

AFGHANISTAN TO NIGERIA: THE FUTILITY OF FOREIGN LEGAL AND POLITICAL IDEAS

By

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Abstract

Afghanistan is the latest example of failed intervention by foreign powers in the legal, political and social life of another nation. Like Vietnam, the intervention of the United States in Afghanistan ended up in a fiasco and major embarrassment to the foreign policy objectives and practice of the World's number one power. In this article, using the case of Afghanistan as a reference point the writer surveys the reason why imposition or importation of foreign ideas and institutions of governance, law and economics has not succeeded in transforming African nations even where such ideas and institutions have been successfully practiced and existed in their home nations. He links the phenomenon to colonialism in Africa which could not after about a century or more of intervention in most African nations bring such nations to develop along the trajectories that the colonial masters fashioned for them or which the nationalists promised their people. He identified the major social difference of individualism vis-à-vis collectivism in Africa as being the underlying cause and recommends the need for intellectuals and practitioners to review and fashion out the organization of the nations of Africa along the original models of organization while considering the changes brought by diversity and agglomeration of different peoples into single nations. The article uses Nigeria as the country of study and pays closer attention to law and legal principles.

Keywords: *Afghanistan, Nigeria, Futility, Foreign Legal, Political Ideas*

1.0 Introduction

On Sunday August 15, 2021, the government of Afghanistan crumbled as the President of the nation, Ashraf Ghani, fled and left the city of Kabul to the invading and rampaging Taliban religious militants. He later apologized to the people from the United Arab Emirate for abandoning them. The United States of America had for almost 20 years driven the Taliban who held sway in the country a decade earlier from power into the remote mountains of Afghanistan. During Taliban's time in power, they made the country a haven for the Al Qaeda terrorists led by Osama Bin Laden. From Afghanistan Al Qaeda allegedly brought down the pride of America, the World Trade Centre in New York and the Pentagon, on September 11, 2001. The Taliban practiced a very ultra-conservative interpretation of Shiite Islam which had utter disregard for human rights especially for women and children. The Americans installed governments controlled by Afghan politicians who preferred more liberal ways of living which were tolerant of global, if not Western, ideas albeit under Islam. Some of them had been

refugees in the United States under asylum having fled from the Taliban's suffocating stranglehold during their first stint in power. These American-backed governments sought to introduce more liberal forms of government in the mould of democracy, not theocracy as the Taliban enforced. Before the Taliban took over in the 1990s, the Russians, formerly the Union of Soviet Socialist Republics, had occupied Afghanistan during the Cold War Era and left after several years of war with the same Taliban (Mujahedeen) then supported by the United States.

In a replay of the ugly scenes in Saigon, Vietnam on April 30, 1975, the world was shocked on August 15, 2021 and the days thereafter to see Afghans struggling to enter United States military cargo planes and others clinging to parts of the military plane as it lifted off the airport amidst civilians running along on the runway. Three of them, including a young footballer, of course but regrettably, soon fell off the plane to their certain death. The resemblance of the Afghan tragedy to what Henry Kissinger, in his book of the same title, called 'Vietnam: A Diplomatic Tragedy' was too eerie. Though President Joe Biden tried to put a bold face to it when he addressed the American nation on Tuesday August 17, 2021, he was not much better than President Gerald Ford who sat alone in the Oval Office in the White House in April 30, 1975 watching the television report of U.S. helicopters evacuating people from the embassy in Saigon (now Ho Chi Minh City) and later described that day as 'one of the saddest days in my life'.¹ The poignant repeat of history can be summarized by comparing the *Newsweek* magazine summary of the situation in Saigon in 1975 with the address of President Biden in 2021:

Henry Kissinger wanted a gradual and orderly exit from Saigon, to save Vietnamese as well as American lives. In the end, he says, he and President Gerald Ford became spectators to fast-moving events they could no longer influence, "suspended between a pain we could not still and a future we were not yet in a position to shape".²

It seems that that is a surmise of the failure of America's adventure into Vietnam as it is of Afghanistan. It may perhaps be a summary of foreign incursion into African and Asian societies!

As inquiry is made as to why African nations have made no success of any of the forms of legal, political and economic systems imposed by the Western colonial masters directly or indirectly or those imported by their leaders from the East, it has become necessary, by looking at Afghanistan, to examine the futility of the imposition or importation of foreign legal, political and economic ideas into African countries or other countries for that matter. This article tries to do that. It is hoped that in doing that an insight may be had into why all the Western ideas

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¹ See 'The Last Days of Saigon' a Special Report in *Newsweek* of May 1, 2000, 24-39.

² Ibid, 34. Kissinger was the Secretary of State during the Gerald Ford Administration.

in law, politics and socio-economic organization seem to fail so signally, to the embarrassment of the whole world.

The paper is discussed under six sections. In section one it examines the zest and quest of foreign nations without knowledge. Section two examines the nature of African society. Section 3 deals with the concepts and practice of legal, political and economic ideas in pre-colonial African societies while the fourth section deals with the intervention of European ideas and practices in these three fronts. The extent of success or failure of the foreign concepts is evaluated in section five while the sixth section concludes with some observations and recommendations. Law being the central concept of every society, the greater focus in this article is on Law and the legal systems in Africa in general and Nigeria in particular.

1.1 Foreign Zest and Quest without Knowledge

The United States had the missionary, if not imperialist, objectives to instill in the Vietnamese and Afghanistan societies not only its own views of democracy and capitalism but its ideas and practice of law and dispensation of justice. It seems to be its aspirations in some Latin American countries, from Venezuela to Cuba. As salutary or well intended as they perhaps may have been,³ the colonial European nations scrambled for and colonized Africa with the same motives. The assumption seemed to be that the colonized territories were lands of primitive natives who had no history, no law, no organization, no institutions and perhaps no ideas. So the colonial masters had to ‘help them’ by introducing their own history, laws, social and political organizations, institutions and all other ideas. It seems that this zest and quest was born more out of ignorance driven by paternalism and sense of superiority rather than sound knowledge of what is extant or ought to be. It is a zeal which assumes all those that it encounters to be infidels and ignoramuses in need of the flicker of light which the missionary carries or represents.

The colonial masters imposed their own ideas and practices of governance; their own legal systems based on their own theories and concepts of law and ran the economy of the colonies based on the colonial interests and needs of their home countries. Rather than lift up the colonies, they left them in deeper crisis of identity, poverty and governance. More than sixty years after independence in most of the nations the people are still dazed and seem to live in confusion.⁴ Unfortunately, the products of the education and re-orientation introduced by the colonial masters swallowed what they were taught lock, stock and barrel and made little or no efforts thereafter to contextualize what they received or adapt them to their communities and ways of life. They viewed everything from the spectacle of the colonizers and, in despicable

³ The foreign paternalistic nations always argue that such efforts are in the best interest of the indigenous population and their nations and it cannot be denied that some of the foreign interventions were salutary especially in a globalizing world. See Nlerum S. Okogbule, ‘Localizing Human Rights in a Globalizing World: The Challenges for Africa’, professorial inaugural lecture (Series No. 45) delivered at the Rivers State University, Port Harcourt, Nigeria on 26 April, 2017.

⁴ M. Meredith, *The State of Africa: A History of Fifty Years of Independence*, (The Free Press, 2005).

show of deluded elitism, rather increased and accentuated the dichotomy between the native and foreign ideas, practices and institutions, disdaining the former in order to be considered ‘civilized’ or modern. Over time the fissure became a big gulf and most of the nation’s virtually caved in or are presently at the precipice.

There may perhaps be no denying of the benefits of colonial intervention in African lives, especially when viewed from the perspective of what post-independence African leaders and governments have done to their nations in not just under developing them, which some have rightly or wrongly accused Europe of doing but dis-developing them by destroying what was present in the nations before colonialism and pre-independence. One does not dispute that some parts of Africa were on the road of development before the advent of the Europeans.⁵ The development was in organized societies operating under Law. However, it is not intended to engage in the historical scapegoat-seeking mission of blaming the Europeans for the lack of development which the continent has suffered and is increasingly suffering at the hands of its sons and few of its daughters.⁶

2.0 The Nature of African Society

Human concepts, whether of law, economics, politics or sociology, are usually meant to and actually operate within the milieu of particular societies. It is within that context that they make meaning and contribute to building societies based on sound foundational and operational principles. Whether they are prescriptive or normative, ideas and concepts on these subjects are not ordinarily universal. They vary from place to place according to geographical, racial, ethnic or tribal characteristics or from age to age depending on the effect of time and intermingling of peoples. Most thinkers were humble enough to admit that their propositions and theories were made within the context of particular societies and therefore expected some differences in operation or administration of the ideas in other climes. John Locke’s observations were based on what he saw in England just like Dicey conceded when he taught and wrote on Rule of Law.⁷ Jean Montesquieu’s studies were confined particularly to France and England.⁸ Adam Smith’s studies in his *Wealth of Nations* were based on his observations of 18th Century England and perhaps the epochs preceding that time.⁹ Even as recent as the 19th

⁵ Walter Rodney, *How Europe Underdeveloped Africa*, Panaf Publishing Inc, Abuja, Lagos, Pretoria, 26-85.

⁶ Ibid. While not exonerating the colonialists one does not think it smacks of imputing any capacity for self-governance to blame them for the sorry state of Africa in the past 60 years since most of the nations of Africa attained independence with unimaginable amount of resources at their disposal. An African proverb says that while a person is blaming others for what they did to him he should also ask what he had done to himself. Another one says that what kills a tree is at its root.

⁷ See John Locke, *An Essay Concerning the True Original Extent and End of Civil Government*; A. V. Dicey, *Law of the Constitution*, 10th Edition; M. Ayua, ‘Rule of Law in Nigeria’ in I. A. Ayua (Ed) *Law, Justice and the Nigerian Society: Essays in Honour of Hon. Justice Mohammed Bello*, 1985, Nigerian Institute of Advanced Legal Studies, 71.

⁸ See Book XI of his *L’Esprit des Lois*. I discussed it briefly in Chukwuma Chinwo, *Principles and Practice of Constitutional Law in Nigeria*, Second Edition, Princeton & Associates Publishing Co. Ltd, Lagos, 98-99.

⁹ Bantam Classics, with Introduction by Alan Krueger. In Smith’s discussion of colonies in Chapter VII of Book IV, for instance, his reference to Africa was only to the Cape of Good Hope as a passage from America to the East Indies, 749ff. Other references to the continent were to the ‘barbarous nations’ or peoples of Africa. Pp. 31, 805-6.

and 20th Centuries most philosophers were careful not to assume to be addressing issues from the global perspective.

It is always imperative and more beneficial that the social context of ideas and concepts be considered in assessing their application in different nations. The one size-fits-all approach has failed and is a cause of worry or wonderment for many researchers and analysts.¹⁰ Thus discussion of democracy, even using Abraham Lincoln's popular view of it in his Gettysburg Address as the government of the people for the people and by the people,¹¹ must be done by recognizing the peculiar way each society is structured and organized and how the concept of 'the people' is understood. The failure to do this has been the reason for blaming the panaceas provided for the challenges of African nations when the true problem is actually poor diagnosis and inappropriate prescription. African societies are native or indigenous at large and not migrant.

Thus on the issue of land for instance, there is for the average African, except the pastoral nomadic one, an attachment to land which extends to 'time immemorial' because it is conceived to belong not just to the present but to the past and future generations.¹² The ownership of the land is generally communal¹³ among the descendants of the founders of the community who may have first entered and cultivated it.¹⁴ The notion of individual ownership in Western societies is not similar to individual ownership in most African societies 'even though the very notions of family, sub-family and immediate family property carry with it an acknowledgment of an original individual acquisition by the founder of the family or branch of the family'.¹⁵ Based on the communal land economy much of life is considered from the communal perspective.¹⁶ Without this understanding many wonder why Africans fight over land to the extent that lives are lost. In the same way, a lack of understanding of the value of the nomadic pastoralist for his animals would always lead to the bloodletting that has been the lot of many African societies and which intensified in the early decades of the 21st century across East and West Africa with the devastating effects of climate change.

¹⁰ D. Acemoglu, and J. A. Robinson, *Why Nations Fail*, (Crown Business, New York 2012). The authors compared cities and nations that appear to be the same in several aspects but which progresses on different if not opposite trajectories and tried to identify reasons why that is so.

¹¹ S. S. Montefiore, *Speeches that Changed the World*, Quercus Publishing Ltd, London, 48.

¹² Before the West African Lands Commission in 1908, a traditional ruler, the Elesi of Odegbolu testified as follows: 'I conceive that land belongs to a vast family of which many are dead, few are living and countless members are still unborn'. Quoted in B. O. Nwabueze, *Nigerian Land Law*, Nwamife Publishers Ltd, Enugu, Nigeria, 53; *Salisu v Mobolaji* [2017] All FWLR (Pt. 874) 1785, 1815.

¹³ (n10) 32-35

¹⁴ This is often described as 'disvirginning' of the land.

¹⁵ Bentsi-Enchill, *Ghana Land Law* (1964) 81

¹⁶ Hillary Clinton in her book, *It Takes a Village*, discovered that it takes a village to do most things in Africa including raising of children

Likewise, democracy in Africa in its pure form, before the advent of Western concepts and institutions, was not a matter of individual vote but community decision and choice. ‘The people’ is not necessarily the aggregate majority of individuals but the community of the people (often the entire community). That is why dissent was and is still considered a punishable offence as being detrimental to the stability of the society. Yet ‘the people’ is not the entirety of the people but the aggregate of those who by virtue of age, birth, function, might or acquisition are considered important and or competent enough to decide for all.

In political leadership, in most African societies, the idea of a leader subject to the people was strange. He was not accountable to the people but to the god(s) of the community who though unseen would rule the community and make choices for it through the seers and initiates of some societies which are made to appear mysterious by acclaimed affiliation with the god or gods of the land.¹⁷ The leader or king is thus a representative or ambassador of the gods. He owns what belongs to the gods – the land and all the people in it. Thus, in most African societies the natural leaders or kings are known as ‘the owner of the land or community’.¹⁸ In some places, that confers on the king absolute powers over the land while in others he is the legal trustee to hold it on behalf of the people who meet him to request for and use land in line with his terms and conditions.¹⁹ To expect such a king to be accountable to his subjects in the Western sense seems to be an aberration of sorts. The people had to depend on their god to rein him in. In the societies that had strong religious culture, members of powerful secret societies or tribunals, like the Oyomesi of the ancient Oyo Empire, on behalf of the god of the land gave a king who had lost the confidence of the people the calabash which was an invitation to him to abdicate the throne and commit suicide.²⁰

A discussion of marriage in the traditional African society, even with a view to instilling some reform, must appreciate the view of the African that though conjugation of marriage is ordinarily and usually between the man and the woman, a marriage involves the families of the couple and opens up new vistas of relationship, opportunities and responsibilities for all involved.²¹ Also on the issue of succession and inheritance, the African social and legal

¹⁷ There seems always to be ‘the desire of most nations to find a mythical origin for themselves through their kings and ancestors’ Samuel Johnson, *History of the Yorubas: From the Earliest Times to the Beginning of the British Protectorate*, 2009, CSS Bookshops, 169

¹⁸ In Rivers State of Nigeria the titles are Nyenwe Eli or Ali (Ikwerre), Okan Ama (Andoni), Amanyanabo (Okrika, Kalabari), Onu Oyan Ekein (Udekama – Degema), etc.

¹⁹ In Hausa/Fulani communities of Northern Nigeria the Emir is absolute owner while in the Benin kingdom of Edo State in South-South Nigeria the Oba is a Communal trustee operating through his delegates. *Ighiwiyisi v Igbineri* [2016] All FWLR (Pt.819) 1056, 1069-170.

²⁰ (n17) 84-85.

²¹ No traditional African society in the 20th Century or the early decades of the 21st has accepted the notion of homosexual or same sex marriage involving sexual intercourse between persons of the same gender. It is considered as not only abomination due to culture but also contrary to the Christian or Islamic religions which are passionately followed in most of the nations and enforced as community matters. However, many African societies recognise surrogate same sex ‘marriage’ whereby a woman who may be barren or aged marries another woman to bear children in her name for her if she is not married or for her husband if she is married. Because of the idea that it is the responsibility of the woman to produce children for her husband one is not aware of any instance of a man engaging another man to serve as a ‘super stud’ to impregnate his wife

concepts did not give any person the sort of dispositive right that the European has to dispose of his properties as he likes, including to dogs and cats, when his children are not taken care of. Most African societies have proverbs²² which posit that if a deceased person wrongly disposed of his inheritance the living would rectify it. Of course, for a people who believe in the power of the dead over the living and worship spirits and the dead and that not without the performance of some rituals in the form of libation or sacrifice. Politically, this same challenge arises. Most Western political and social scientists must be at loss why all the time-tested political systems which have worked in their nations have not worked well or at all in the African nations. Some nations, like Nigeria, upon the attainment of political independence²³ have practiced the parliamentary system of government, which has worked for the United Kingdom for nearly half a millennium even without a written constitution;²⁴ the presidential system,²⁵ which has worked for the United States for nearly a quarter of a millennium, and dictatorship, which has always worked for Russia, without tangible success in the political or economic front.²⁶ The explanation, it seems, is in the nature of the African society and the

for him, even if he is infertile. The closest that may come to that is where the man deliberately winks at his wife consorting with another man provided it is discreet to preserve his dignity.

²² Proverbs in most African societies are like the maxims of equity in English Law.

²³ It seems that the only agreement most African societies had among themselves was resistance against foreign domination by way of colonialism. Incidentally that is a universal tendency. It has been said by many that Africans seem to have handled coexistence in diversity much better than Europeans. Some of the nations of Europe like Liechtenstein and most of the countries that emerged from former Yugoslavia and Union of Soviet Socialist Republics, some after very bloody wars, are not as large as the smaller ethnic groups which the European colonialists for their own administrative convenience cobbled together as one and insisted on giving them independence as units instead of releasing them as they were before colonialism or on their choices. It is the cause of agitations and cries of marginalisation, oppression and injustice in some countries like Nigeria, Ethiopia and Congo. Though humoured for their sizes, which they never worked for or desired, these nations are in some cases at the brink of implosion or explosion. At the time of writing in September 2022 Nigeria was engaged in legal proceedings against Nnamdi Kanu and Sunday Adeyemo (Igboho) who were leading secessionist groups in the South Eastern and South Western regions of Nigeria respectively while the Northern region has been in throes of invasion by Fulanis who proclaimed to be on a mission to complete the territorial acquisition of the 19th Century which they claim was frustrated by colonial government.

²⁴ Upon attainment of independence from Britain in October 1960, Nigeria, like other former British colonies such as Ghana, Sierra Leone, Uganda, Kenya, Tanzania, Zambia and Zimbabwe, embarked on the Parliamentary model of government. In six years it failed and was toppled by the military.

²⁵ After years of military dictatorship, Nigeria first practised the American Presidential model from 1979 to 1983 when the government was overthrown to popular acclaim by the military on December 31, 1983. The Military then ran the nation almost aground from 1984 to May 1999 during which period there were several coups. Somehow the realisation that what may keep the military at bay might be the use of former military Generals seems to be the only reason why the Presidential system has lasted over 20 years from 1999 to date. Ghana also passed through similar evolution with Jerry Rawlings. That may be an insight into the secret for getting stable constitutional government in Africa: the strong man who would have the vision and responsibility to build strong institutions that would outlast him and make the need for other strong persons redundant or impossible. That seems to be the unspoken political goal of President Buhari who has promised not to interfere in the 2023 General Election when Governors of his party visited him apparently seeking for such. See 'Buhari to Nigerians: I won't interfere in next year's polls' in *The Nation* newspaper of August 31, 2022, front page, 4.

²⁶ The Military, always cashing in on the impatience or frustration of the people with politicians that promised much and delivered little, overthrew most of the post-colonial constitutional governments, to the enthusiastic welcome of the people who were soon left high and dry. The experience seems to be uniform in all the African countries that have passed through the cycle. Of the major African countries only Cote d'voire and Cameroun have been spared military take over. These nations were under the shackles of dictatorial politicians who played the ethnic and economic cards very well enough to hold the people virtually captive. See Max Silloun, *Oil, Politics and Violence: Nigeria's Coup Culture (1966-1976)*, Algora Publishing, New York; Robert Guest, *The Shackled Continent: Power, Corruption and African Lives*, Smithsonian Books, Washington (2004) and Martin Meredith, *The State of Africa: A History of Fifty Years of Independence*, Free Press. After

cultural ideas which they hold dearly to and its being overlooked in the assimilation of foreign ideas and systems.

It is thus important that in the application of legal concepts or initiating of legal reforms in any area of life cultural peculiarities which are held sacred and perhaps immutable by the people must be put into consideration. Legal concepts ought to recognize and embrace these peculiarities and legal scientists in Africa or those from any other places studying the African society should conceptualize them for others to appreciate. Where this is not done it gives rise to the disconnect between the law and the people, including leaders, which has been the bane of Africa.

3.0 Legal, Political and Economic Concepts and Practice in Pre-Colonial African Societies

Pre-colonial African societies had legal, political and economic concepts and practices around which their communal existence revolved. These concepts embraced the universal ideas of justice, equity and fairness but were practiced within the socio-cultural peculiarities of the African society.²⁷ Some of these concepts and practices are commendably being reflected in judicial decisions and other legal instruments today in many African countries. Without elaborating on them, they include:

- a) Universal brotherhood. Consequent on this everyone has a duty to protect and defend his neighbour, his property, his children or wards and ensure that the neighbour dwells safely by him.²⁸ Criminal law in pre-colonial African society is addressed to all classes of society as the rules that they are bound to obey on pain of punishment.²⁹
- b) Collective Responsibility to lift up every member to basic minimum standards of living and to join in building up the community in a sustainable manner.³⁰
- c) Sacredness of life, it being an abomination to shed the blood of a fellow member of the community.
- d) High premium on accountability on being sent on errand. A representative had no right to appropriate what was given to him to deliver to the family or community, not even food or, as stated below, to seek to compensate himself.
- e) Fidelity to message. The proverb or maxim is that a messenger does not give proverb or parable. He is expected to give the message as given and not embellish or diminish its effect except to the extent of making it diplomatically acceptable.

reading this work I commented on it as ‘an outstandingly frank, well-researched and great work on the woeful state of Africa – the mother raped by its own sons while held down by its daughters’.

²⁷ Morse Hyun-Myung Tan, ‘Jurisprudential Underpinnings of Law, Especially International Law: The Basis for True Progress and Reform’ in *Tennessee Journal of Law and Practice* 2:1 (Fall, 2005) 8.

²⁸ *Fawehinmi v Akilu* (1987) 12 SC 136, 164; (1987) 4 NWLR (Pt.67) 794.

²⁹ *Ibid*, SC 165.

³⁰ Section 24 (d) Constitution of the Federal Republic of Nigeria, 1999.

- f) Respect for elders and authorities is paramount and where the elder is at fault on any issue he should be treated with decorum and respect in rebuking him but not excused or exempted from responsibility.³¹ Apportionment of responsibilities and benefits in the community invariably depends on this criterion of age.³²
- g) Representation of a family or community is considered a sacred trust and a delegate has no right to compromise the interest of those that sent him on an errand. If he has no conviction to go on an errand as sent, he is expected to decline or get a better direction.
- h) Public goods are shared openly in the presence of all or as many as possible. It is said that if it is shared in the secret or in the dark the first son or most senior would be accused of taking the lion share.
- i) Respect for experience acquired by age or engagement. This is conveyed in the proverb that what an aged person can see while sitting down a child or young person would not see it even standing.
- j) Crime is outrage against the collective ethos and conscience and demands prompt and public punishment. In some cases, it is an offence against the gods which require their appeasement by sacrifice. No one is expected to connive, collude or cover up an abominable conduct.
- k) It is the responsibility of everyone in the society to work hard to keep his family and leave inheritance for his children.
- l) The woman is to be protected by the man in the home and the men in the community and therefore women are not to be exposed to responsibilities that would in any way expose them to ridicule or pain.
- m) Sons are an extension of every man and parents, especially fathers, have a responsibility to make them know and acquire skills to do what the father does and perpetuate it within the family.³³
- n) Leadership must be in accordance with generally accepted due process³⁴ and with due respect to the ancestors who have gone to dwell with the gods and yet watch over the living.
- o) The honour of a family is in what it has of the major indices of wealth in the community and it must be protected with all the resources the family or community can muster in accordance with the established rules and practices which may include resort to the supernatural like juju.

³¹ This principle which was also stated in Paul's epistle to Timothy is still held strongly in Africa. *Holy Bible*, 1 Timothy 5: 1, 19,20

³² Walter Rodney (n5) 42.

³³ John Nwodo, in *This Day* newspaper of September 24, 2002, 37 quoted in Chukwuma A. J. Chinwo, *Studying and Practising Law in Nigeria*, 2nd Ed., Princeton & Associates Publishing Co. Ltd, Lagos, 8.

³⁴ The Ikwerre people of Rivers State describe due process as *omeneli*.

- p) While individual wealth is accepted and encouraged no one is to eat or enjoy his wealth alone to the exclusion of the other members of the society. The wealthy person is expected to invite others to help him produce and let them partake in its enjoyment.
- q) The younger ones are expected to learn by getting close to the elders, observing them do what they do, ask questions and practice what they see. This is till observed in places like Igbo land in South-East Nigeria by way of apprenticeship. Formal and mass education was rare. But mass induction or initiation, akin to graduation programs, was popular.
- r) The idea of an artificial legal personality who can be treated separate from the person who does a business or performs an act of leadership is not accepted. Everyone was expected to bear personal responsibility for his actions.
- s) Every individual, family and community is entitled to a good name and if anything is uttered or done to blemish it serious sanctions followed which showed that the culprit is not worthy of respect at all.³⁵
- t) A representative, even a champion, has no right to reward or garland himself; the community or family publicly appreciates him and gives him any reward. It is an abomination to confiscate public resource because one had the privilege to represent the community even in leading a war or redeeming a pledged land.
- u) Everyone in the family or community has an assigned portion of benefit as he has in fulfilling duty. Thus the first son, first daughter, second son and others had designated portions/parts in an animal that is killed by the father in hunting or otherwise procured. If the children are not of the same mother equitable distribution is done by alternating between the sons or children of the different wives such that no particular kitchen has an undue large portion leaving the others as if they are not children of the same father.
- v) Justice was assured by ensuring that everyone is treated as another. The proverb is that it is unfair and unjust to treat the second person differently from the first.

These are some of the settled principles on which most African societies were run in all sectors before the advent of the colonial masters from Europe. Some of the concepts may have been abused in application and practice but the systems had ways of rectifying abuses to preserve the social solidarity.

4.0 The Intervention of European Ideas and Practices

Europe got to African and found a people who were settled in their several enclaves, some content to be alone and separate from others like the Biblical account of the Sidonians whom

³⁵ The Ikwerre people of Rivers State, Nigeria have the doctrine of *chacha* which penalizes defamation of character with among other things the fine of a goat described as *owu chacha*. A culprit is by that sanction proclaimed to be a person of no reputation whose words can no longer be taken seriously. The blood of the goat is offered as an appeasement sacrifice to the gods for the sacrilegious defamation of the victim's character while the people eat the flesh.

the tribe of Dan conquered³⁶ while others were in warlike moods seeking to extend their geographical presence beyond their present boundaries. The European adventurers took advantage of both tendencies to overrun the native people by hook and crook. While they got into Africa in search of sources of raw materials they soon took undue advantage of the simplicity and, in some instances, gullibility of the people and began to develop the ideas of being an exceptional people with whom lay the solutions to all the problems of the communities they met. It was exceptionalism in practice. The Europeans had it in great measure in the period of two centuries or more of colonialism and imperialism in Africa. With the fall of colonialism after the Second World War the Americans seemed to take over from the Europeans whose weaknesses were exposed in the two World Wars. It was manifest in Asia, especially in Korea and Vietnam. According to Henry Kissinger, ‘One of the most important casualties of the Vietnam tragedy was the tradition of American “exceptionalism”. The once near-universal faith in the uniqueness of our values and – and their relevance around the world – gave way to intense divisions over the very validity of those values and the lengths we should go to promote and defend them. And those schisms have profound impact on the conduct of U.S. foreign policy ever since.’³⁷

In the 1960s, under President John F Kennedy, United States, in pure self-conceit, assumed for itself the place and role of the universal police man. This was captured in Kennedy’s Inaugural Address when he said that the nation under his administration would ‘pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, to ensure the survival and success of liberty.’³⁸ According to Kissinger, ‘At the time there was virtually no opposition to this open-ended commitment...’³⁹

The United States, while demurring on any impression of colonialism took the path Europe trod and failed. It sought to impose its ideas of law, politics and socio-economic system on the people and regarded local ideas and practices as repugnant to their own idea of what is legal, equitable, just and fair. Even where local structures were preserved, they were retained not to serve the needs of the local people but the interest of the foreign country.⁴⁰ The goals of the colonial masters appeared to be directly and completely to replace native ideas, structures and institutions with foreign ones, as France did by the policy of assimilation, or like Britain, indirectly and partially substitute them using local agents in native garbs.

In Afghanistan USA fought and lost the longest war in its history and took a blow to its pride after losing over 2,400 soldiers and trillions of dollars spent in keeping its troops, training and

³⁶ *Holy Bible*, Judges 18: 7-11, 27-29 (KJV).

³⁷ (n1) 35

³⁸ (n11) 142

³⁹ (n37)

⁴⁰ In the course of colonial administration in Nigeria and other countries such as India and Sudan, the British introduced the Indirect Rule system whereby it used the existing traditional institutions to rule the people in pursuit of colonial objectives and programmes such as taxation, recruitment of soldiers and law enforcement officers, etc.

maintaining Afghan defence forces and equipping them with highly sophisticated military hardware.⁴¹ In 20 years the United States tried to institute in Afghanistan western ideas of democracy, civil society, law and justice; in short, Western Civilization. While pushing and pursuing the Taliban, a group it had tried for decades to make its ally and failed, it was propping up politicians who were derided by the Taliban and others as American stooges but who, while claiming to embrace Western ways, were engaged in levels of corruption and incompetent misgovernance that would shock the average American. The leopards could not change their spots. Rather than raise anti-Taliban sentiment the governments made the people to rather wish for the ousted religious extremists who, like the communists, sang good music to the people which they themselves would rarely dance to. In Iran, the extremists that claimed to fight against Western-inspired corruption and immorality assumed office and took the nation further into these evils while depriving the people the right or even opportunity to know what they were doing not to talk of dissenting.⁴²

The situation must have raised questions in the minds of the Americans at home and the Afghans as it did in the minds of the international community as to the value of their presence and intervention. It is the same situation in most countries where there had been colonialism and efforts to impose foreign legal, political and social ideas. African native societies conquered by the colonialists but granted independence, whether peacefully or precipitously after bloody struggles, are suffering the contradiction inflicted by these efforts today, in some cases like Nigeria, not less than six decades after political independence.

The ideas and practices forced down or dumped on the African nations are in the legal, political, socio-cultural and economic aspects of life. The problem is not in those concepts *per se*. Concepts and ideas can be adapted to and adopted in different environments and be made to work with little friction if the proper things are done. The proper thing is invariably in the adaptation. The adaptation process must have in view the environment and the people who must be presumed to know what is right for themselves and have developed cultures that they find acceptable. Sometimes what is considered 'new' concepts and practices by the foreigner may be in existence in the host environment but only operating under different forms. The Christian doctrine has it thus:

Now there are diversities of gifts, but the same Spirit. And there are differences of administrations, but the same Lord. And there are diversities of operations,

⁴¹ With over 3000 persons who died on 9/11/2001 in the attacks on the World Trade Centre and the Pentagon it means that the war to capture Osama Bin Laden and conquer Al Qaeda took not less than 5,400 American lives and an undetermined number of Afghans and others. It thus cost American very heavily in human and financial resources.

⁴² It followed the pattern George Orwell depicted in his epic work *The Animal Farm* which seems to be a pattern familiar with groups that promise revolutionary change but assume power and do worse than the ousted derisively described *ancient regime*.

but it is the same God which worketh all in all. But the manifestation of the Spirit is given to every man to profit withal.⁴³

Lack of understanding of this and not working accordingly is like trying to make one size of shoe to fit all with obvious inclination to fail and possibly lead to falling.

5.0 The Extent of Success or Failure of the Foreign Concepts

The quest for holistic autochthony is almost always the battle that persists after political independence in most nations.⁴⁴ It is high time that proper evaluation should be done as to why African nations that had contact with foreigners, whether of the West or East, and their ways and institutions have not been able to replicate the success those foreigners made in the development of their societies. Several efforts have been made in this direction, especially by ideologues like Walter Rodney⁴⁵ without much success. Ideological pitching seem to fail as much as colonial fiats because of the same kind of failure to adapt foreign ideas to the local environment to develop autochthonous patterns based on which societies would grow and be able to contribute to worldwide collage and discourse of systems. The impression that an idea or practice of the East would work by itself where those of the West did not work is as flawed and paternalistic as the wholesale imposition or importation of the first. This has been proven even in the areas of physical science and technology. Many of the successful Asian nations have succeeded by adaptive technology. Many of them in the same vein have made cultural success by adaptation rather than mere ‘copy and paste’. According to Indira Gandhi,

...for India to become what we want it to become with a modern society and firmly based on what is good in our ancient tradition and in our soil, for this we have to have a thinking public, thinking young women who are not content to accept what comes from any part of the world but are willing to listen to it, analyze it and to decide whether it is to be accepted or whether it is to be thrown out and this is the sort of education which we want, which enables our young people to adjust to this changing world and to be able to contribute to it.⁴⁶

‘American intervention has left disastrous outcomes in Iraq, Libya and now in Afghanistan today. It is a result of a tragic cognitive dissonance between understanding and the realities on the ground; between ambition and hubris. The West have never really understood the Muslim

⁴³ Holy Bible, 1 Corinthians 12: 4-17 (KJV).

⁴⁴ Peter Oliver in R. Grote, F. Lachenmann, R. Wolfrum, (eds.) *Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford University Press, 2017); I have written on autochthony in Chukwuma A. J. Chinwo, *The Problem of Autochthony in Nigeria's Constitutional Democracy*, Yenagoa Bar Journal (2018 2(1) 1. Constitutional autochthony can be used in the procedural and substantive sense. In the procedural sense it refers to the persons who made the constitution while in the substantive sense it refers to the ideas and institutions enacted into the constitution. It is mainly in this substantive sense that most independent African constitutions are deficient and thus ineffective.

⁴⁵ (n5).

⁴⁶ (n11)183

World, least of all Afghans; a people who value their extremist ideologies more than life itself; and who are prepared to wage a war for entire century to achieve their ambitions'.⁴⁷

It is the same thing that happened in most African nations. Not much effort was made by the colonial governments and their apparatchiks to understand the realities of the lives of the people. Unfortunately, the local educated elites and the educational curriculum they adopted on attaining independence did not do better due to lack of thinking. They stepped into the shoes of the former foreign masters and continued where they stopped without making any effort to indigenize. In some cases, the local elites became more disdainful of local ideas, practices and institutions than the foreigners and would not accept any attempt to view anything from the local perspective as civilized or worthwhile.⁴⁸ It is perhaps for this reason that African academics are yet to develop effectual theories of Law, politics, economic development, religion (including Christianity and Islam) and so forth which the people can relate with and own. As a result, Western and Eastern minds find it difficult to connect what happens in African to ideas which are claimed to proceed from them. The capitalist in the United States may still find it as difficult to understand the operational methodology and ideas of his counterpart in most African countries as the communist or socialist of China or Cuba with his African counterpart. Even in the practice of religion many of the practitioners of the major religions of Christianity and Islam elsewhere might find it difficult to relate with the practice of those religions in Africa. The problem, it is submitted, is not in the content of the doctrine but in the context of practice.

The nature of every society and its way of life invariably affect the workability of any ideas in every sector. One fundamental difference between the Western and African life, which affects the efficacy of many concepts of society that work elsewhere but have not worked well in Africa, is the idea of individualism vis-à-vis collectivism. It has been said that the concept of individualism appeared first in France after the French Revolution and was used to describe the evil and anti-social impulse of self interest. According to the *Encyclopedia Americana*, there has been two ways of defining the meaning of the concept – the ideal definition and historical imports. The ideal definition defines it as a doctrine that asserts the supreme value of the individual and sees society as only a means to the satisfaction of individual ends. In this sense individualism is in contrast with collectivism.⁴⁹

It is this sense of individualism that the colonial government left for Africa and which the ruling elites adopted and made governance, whether by way of constitutional democracy or

⁴⁷ Obadiah Mailafia, 'The return of the Taliban' in *The Punch* (newspaper) of Monday, August 23, 2021, back page

⁴⁸ This tendency is manifest in the academic sphere where the emphasis on being published in foreign journals or by foreign publishers has grown to utter disdain for local journals and other publications. The realisation of the need for a shift from this tendency in literature led to the establishment of the African Writers Series by Chinua Achebe and others. Today 7 Africans have won the Nobel Prize in Literature. A British publisher not only rejected Achebe's script for his book *Things Fall Apart* but did not have the courtesy of returning it to the writer.

⁴⁹ *Encyclopedia Americana*, 2000 Grolier Inc. (15), James W. Ward, 69.

dictatorship, a farce; leaving the people at loss whether they were better off under colonialism or independence. It has been as much a difficulty for the ruling elites though as for the masses why the systems of governance which had been proclaimed to hold the solution to the underdevelopment of their societies do not work in their nations. To operate a Western governance model in an African society without the necessary adaptation is as difficult as trying to make a square peg fit perfectly in a round hole without chiselling parts of either.

The intellectual, ideological and physical battles against Western democracy and capitalism by the socialists and communists of the East have been against the individualistic approach of the West. Yet adoption of communism and socialism in Africa including Julius Nyerere's *ujamaa*⁵⁰ did not provide the promised or envisaged solution.⁵¹ This is because most African traditional communities, while not blandly capitalist, are not communist. Private wealth is allowed and encouraged but is usually based on the consideration of the one who gathers not gathering all and the one who consumes not taking all to himself.⁵² The collectivism envisaged in this article is not akin to Nyere's *ujamaa* villagisation policy called *operation vijiji* which forced people into government-created virtually-forced village settlements. It is rather one based on the natural organization or grouping of the people. Except for the nomadic Fulanis in Nigeria for instance, all the peoples of Nigeria are organized in villages which they acclaim to be their places of origin.⁵³ Unlike the aspirations of socialism and *ujamaa* as shown in the Arusha Declaration of 1967, the African society is not a classless society. Yet it did not allow for slavery or slavishness within the community.⁵⁴ Its conceptual focus is akin to the Judeo-Christian doctrine which encourages everyone to get as much as he needs but not excess:

This is the thing which the LORD has commanded: 'Let every man gather it according to each one's need, one omer for each person, according to the number of persons; let every man take for those who are in his tent.' Then the children of Israel did so and gathered, some more, some less. So when they measured it by omers, he who gathered much had nothing left over, and he who gathered little had no lack. Every man had gathered according to each one's need.⁵⁵

The New Testament makes similar prescription for co-existence.⁵⁶

⁵⁰ Swahili for family-hood or extended family.

⁵¹ Ibid, 577; Claude Ake, *A Political Economy of Africa*, Longman, 116-117, 156-157.

⁵² This is expressed in the maxim of the Ikwerres of Rivers State, Southern Nigeria: '*nye okpa kpakwoga, nye ori rikwoga*'.

⁵³ Section 25 of the 1979 Constitution of Nigeria defines citizenship by birth with reference to 'community indigenous to Nigeria'. The nomadic aspect of the Fulani life is for the rearing of their cattle and in that capacity they show no interest in politics. Where they have settled peacefully they become a political unit and settlement. In most parts of Northern Nigeria they deftly control the politics of the areas upon settling. However, this is also the cause for serious conflicts when they seek to dominate the indigenous communities. It is believed that a well thought out political arrangement can incorporate even the nomadic tendencies without prejudicing the indigenous community and its people.

⁵⁴ Rodney (n5) 46, 52-56.

⁵⁵ *Holy Bible*, Exodus 16: 16-18.

⁵⁶ Ibid, Galatians 6: 2-10.

The African society originally believed in egalitarian capitalism and communal responsibility.⁵⁷ While it makes room for the strong man, his worth or esteem is not in what he does, earns and keeps for himself but what he does for others and the entire community. Unfortunately, the imported Western ideas were not founded on this and the counteracting Eastern ideologies went to the non-sustainable extreme of proclaiming everyone equal and everything for all, thus encouraging lack of initiative, drive and vision while the leaders surfeited in wealth not earned by hard work but brazenly stolen from the public purse.⁵⁸ This seems to be reason for the failure of the forms of governments of the West and East in Africa and it warrants a new definition of democracy which must give a pride of place to the community's interest of advancing without leaving anyone behind. Constitutionalism in Africa must be based on the beneficial way of life which the people had before the advent of colonialism and the intellectual boomerang of communism.

Thus, Rule of Law must involve obedience to God as believed and worshipped by the people or each person in view of the high regard for religion. Democratic representation in the legislature at all levels, for instance, should as much as possible be based on homogeneity of the constituency along their natural history. In that unit the African is more accountable, knowing that it houses those among whom he was born, lives and have his being and among whom he would be buried when he dies.⁵⁹ The opinion of this group matters much to the African and he would respect it more than any choice made by political parties controlled by some godfathers who demand allegiance based on selfish agenda of dominance. If such units are given the power to select, vote and recall their representatives it is submitted that they would be more accountable in their service. A natural unit-based constituency delimitation approach, even in a modern State, would also respond to some of the causes of agitation and destabilization in most African nations such as zoning of offices and distribution of resources. This idea advocates a bottom-up political structure using the extant natural arrangements into villages, clans, kingdoms and tribes having similar history.

In a native society like Nigeria, it is submitted that the rights of the communities as legal entities ought to be recognized. It is well-known that agitations are usually communal extending to tribes and regions as in Nigeria.⁶⁰ The attempt by the makers of the 1999 Constitution of

⁵⁷ (n54) 46-47.

⁵⁸ Political leaders in Africa at all levels have been brazen in looting their national incomes and stashing them in Europe and other safe havens to the impoverishment of their nations. Among the most notorious ones are late Sani Abacha of Nigeria, Mobutu Seseko of Zaire and Emperor Jean Bokasa of Central Africa Republic. It is still an ongoing tendency.

⁵⁹ To be buried 'among my people' is one of the greatest desires of the average African unless he lives too far away from home at the time of death or his religion, the other dominating consideration, warrants otherwise.

⁶⁰ The major agitation in Nigeria on the approach of every general election is which region or zone in the country or State shall produce the next President or Governor. It is an agitation based on communal not individual interest irrespective of whether the emergence of 'our son' translates to the improvement of the condition of the zone rather than the leader and his cronies. Section 14(3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 provides for the issue under the concept of Federal Character Principle as follows: (3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of

Nigeria to provide for ‘federal character’ appears to be an attempt, albeit tentative, at making democracy appreciate the peculiarity of its environment.⁶¹

Governance at the local level would be more effective if it is organized along the lines of the natural groupings earlier identified. The local government system in Nigeria plummeted and could no longer meet the expectation of being development centres and the means of bringing government closer to the grassroots because the real power of choice of councilors and chairmen of Local Government Councils, some which were created to assuage the selfish needs of some political potentates who control them as personal cash cows, is not in the communities but in political parties under the stranglehold of superior potentates such as State Governors. It is suggested that if fifty percent of the revenue of Local Governments were allocated to and managed by these natural units under the regulatory control of the States, they would have developed much better.⁶²

6.0 Conclusion and Recommendations

This article has proceeded on the premise that while cross-culturalisation, whether voluntary or otherwise, may be inevitable in the development of nations, it is important that local fundamentals be preserved or reformed with the willing acceptance of the host people who should seamlessly adopt such reforms and adapt their lives to it. Where this is not done it often results in dysfunctionality in the society in such a manner that time and resources put into the process of making such nations become a waste. This is what happened in Vietnam and Afghanistan. It is submitted that it is the bane of African nations, which after over a century of encounter with the Western world through colonialism, are still steeped in crises of identity and remain grossly underdeveloped in spite of the intellectual attainment of their nationals and abundance of natural resources. It is recommended therefore that:

- 1) African intellectuals including Law teachers and researchers, should conduct proper researches not to criticize foreign ideas imposed on them by colonial masters or imported by their African political leaders without consideration of local viability but to understand the historical values, ideas and institutions that operated in their nations

persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies. (4) The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation’. ‘Federal Character ‘refers to the distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation as expressed in section 14 (3) and (4) of this constitution’ (Section 320).

⁶¹ See the Federal Character Commission Act, Cap F7, Laws of the Federation of Nigeria, 2004

⁶² The oil industry in Nigeria in 2007 or thereabout introduced what is described as the Global Memorandum of Understanding (GMOU) with their host communities whereby the communities created Trust Boards and accountably managed monies voted for community intervention by the NNPC/Oil Companies Joint Ventures. That has dramatically reduced crisis in the Niger Delta and enhanced peace in the operational environments of the joint ventures.

before the advent of the foreigners and advance ideas on how they can operate in the context of modern diverse nations in which they are.

- 2) Legal, political and social theories must be developed to properly conceptualize the practices and institutions customary to and effective in African societies in the context of the modern times. Decades after independence and establishment of Law Faculties, for instance, it seems unfortunate that legal theories developed by Eastern and Western legal philosophers are still held sacrosanct in African Law Faculties even when those ideas do not in any way explain the rationale, function and meaning of Law in Africa before encounter with the foreigners or after they left the continent.⁶³
- 3) Constitution-making in Africa must be based on ideas that are directed at reflecting the lives of the people in their socio-cultural context while taking care of the diversities of the larger society.⁶⁴
- 4) The upcoming generation of African leaders in various institutions of learning should be instructed on this contextual explanation of legal, social and political ideas, practices and institutions in order to put them into practice when they assume the reins of leadership in their nations. It should no longer be enough, if necessary, to reel out and force down the mind of the youths of Africa theories and ideas conceptualized and practiced in social contexts that are fundamentally different from those of their nations.
- 5) The present crop of leaders in whose hands the imported and imposed ideas have failed should be open to autochthonous ideas and put them into practice from the community levels to the central governments. These ideas should guard their policy formulation.

⁶³ One has noticed that Law Faculties are not conceiving or encouraging their postgraduate including their doctoral students to think outside the imported and imposed intellectual boxes. A doctoral Law student once told me of how his supervisor questioned his audacity to propose a theory of law!

⁶⁴ *Rabiu v State* (1980) 8-11 SC 130, 148, Udoma, JSC