepted, almost taken for granted “fact” that colonialism ended when the Euro-Western colonial governments pulled out of the occupied territories. Yet, left behind are their languages, their “superiorities” (economic and cultural), and their institutions of control.

The structures that I confronted most often during my time in West Africa were those erected through the criminal justice system. Ironically, it is those same structures that legalized slavery and colonization that continue to define and (il)legalize the conduct of members of the civil society, how their conflicts get defined and/or resolved, the division of labour, the control of land, cultural priorities, and economic negotiations. The irony of this situation seems to be lost in the arrogantly centralized aspects of the contemporary criminal justice system’s global capitalist institutions. In a quest to understand the absence of post-colonialism and the continued implementation of colonialism, I find it productive to focus on the impact of a colonial justice system in sub-Saharan Africa, as it is that system that presents a highly visible remnant of colonialism as defined through the historical era of physically occupied territories. In my quest, I am faced with the following questions and conceptual barriers.

### **What Is Colonialism?**

In search of an accurate picture of what colonialism is, I found Fanon’s assessment of Algeria and the revolution against the French colonial government illustrative. He concludes that:

Colonialism is not a type of individual relations but the conquest of a national territory and the oppression of a people: that is all. It is not a certain type of human behaviour or a pattern of relations between individuals. Every Frenchman in Algeria is at the present an enemy soldier. So long as Algeria is not independent, this logical consequence must be accepted. (Fanon 1964, 81)

Within the context of “occupied territory,” colonialism comes forth as a dichotomizing force, enforcing oppressor and oppressed roles, and in revolution, marking enemy and ally status. Within this realm, I have come to see colonialism as the formal implementation of war; international wars disguised as civil conflicts, occurring within specified “national” boundaries. An extension of these dichotomies exists today, as Hecht and Simone (1994, 18) describe the current geographical boundaries as central to an understanding of colonialism, considering that it was the colonial governments that defined these boundaries, the official languages<sup>2</sup> of each “nation,” and their existing political and social structures.<sup>3</sup> While the physical occupation of the land has legally ceased to exist, the co-optation of African social structures continues to occur, not only institutionalizing oppression within nations, but continuing to exploit international relations, while destabilizing continental associations.

Merry’s (1991, 890) assessment of colonialism presents an accurate summary of such intricacies: “Colonialism is an instance of a more general phenomenon of domination. Events that happened in the past, such as those in the period of colonial conquest and control, can provide insights into processes of domination and resistance in the present.” Further, she explains that an understanding of colonialism allows for an assessment of “domination at the periphery of the world system” (Merry 1991, 890).

Merry (1991) and Tamanaha (2001) present two definitions of colonialism: one general and one narrow. The general definition, one I found to be accurate, relates to an assessment of power and the unequal distribution of power occurring when one group endeavours to impose its command upon an “inferior” group. The narrow definition, one that encompasses a more traditional view of colonialism, asserts that “the term refers to the European political, economic, and cultural expansion into Latin America, Africa, Asia, and the Pacific during the last four hundred years. Although similar processes have been going on for thousands of years, it is the recent European expansion, intimately connected with the spread of capitalism and

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<sup>2</sup> Which continue to be used within them, facilitating territorial determinism of contemporary economic relations in Nigeria to England and the United States in general, in Cameroon to France, and in Angola to Spain and Portugal; in addition, past colonial Western nations tended to have the largest embassies in the African countries that they previously “inhabited.”

<sup>3</sup> Highly visible in the types of criminal justice systems currently institutionalizing each African “nation.”

the search for land, labour and markets, which has shaped the contemporary world” (Merry 1991, 895). The general definition of colonialism is one that is most relevant to the contemporary era of “post”-colonialism because it is not specific to geographic land occupations and is based within a context of global power relations.

Césaire (1972, 13) presents an assessment of colonialism that is painful, more heartfelt, and in my opinion, more functional in defining what the study of colonialism could achieve. He states that the study of colonialism allows society to “*decivilize* the colonizer, to *brutalize* him in the true sense of the word, to degrade him, to awaken him to buried instincts, to covetousness, violence, race hatred, and moral relativism.” In conjunction with Césaire’s switch of attention from colonized to the colonizer, Hecht and Simone (1994, 18) assert that colonialism was as much about disordering Africa as it was about ordering and stabilizing the West, claiming that the consequences of colonialism must be studied both in the destruction of African socio-political systems as well as in the settling of the West more comfortably into itself today.

### **Who Are the Colonizers?**

Western European nations quickly come to mind when colonialism is brought up: the British Empire in particular, with some awareness around France, Spain, and Portugal’s colonial exploits. Seldom do discussions on colonialism outside the academic realm bring in the colonization of North Africa by the Arabs. A prime example lies in Egypt, located on the African continent, yet referred to today legally and politically as the Arab Republic of Egypt. The same connotations are attributed to Libya, Morocco, and Algeria. In a more current context, the Americanization of the Middle East, the war in Iraq, the overthrow of the Afghani and Iraqi governments by the United States, and the implementation of “new democratic” (i.e., United States compatible) governments upon occupied territories does not seem to enter the conscious political and cultural realms of what colonialism, inappropriately relegated to a historical endeavour, has come to represent.

It seems that colonialism has been relegated to a historic timeframe, like a mistake in the past, ending when the British Empire became less powerful in relation to the American Empire. Césaire is frank in stating: “I make no secret of my opinion that at the present time the barbarism of Western Europe has reached an incredibly high level, being only surpassed, it is true, by the barbarism of the United States ... and I am not talking about Hitler, or the prison guard, or the adventurer, but about the ‘decent fellow’ across

the way [believing that society has progressed and civilized itself] a sign that cruelty, mendacity, baseness, and corruption have sunk deep into the soul of the European bourgeoisie” (Césaire 1972, 26).

These imposed historical connotations of colonialism have several implications. First, they place “colonialism” in a safe space, allowing colonial tenets and practices to continue, but outside the reach of contemporary criticism, not allowing the colonized territories to point mainstream fingers into history, bringing to light the true cycle of power and the continued degradation and exploitation of colonial practices; second, they place contemporary colonizers in a more righteous position of power, making their actions void of historical context and thus more difficult to assess according to learned lessons, thus perpetuating and enforcing global cycles of violence.

In reflecting upon these cycles, I found that Bourdieu’s (1991, 163–164) assessment of symbolic power may be applied. He states that “without turning power into a ‘circle whose centre is everywhere and nowhere,’ which could be to dissolve it in yet another way, we have to be able to discover it in places where it is least visible, where it is most completely misrecognized — and thus, in fact recognized. For symbolic power is that invisible power that can be exercised only with the complicity of those who do not want to know that they are subject to it or even that they themselves exercise it.” The symbolic power of colonialism today lies in the illusion of “post”-colonialism. In contradicting these notions, I hope to contribute to the dismantling of the global and temporarily continued misuse of power by the Western “industrialized” nations in their relations with the “developing” world.

It seems that abusive relationships and cycles of violence between Eastern and Western nations are only defined as abusive in retrospect, leaving the colonizer “sorry” but richer and stronger, and the colonized “broken” and poorer. I question the accuracy of this “broken” image, and the impact of the “victim” label upon colonized nations, since much of victimization (in the Western context) seems to be associated with helplessness, backwardness, blame, inefficiency, and lack of dependability, carrying with it an infantilizing connotation that keeps the aggressor in control.

### **Who Are the Colonized?**

It is not coincidence, in my view, that all nations defined as “developing” have colonial “pasts” while the vast majority of industrialized First World

nations have a history of colonial occupation. The impact of colonialism on Africa specifically has direct and implicit links to the economic and political problems that face the continent today. In perpetuating colonial tenets of superiority and “civility,” the aftermath of colonialism has relegated African nations to a “developing” or “underdeveloped” political and economic status, while enforcing a “developed” and First World image of the West.

Writing during the “colonial era,” Memmi (1965, 91) claimed that mythology and dehumanization of colonized populations played a functional role of control, and further asserted that “the myth is furthermore supported by a very solid organization; a government and a judicial system fed and renewed by the colonizer’s historic, economic and cultural needs” thus even if the colonized peoples maintained an African identity and resisted elements of degradation, “how could the colonized escape the low wages, the agony of his culture, the law that rules him from birth until death?” This question brings forth an assessment of resistance, but within the grander scheme of colonialism, what role does resistance play and how successful has the Third World been in maintaining and regulating its role in global politics? At times, the element of oppression becomes so large, and has established such engrained foundations on African soil, that resistance and survival become elements of colonialism, relegating much of the African existence to historical subjugation, forcing me to consider the massive impact such practices have within the capitalist method that engulfs much of the contemporary power relations.

### **Imagery Associated with Colonialism**

Memmi (1965, 79) explains that “just as the bourgeoisie proposes an image of the proletariat, the existence of the colonizer requires that an image of the colonized be suggested” and it is within these images, largely supported by and promoted through science, that excuses and justifications for brutality emerge; void of this imagery “the conduct of a colonizer, and that of a bourgeoisie, would seem shocking.” It is that same imagery that I find consistent from pre-colonial slavery, through colonial times in which Africa was divided up into occupied territories, to the so-called “post-colonial” contemporary era.

Gilroy (2000, 56) presents an assessment of colonialism within the context of racism, emphasizing that colonialism implemented an ideology that consigned Africans to prehistoric and pre-political statuses. He asks, “in what sense does modernity belong to a closed entity, a ‘geo-body’ named



Europe? What forms of conscious solidarity, and located subjectivity does it solicit or produce?" and he concludes that the process of colonialism provided an avenue through which "racially differentiated groups no longer shared the same present. The dominant groups could enlist their irresistible momentum of history on their side and treat the apparently anachronistic subordinates as if they belonged to the past and had no future" (Gilroy 2000, 56–57). The implications of such practices continue to exist today, with the overwhelming majority in the West subjecting Africa to a primitive image, one that encompasses visions of a used up victim of circumstance, too broken to participate in a future that was taken away through colonialism and slavery.

Upon my return to North America from West Africa, discussions with friends, family members, work colleagues, acquaintances, university students, and professors (with exception of a very special few), brought forth that overwhelmingly consensual response: Africa *is* perceived as a wounded continent occupied by broken people. This imagery contradicts my experiences in West Africa. I left Nigeria with a sense of empowerment, understanding that the West Africa that I experienced is a surviving realm, which despite immense exploitation and imposed brutalities, stands tall, not broken, but scarred.

In my assessment of the conceptual imagery of the continent, and in facing the contradictions between the overwhelming negative consensus in the West and my overwhelmingly empowering experiences in West Africa, I find myself thinking back to the tribal marks on a Yoruba friend's face. The scars were deep, and numerous, and I remember first reacting to them with surprise — they were not something I was used to seeing on a person's face. As I got to know him, and I saw more tribal marks on peoples' faces around me, I came to appreciate the beauty they accentuated in the physical features of a person's face, and I came to understand that scars (much like wrinkles), while seen as unsightly in the West, are signs of survival, healing, and wisdom in Africa. So when I say Africa is a scarred continent, I am placing that within an understanding that the scars that exist are signs of healing, and the unhealed wounds beside them are connected to past injustices. Also, the social, economic, and communal wounds that I did see and experience are not beyond the realm of control; they, like old wounds that have healed, would one day become attractive scars.

### **Language Associated with Colonialism**

The negative Eurocentric imagery associated with Africa as discussed above is ingrained and most prevalent in the type of language used when addressing or discussing Africa academically, politically, economically, and (though less in these politically “correct” times), culturally. Through my discussions with people in the academic and the human rights contexts, I found myself compiling a list of the double standards that are implemented and illustrated in the type of language utilized and normalized when referring to Africa, and other continents that have mass colonial “histories.” The list is an ongoing venture, and is nowhere near comprehensive, but it is representative of the discussions that I have engaged in. The list starts upon the international realm of discussion and ventures into the African national, structural (mainly within the context of criminal justice and law), human rights, leadership, and economic resources domains.

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<b><u>The “South” and “East”</u></b>	<b><u>The “North” and “West”</u></b>
<i>Underdeveloped or Developing Third World Nations</i>	<b>Developed, Industrialized, First World Nations</b>
<b>Ethnic and Religious Clashes</b>	<b>War</b>
<b>Brutality in Justice: Human Rights Violations</b>	<b>Brutality in Justice: Shortcomings in the penal system</b>
<i>Traditional Justice Systems</i>	<b>The Criminal Justice System</b>
<b>Community Justice (informal?)</b>	<i>Common and Civil Law</i>
<b>Aid and Education Campaigns</b>	<b>Civil Rights</b>
<i>Corrupt Leaders</i>	<b>Leaders make mistakes, are misunderstood or misinformed</b>
<b>International Corporate Initiatives and opportunities</b>	<b>International Trade Agreements, Free Trade and Capitalism</b>

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These words illustrate a double standard both in the definition of issues and in the implementation of solutions to these issues. On a hierarchical sphere of power, Africa continues to come in last; on an economic realm, Africa continues to represent a pot of gold that should be grateful for and open to the exploitation of its resources; and on a human realm, violence on African

soil is associated with communal “clashing,” while violence on Western soil is serious enough to warrant international wars and global attention.

It has become clear to me that the value of life in this global order is related to power, and that citizens of a powerful nation are entitled to anger and revenge when the lives of their loved ones are taken, while citizens of the Third World caste are not. Their anger is relegated to “clashing” with blaming the victim connotations while the anger of the Western world is used to justify illegal wars and continued colonial conquests. The double standards are so engrained that they are present in the politically correct language of this era. While it is no longer okay to call Africa “primitive” (in most contexts), it is now okay to refer to Africa as “underdeveloped.” I do not see a difference between the two terms. I do see a continued colonial mentality that is justifying a continued colonialism.

On another level, the “informal” approach to African issues, as illustrated in the language used, can be associated with resistance to assimilation, illustrating a flexibility of African societies that is complex in comparison with the simple rigidity of Western standards. When those rigid standards are not met, an informal relegation is accorded, and while this informality appears degrading, within a different context, the inability to formally define structures in Africa can be seen as an African triumph. According to Chabal and Daloz (1999, 4) “it is a consequence of the fundamentally instrumental concept of power which marks out what we call the informalization of politics on the [African] continent. There are, in consequence, good grounds for thinking that the weak character of the state in Africa may be more perennial than has hitherto been envisaged. It may well be, therefore, that the state in contemporary Africa will durably fail to conform to our own Western notions of political modernity.”

### **What Is Legal Pluralism in Relation to Colonialism?**

Legal pluralism is the academic field of study which researches how various legal systems exist in the same society, at the same time. Two forms of legal pluralism have been used to conduct the majority of research in this field. According to Tamanaha (2001, 115), legal pluralism as an ideology was initially formulated by legal anthropologists who were researching law and society in the wake of colonialism. The very birth of legal pluralism is thus linked to and reliant upon colonialism. The work of legal pluralists brought forth what can be referred to as classical legal pluralism. This form of legal pluralism encompasses a general understanding that defines specific

situations (such as colonialism) in which “two or more legal systems coexist in the same social field” (Merry 1988, 870). The imposition of colonial governments on African societies gave these “classical scholars” the ability to conceive of “plurality” and “diversity” as functions of social control mechanisms. Hountondji (1983) assessed the emergence of pluralism in Africa within the cultural realm, asserting that cultural pluralism existed in Africa before colonial governments institutionalized themselves. He contends that pluralism as a scholarly notion that emerged with a dichotomizing and simplifying function, artificially reducing pluralism to a confrontation between two extremities: “colonial” and “primitive” categories.

The “new legal pluralism,” as defined by Merry, better represents Hountondji’s pluralism. It represents an ideological shift that assumes that “plural normative orders are found in virtually all societies” (Merry 1998, 873). Within this understanding, state law itself is recognized as plural in nature (Merry 1988, 890), thus allowing for the unequal distribution of “harsh” consequences; in addition, an understanding of power is implemented in this ideology, thus allowing for an assessment of the “penetration and dominance of state law and its subversion at the margins” (Merry 1988, 886).

New legal pluralists reassess research that emerged during the colonial periods, within the context of that political era. They found that “customary law” was a product of the colonial period (Merry 1991, 893). What colonialists/scholars referred to as “indigenous law” not only reflected the colonial attitude toward law and social control, but became a method through which specifically selected socio-cultural or social control practices could be “formalized.” This helped shape the colonial “modernizing rituals” that were imposed upon African societies. In addition, the colonial modernizing elites were able to formalize those practices that were best attuned to their new market economy. This aided in efforts to co-opt African cultures while institutionalizing the power of tribal political leaders. The end goal was to maintain control of occupied African territories and the resources these territories had to offer. In assessing anthropological literature and contemporary scholarly research, Merry concludes that “native courts” are not a function of pre-colonial law but are a historical construct emerging during the colonial period. The study of the institutionalization of “native courts” illustrates the struggles that occurred between colonized and colonizers for land and resources: “The nature of law changed as it was

reshaped from a subtle and adaptable system, often unwritten, to one of fixed, formal and written rules enforced by native courts” (Merry 1991, 897).

In addition to assessing the changes implemented by “traditional” modes of social control through the colonial process, it is important to also place these changes within the context of contemporary social structures of control in Africa. Gilroy (2000, 41) stresses the need to recognize that colonialism was a military enterprise and thus implanted militarizing foundations for control. In an assessment of the contemporary condition of justice in Nigeria, Agozino (1999, 10) confirms that “the legal institution in Nigeria is militarized given the role of the special military tribunals in the trial of civilians, the widespread use of armed soldiers and police officers to shoot suspected criminals on sight ... the appalling conditions of overcrowded jails where detainees are held without charge, the use of capital punishment and lack of democratic accountability of security agents.” Abashi (1998) traces this militarization as an implementation of British colonial rule and assesses the constitutional building of a judiciary that has the discretion to not only access traditional laws when necessary, but to also refer to martial law when needed.

He illustrates the contemporary implementation of such constitutional regulations by bringing forth the “kangaroo trial” on November 10, 1995, in which writer Ken Saro-Wiwa and eight other Ogoni activists were hanged on murder charges that did not allow for appeal after conviction. These works illustrate the contemporary relationship between civil society and colonial legal institutions in Africa. It becomes clear that the inappropriateness of cultural separation from colonial justice is but one tenet of the problematic nature of these institutions as governmental structures in Africa. It becomes even more clear that the justice system in Nigeria is not a necessary function of social control in society, but is a function of global control in colonialism. By maintaining British institutions of “crime” control, Nigerian society continues to get caught up in the contradictions of such systems with its own African social structures.

### **What Was the Role of Law in “Colonial” Sub-Saharan Africa?**

The role of law within the colonial process was one that encompassed the justification of racism and the legalization of exploitation. Tamanaha (2001, 112) explains that the law implanted by colonizers was largely encompassed by regulations for economic enterprise and outlines the transition from laws meant to govern the colonizers, to laws transplanted to facilitate the

exploitation of colonized people's resources. Merry points out that

European law was central to the colonizing process but in a curiously ambiguous way. It served to extract land from pre-colonial users and to create a wage labour force out of peasant and subsistence producers. Yet at the same time, it provided a way for these groups to mobilize the ideology of colonizers to protect lands and to resist some of the excessive demands of the settlers for land and labour. (Merry 1991, 891)

In its ambiguity, the law becomes both oppressor and "liberator," thus placing within its realm the power to define liberty, take liberty, and shape liberty. In the colonial setting, this power extends beyond "liberty" and has come to encompass economic, political, cultural, and social consequences that not only enforce colonialism today, but continue to keep the wounds from historical repression wide open.

#### **What Is the Role of Law in "Post"-Colonial Sub-Saharan Africa?**

In an assessment of the literature on law and society in the colonial context, Merry concludes that "these works show how law served the 'civilizing mission' of colonialism — transforming the societies of the Third World into the form of the West" (Merry 1991, 894). In studying these "missions" scholars have focused on the points of intersection between "traditional" systems of conflict resolution and colonial legal systems, the new forms of law that emerged as a result of this interaction, and the points of resistance to co-optation that took form through traditional means of implementing legal and social control during colonial periods: "Colonial officials saw the decline in traditional authority as a threat to the stability of the colonial regime" (Merry 1991, 898). Law in this assessment becomes reinforcement for colonialism, institutionalizing cultural, economic, and political degradation.

Merry also stated that "Colonialism typically involved the large-scale transfer of laws and legal institutions from one society to another, each of which had its own distinct socio-cultural organization and legal culture" (Merry 1991, 890). This led to the implementation of dual legal<sup>4</sup> systems

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<sup>4</sup> Legality being a Western phenomenon used in conflict resolution, becoming imposed upon traditional pre-colonial modes of conflict resolution. The transition from conflict resolution to "legality" often gets taken for granted, thus ignoring the structurally and ideologically imposed co-optations that took place.

and the emergence of an ideology that assesses legal pluralism. Merry asserts that the implementation of “dual systems” (one for colonizers and another for colonized peoples) has resulted in an emergence of a conflict in post-colonial societies. It is a conflict that is centred on the struggle to “fashion a unified legal system out of this duality” while reviving and implementing pre-colonial traditions and laws (Merry 1991, 890). My time in West Africa illustrated to me the simplicity and inaccuracy of such an assessment. The conflicts that have arisen are not the result of this duality of legal systems. They are primarily a product of colonial attitudes and structures. While African civil societies continue to be exposed to colonial social structures and colonial exploitation of their resources, elite African government officials are able to employ capitalist endeavours, making a significantly small portion of the population richer while driving the majority into poverty. The legal system is a tool whereby oppression is implemented — the problem does not lie in its unity or plurality, the problem lies in its definitions, its legal cultures, its very existence.

#### **Has Colonialism Been Abolished in Sub-Saharan Africa?**

Tamanaha (2001, 115) assessed the role of law in the “post”-colonial context and found that while the revival of traditional law was “one of the leading slogans of the worldwide decolonization movement of the 1950s and 1960s” the decolonization process kept much of the legal regimes “virtually intact through ‘transnational’ clauses that continued existing colonial law until repealed.” Such repeals, if they were pursued, involved a lengthy bureaucratic process outlined in colonial languages and falling in line with colonial goals. Tamanaha also placed the role of Western law in “decolonized” settings within the context of international politics, and found that “under the prompting and influence of international aid agencies, of transnational banks and other corporations that required familiar legal regimes as conditions of investment” and in the best interest of capitalism, found that Western legal systems continued to implement control not only upon the “previously” colonized peoples, but primarily upon their national resources (Tamanaha 2001, 115).

It becomes clear in this assessment that the current global (dis)order is very much built upon the foundations of colonialism. An understanding of the contemporary situations void of the context of colonialism would thus constitute an incomplete and inaccurate representation. Hecht and Simone

(1994, 17) explain that “colonialism was meant for the West to redefine itself in relationship to the world. And the work for which African bodies were captured during slavery has much to do with the West’s efforts to change itself, to construct new kinds of economics and identities” forging a journey through which the West erodes opportunities for oppositional competition in the contemporary capitalist world order. In addition to these assertions, Hecht and Simone (1994, 15) outline the manner in which the African continent, in its “underdeveloped” manner, represents potential, “not only to survive, but restructure and reinvent itself within a context of global realities.” Within this framework, the dichotomization of the problems in Africa becomes difficult. Resistance becomes a necessary function of oppression, and simultaneously oppression grows to become a tool through which resistance can manifest itself.

Chabal and Daloz (1999) outline the more traditionally dichotomized debate that exists among scholars and politicians who discuss colonialism. They present an assessment of contemporary sub-Saharan political institutions within the context of this debate in attempts to address the problematic nature of these political institutions. On one side, some argue that political institutions have pre-colonial roots in the continent and thus are destined to fail, and on the other side, others argue that political institutions in Africa are in the process of “development” and thus are likely to face problems and downfalls. Hecht and Simone (1994, 31) bring this debate together stating that “the power of African colonialism was not so much to disrupt the internal dynamics of household, kinship, and social life but to disrupt the wide-ranging interconnections that existed among communities and people across often vast distances” adding that colonialism placed the continent in an inflexible condition, devastating but not eliminating its political structures and internal economic cohesions. Central to their analysis are not the functional or dysfunctional political institutions that exist, but more the context within which Africa now exists. The reasons for the existence of “problematic” institutions in Africa are not simply a tenet and natural extension of “historical” oppression, nor are they due to the struggle to rebuild from the destructions imposed by an oppressive history, but are shaped (problematically for the West) due to the attempted destruction of an entire continent’s social, political, and economic structures.

Rebuilding processes are not only problematic because they are being defined and assessed within a “development” framework that assumes these



destructions were successful, but are also problematic because they continue to be assessed through a Western lens:

Many discourses on Africa lament that the continent has lost its “traditions” and become a dumping ground for the world’s social and cultural waste. But in practice, Africans don’t so much defend their traditions as allow tradition to take its own course, into terrain that is often neither recognizable nor acceptable [to the Western world]. (Hecht and Simone 1994, 23)

This unacceptability and fluidity places Africans within a position of advantage, preparing them for a globalization that appears to be dissolving notions of statehood and relegating nationhood (in Africa more visibly than in other more structured settings) to colonial heritage. This dilution of statehood is visible at the national borders that separate African nations, but fail to separate African tribes.<sup>5</sup> Between the Nigerian and Benin borders, although laws exist to regulate trade between the two nations, “the border is the site of rampant smuggling, where unregistered markets provide a livelihood for many ... the illicit exchange is crucial to the economies of both countries. Officials are forced to turn a blind eye or risk further undermining the region’s precarious infrastructures” (Hecht and Simone 1994, 21). While travelling from Togo to Ghana, I did witness hundreds of women crossing borders with merchandise for sale. There was very little customs officials could do, despite their prescribed position of authority, and their colonial officials’ “uniforms.”

While the laws that regulate trade between nations are being compromised, within nations, Hecht and Simone (1994, 19) further explain that while African societies have become “underdeveloped in the web of advanced capitalism” what they have essentially accomplished in this “underdevelopment” is the ability to slip “further out of either comprehension or control. Post-colonial regimes from Khartoum to Lagos have no idea how many people live in their metropolis, let alone how, with

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<sup>5</sup> As the Yoruba reside in southwestern Nigeria, and neighbouring West African nations, while the Hausa tribes in northern Nigeria span northward into Niger, and westward into Benin Republic, Togo, and Ghana.

little or no employment or services, millions somehow survive.” And it is in that survival that “invisible governance” emerges, confusing, sometimes frustrating, but in general, destabilizing Western analysis of social structures, while empowering Africans enough to endure the hardships associated with displacement, oppression, and colonialism.

**“Post”-Colonialism?**

Has colonialism ended in Africa? I assert that it has not, that on an international and continental level, it thrives, that on a national level, it is well defined in the structures that are erected to regulate society, but on an individual level I assert that as in the times of occupied land colonies, the people continue to resist and continue to exist. So legally, yes, the same system that legalized colonialism has now “outlawed” it, implementing legal “independence” for African governance; but what is legal is clearly not representative of what is applied. Economically, socially, and politically, colonialism still has a strong hold on the continent. And on a level of micro-politics, resistance continues: the oppressive living conditions upon civil society continue to carry an emblem for survival against all odds. It is within this context that Nigerian prisoners live and it is within these historical and contemporary conditions that their experiences can be appropriately and accurately understood. For outside of this context, the colonial demonizing and “post”-colonial projecting of political and social ills can continue, but from within a contextualized understanding, the experiences of oppressed and imprisoned populations can become both tools for understanding as well as opportunities for resistance.