THE NIGERIA CRIMINAL LAW
A SOCIOLOGICAL EXAMINATION
OF THE FORM, CONTENT AND OPERATION

BY

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A thesis submitted to the Postgraduate School, Ahrnadu Bello University, in partial fulfillment of the requirements for the degree of Master of Science in Sociology with specialisation in Sociology of Law.

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December, 1984

CERTIFICATION

This thesis entitled THE NIGERIA CRIMINAL LAW: A SOCIOLOGICAL EXAMINATION OF THE FORM, CONTENT, AND OPERATION by Mr. P. O. Omaji meets the regulations governing the award of the degree of M.Sc. (Sociology) of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DECLARATION

I hereby declare that this thesis is a product of my own research work and that it has not been submitted elsewhere for award of any degree. All sources of information have been duly acknowledged by means of reference.

DEDICATION

To the Almighty;

to my beloved wife, Alice;

to our children, Ruth and Reuben;

to the CAUSE of Substantive justice.

ACKNOWLEDGEMENTS

In all sincerity, this thesis benefitted from commendable contributions of many people. Among these, Associate Professor 'Femi Odekunle of the Department of Sociology, Ahmadu Bello University, Zaria who supervised this work deserves mention before all else. Simply put, I shall live to ever remember him, particularly, for unsparingly bringing to bear upon this work an enviable quality, namely, a meticulous concern for lucid and perfect (or thereabout) presentation, in pursuance of which he made line by line corrections and incisive comments on the drafts of this work. For this, I am greatly indebted.

Others to whom I must express my heart-felt gratitute are Dr. Ebow Mensah, Dr. Z. Kano, Dr. P.Wilmot and Dr. O. Nkom,all of Sociology Department of Ahmadu Bello University, Zaria, who, in one way or the other, enlightened and encouraged me in the course of this work. I should like, similarly,to acknowledge the constructive advice from, and discussions with, persons from other units of this University. These include Dr. Ofori-Amankwa and Dr. Kharisu S. Chukkol of the Faculty of Law, Ahmadu Bello University, Zaria; Dr. F. Ogunlade, Dr. A.P. Eshiet, Dr. I.A. Olaofe and Mr. D. Ofuokwu of the School of Basic Studies, A.B.U., Zaria; etc; etc. To these gentlemen, I say "thank you".

Next, my gratitude goes to the respective Police, Court and Prison Authorities in Zaria, Kaduna, Makurdi and Idah, who graciously allowed me access to some of the information I needed from their Departments. I am quite appreciative of this co-operative gesture. On the same note, I sincerely thank Mallam Ibrahim Lau, Assistant Controller of Prisons for Kaduna State for granting me audience on a number of occassions and answering general and specific questions from me about the operation of the criminal law and the Prison System in Nigeria.

The assistance given me in the other areas of data-collection by Mr Joe Ad'ojo Abrahams, Mr. James U. Amejo, and Mallam Ahmed Mohammed, who, additionally, translated the Public-Interview-schedule into Hausa, is hereby equally acknowledged. The commitment and demeanour shown by these gentlemen are highly commendable.

Next, particular mention of the great concern and enormous contributions of my brethren in the Lord should be made with joy and gratitude. These people laboured with me for the success of this work on their bended knees. For lack of space, only a few of the prominent ones are named here: Mr. Johua A. Awosan (with whom I have closely associated for the past seven years and

whose professional expertise permeates the fabric of this work), members of the Reconcillers' Ministry (led by Mr. Kath Atebije), Dr. J.A. Gana; Rev. (Dr.) S. Ale, Dr. D. Olagunju, Mr. W. Attoye, Mr & Mrs D.S. Abolude, Mr & Mrs S. Amaga, and Mr & Mrs Enoch Oyedele. I thank them all for their brotherly love.

I cannot forget my family, especially my beloved "principal partner" - Mrs Alice K. Omaji, at this time when "honour is given to whom it is due". In spite of their having to bear the discomfort of my absence from home many a time, they untiringly provided the necessary backing (social, emotional and physical) needed to bring this work to fruition. I duly appreciate this invaluable and priceless love. Accept my many thanks.

Let me also sincerely thank Mr. Gabriel Onuorah of the School of Basic Studies, Ahmadu Bello University, Zaria who conscientiously typed this work, and the entire Administrative staff of the Department of Sociology, Ahmadu Bello University, Zaria for their respective contributions to the production of this thesis.

In closing, I unreservedly express my gratitude to the University Board of Research of Ahmadu Bello University, Zaria, the Administration of the School

of Basic Studies, Ahmadu Bello University, Zaria, and the Benue State Scholarship Board for the financial support given to me for this study. To all, I say, Bien faites!

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ABBREVIATIONS

All N.L.R.	:	All Nigeria Law Reports
Am. S.C.	:	American Supreme Court
C.C.	:	Criminal Code
N.L.R.	:	Nigeria Law Report
P.C.	:	Penal Code
Q.B.D.	:	Queen's Bench Division
S.C.N.	:	Supreme Court of Nigeria
S.	:	Section (in the relevant Code)
SS	:	Sections
Tang. L.R.	:	Tanganyikan Law Report
W.A.C.A.	:	West African Court of Appeal

ABSTRACT

This study examines the form, content, and operation of the Nigeria criminal law, using the Marxist perspective which, more than others, emphasises developmental relationship between law and society and pesits "historical concreteness" and sociological analysis as proper methods of investigation into law. The premise is that law is a social phenomenon, bound up with the corresponding philosophical and sociological traditions, whose effective um anding (with regards to the nature and administration of law) requires reaching beyond the veneer of legal "verities" to the ideologies that dictate or determine its substantive rules.

With particular reference to structural organisation and language, the form of the law is found to be "chaotic" (with irrelevant distinctions) and largely incomprehensible - all bearing the marks of the law's English parentage. For the content, it is found, using "exhaustiveness of offence-formulation⁰ (i.e. the quantity of law) as the parameter of "seriousness" that the law places more "premium" on property-offence category than other categories. Further analysis establishes a strong link between this dominant characteristics and the bourgeois

s oc i o- economic relations which the law's model w a s designedtoregulateinthe19thCenturyEngland. Additionally, the real face of this law is ascertained by assessing the public impression about the activities of the Nigeria Police force (N.P.F.), Area and MAGISTrate Courts, etc., and it is found, among other things, that the public confidence in, and respect for, these operational units are, generally speaking, very 1ow; and *t*hat the bias of the law, discernible from the "diagnosis" ana treatment of the Nigerian criminal justice system, is heavily tilted against the underprivileged.

The findings and discussions put together effectively locate the form, content and operation of the law in the context of its English legal parentage and the circumstances of colonialism through which the law was "imported" to Nigeria and maintained to this day. Following from this, the study articulates the implications of this law (particularly its bourgeois-oriented content) for the Nigerian society and recommends the development of a new criminal law (as a long-term measure) with primary attention *on the* simplification and publicity of the law thro. well designed legal education programme. And based upon all this, it is posited that Sociology of Law in Nigeria must be designed and operationalised within the tradition of the "critical sociology" to be relevant and useful.

CHAPTER ONE

INTRODUCTION

The Research Problem

Philosophical doubts[1] notwithstanding, experience has shown that law is one of the institutions which are central to the social nature of man. And with regard to the link between the development of law, the machinery for its regular and effective enforcement, and the growth of civilisation or historical development of societies and nation states, there is a basic consensus (Marx, 1845; Holmes, 1881; Lloyd, 1979).

What is deducible from these facts is that the law (in form, content and operation) is substantially bound up with the corresponding philosophical and sociological traditions of the various human societies in which it operates. Hence (in broad categorisation), the British law based on the doctrine of individual liberty and empiricism; the Continental European law based on "natural-law" philosophy; the Soviet law based on socialist ideology; the traditional Indian law based on the caste system of Hindu culture; the traditional African laws based on local customs of kin-groups; etc. etc.

The above, by implication, presupposes the

logical point of departure for any deeper and critical analysis and/or understanding of law, viz: an investigation into the substantive rules of the law vis-a-vis the social value systems or ideologies that dictate or determine them. It is contended here that this is the proper premise from which any systematic scholarship on law, its enforcement and administrative machineries should proceed.

However, apart from some specific efforts (though mainly conceptual) in defining the subject-matter and limits of jurisprudence[2], the existing scholarship in the field of law as far as one knows manifests generally, an orientation which, in one's consideration, deviates from this logic. This orientation consists principally in the disproportionate concentration on issues relating to procedures in crime definition, law enforcement, judicial processes and legal corrections, while relatively neglecting the substantive law and its social context which is normally at the base of these procedures.

This orientation reflects the essence of certain classical conception of scholarship in the field of law. For instance, Montesquieu made a statement in 1748 to the effect that "the most important thing in

this world about which men ought to know is the administration of criminal justice" (Gatrell et. al., 1980). The statement, in essence, exalts the knowledge of the functioning of the law, the activities of the judiciary, and the correctional institutions, etc, over and above the need for critical investigations into the substantive rules of the law itself.

In modern times, the space devoted to these procedural issues in legal texts and articles testifies to the kind of scholarship that proceeds from this orientation. The corollary is not arguable: the relegation of critical and systematic investigations into the the substantive law to a secondary position to the extent that even the feeling of something being basically wrong with the law and its effects, never drew attention to the law itself, but instead led to a number of studies of legal institutions (Freeman, 1974).

This feeling is implicit in a number of observations made concerning the orientation in which the substantive law is taken for granted. A few of these observations are restated to focalise the problem being identified for this study.

By the first half of the twentieth century, Mannheim (1946) had observed that:

> We have made considerable efforts to discover what sort of person the offender is ....., and we rack our brains to find out what to do with him. But hardly do we pause for a moment to examine critically the contents of that law, the existence of which alone makes it possible for the individuals to offend against it (Emphasis added).

Pritt (1971), reviewing the legal intellectual activities in Britain over time, observed that what there has been in the main was "only to apply the law as it stands without considering how it has come to be what it is..... (and) what forces have shaped it (in form, content and operation)".

While acknowledging an intellectual break-through into the domain of law by sociologists, McBarnet (1981) also observed that:

> Sociologists have taken .....only one side of the equation - the operation of justice, not the law itself. Explicitly the question underlying (most of) sociological analysis of (law) always seems to be concerned with why the people who routinely operate the law also routinely depart from the principles of justice... ..... What is barely touched on is the 'nature' of the law itself ..... The 'law in action' is scrutinised but what the 'law in the books' actually says is simply taken as read; it remains unproblematic .....

The common denominator of these observations is the recognition of an orientation which is pre-occupied with what can be called a "second-order" level of investigation into legal systems. Essentially, it is a level at which the analytical units include only crime-detection/definition, the taken-for-granted rules of law as contained in the statutes, law enforcement and judicial activities. This, of course, conforms to the tenets of the 19th century legal positivism typified in Austin's "conceptual approach" to jurisprudence. It is an approach which, in addressing legal concepts and their mechanistic interpretation, overlooks the contextualisation of law in its social milieu as an essential key to the proper understanding of law (Lloyd, 1979).

The vitiating effects of this orientation, for practical and academic purposes, cannot be overstated. First, it renders any attempt at analysing/understanding the law (from this second-order level), arid, unrealistic and, hence, incapable of yielding principles of scientific validity. Second, it amounts to treating law as if it contains "axioms and

corollaries of a book of mathematics", hence making "justice" elusive since it does not allow for deciding whether the actual rules are themselves just, given the value system from which they evolve and are operated. And third, it renders the teaching of law mechanistic, and the legal profession divorced from the realities/ethos of the society, with the consequence of producing "legal mechanics" whose only worth consists of knowing the "language of the Queen" (like in British colonies), and using law in most fashionable ways to protect or destroy individuals or institutions, depending on their status or class.

Nowhere in the entire legal field are the effects of this orientation more excrutiating than with the criminal law and its administration. The explanation for this is not far-fetched: criminal law occupies a fundamental position in the social ordering of any nation. In the early 19th Century England, for instance, there was no regular police force, but "a system of criminal law based on terror, kept the order" (Hay, 1982). In Hay's assertion, "the rulers of eighteenth century England cherished the death sentence.....; twice a year, in most counties in England, the scarlet-robed judge of assize put the black cap of death on top of his full-bottomed wig to expand the law.....". In this regard,

the criminal law was critically important in maintaining bonds of obedience and deference.

Apart from providing an authoritative statement of the contours of acceptable conduct in society, criminal law is the only type of law that "has the ability, by its own direct and crude manners, to assume a separate personality". It also "assumes the role of the representative of law in general". This is particularly evident in modern times. Wechsler's comment is eloquent and apt for the view on the status of criminal law enunciated above. He said:

> Whatever views one holds about the penal (criminal) law, no one will question its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy.
>
> Nowhere in the entire legal field is more at stake for the community (government), or for the individual (Quoted in Williams, 1978) /Emphasis added/.

The importance of the criminal law as indicated in the foregoing has found expression in other various conceptions and definitions. In some views, criminal law is the barometer of the moral and social thinking (consciousness) of a community; it reflects the

community's social consciousness on what kind of conduct it considers, at a given time, sufficiently condemnable to impose official sanctions (Friedmann, 1964). This view underlies the definition of the law as:

> a body of norms formally promulgated through specified governmental organs, contravention of which warrants the imposition of punishments through special proceedings maintained in the name of and concern for the people (Shills, Vol. 4, 1968).

In other views, criminal law is a socio-political instrument of control defining the duties which a person owes to the society; determining those who can and have violated these duties, and ipso facto face prosecution. It is regarded, in essence, as an instrument for securing law and order (Michael et. al, 1940; Cross et. al., 1972; Elias, 1973; Rich, 1979).

The radical extension of this conception of criminal law as an instrument, views it as not serving overall societal function, but a vested interest. It is the coercive instrument of the State, used by the State to maintain the existing social and economic order which is basically in the interest of the ruling class (Pritt, 1971; Quinney, 1974; Picciotto, 1979).

The varied conceptions stated in the last three paragraphs converge in one major respect: showing, that

the law is not "a brooding omnipotence in the sky". It is a flexible instrument of social order based on, or reflecting, the political, economic and social values of the society in which it evolves[3]. For examples, the 16th Century Spanish criminal law reflected the corresponding political organization by the concurrence of the royal (crown) and seigneurial (ecclesiastical) systems of justice in Spain (Weisser, 1979); in the 17th century England, the divergence between the "mores" of the richer and poorer elements in the community was mirrored by the criminal law which focused mainly on the activities of a body of resident poor alleged to be the real problem (Sharpe, 1980); and in most African traditional societies, the criminal law reflected the corresponding political and cultural values of peace and harmony by emphasizing the concepts of "harm" and "restoration" over those of "crime" and "guilt" (Holleman, 1974).

Therefore, to treat the law as if it contains only "axioms and corollaries of a book of mathematics" may not only be fruitless, scientifically as earlier asserted; it may also enthrone "the tyranny of concepts" which is "a fruitful parent of injustice" (Cardozo). This is typical of the existing general orientation which is pre-occupied with analysing the

functioning of the law, the effectiveness of the machinery for its enforcement and administration. It not only isolates the law, its enforcement and administration from all questions of policy and philosophy, but also diverts from the substantive law, the appropriate (sociological) attention it deserves.

It is for this orientation that Quinney (1974) indicted early legal sociologists and criminologists when he said:

> Most of the research and theoretical developments in the sociology of law have been dominated by the positivistic mode of thought; the legal order is taken for granted, and research is directed toward an understanding of 'how' the system operates. Little attention is devoted to the questions [of law itself]....
>
> ..... The efforts of criminologists have been devoted almost solely to the most conservative interests.... Only recently have some criminologists, realising that law is problematic, turned their attention to a study of criminal law. But for the most part these studies have been based on the positivistic mode of thought.

However, beginning from the second half of the 20th century, the realisation of the effects of this lopsided orientation has gained currency. The outcome is the considerable effort at redressing the syndrome in the socio-legal scholarship of the developed countries like the United States of America (Hunt, 1978; Lord Lloyd, 1979). But, such is largely absent in the "third" world socio-legal scholarship,

particularly in the countries where foreign notions of criminal justice and system had been superimposed.

In Nigeria, most probably, there is no clear indication in the existing scholarship that the problem of this orientation is effectively appreciated. At best, the attention the problem had received in the indigenous literature had been the "unsystematic" and allusive observations on what one considers symptomatic of the real issue.

Elias (1963; 1973) had noted that the text of the Nigeria criminal code was "inelegantly drafted"; the various species of crime and their subject-matter, unorthodoxly classified and arranged respectively; and that the code "contains too many of the technicalities of English law in a number of offences....."

Adeyemi (1977) reinforces this observation by saying that the technicality of statutory language and the substance of our modern criminal law have generated in the average lay Nigerian the problem of 'incomprehensibility' (in terms of form), and the problems of absurdities, anachronisms, and anomalies (in terms of content and operation).

Okonkwo et. al. (1980) exemplifies this 'lamentation' when he commented that our law on the subject of

corruption is not clear: "there are an uncomfortable number of cases in the Law Reports where the courts have felt compelled to acquit an obviously dishonest accused, and this has often been the result of inept framing of charges, which in turn has been due to the difficult wording of the sections concerned" (emphasis added).

Chuldkol (1980) comments on the issue more pitifully when he said that:

> Our laws are still written ..... in verbose terminology that makes even the educated not quite certain of what they mean. Thus, even where one has the 'good fortune' of having the statutes brought to his notice, the phraseologies are such that the meaning intended will remain a mystery until a court gives an authoritative ruling.

The consensus, implicit in the foregoing citations is that the criminal law in Nigeria is, as it stands, beside the inevitable imperfections, problematic: the form, the content, and the operation engender a disjunction in legal knowledge, even among the "educated" Nigerians.

It is not contestable that this disjunction is a manifestation of the complications created by the super-imposition of the British criminal justice notion and system on the Nigerian indigenous system. The

argument of the "mixing process" whereby the British law was said to be effectively blended with the indigenous law cannot suffice. The process not only increasingly distorted the understanding of the local people, but also seriously undermined the validity of the customary criminal law. The cases of Tsofo Gubba v. Gwandu Native Authority[4], R. v. Nameri[5], etc. can largely be understood in this light. A submission in Ogundare (Bale of Isheri) v. Olorunfunmi[6] (though a civil case) speaks aptly for the contention here. Ogundare accepted the judgement of a lower court against him and his people in a land case without understanding the implications. The other party to the case, started to act in accordance with the judgement that was in their own favour. This meant that Ogundare and his people would have to pack away from the village they had settled over a long period. At this realisation, Ogundare appealed to the higher jurisdiction

When the case came up, the appeal was dismissed, not for lack of substance (because they would have had a good case) but for procedure: "the Court could not review the judgement after the lapse of time" (6 months within which an appeal could be filed had expired). The most relevent aspect of this reference is the submission by the plaintiff's Counsel, viz:

> The plaintiff and his people are illiterate and did not understand the effect of the judgement which was never explained to them; had they understood that it involved the village in which they have lived from time immemorial they would never have consented to judgement being entered against them-------. If the judgement is allowed to stand, grave injustice will be done to the plaintiff and his people." (emphasis added).

In spite of this submission, the earlier judgement was upheld for the sake of the procedure with which the natives were not acquainted.

The situation was that only those aspects of the Nigerian customary law, which were not "repugnant to natural justice, equity and good conscience"[7] nor incompatible with the existing legislation (i.e. the Supreme Court Ordinance of 1876 - reproclaimed in 1900) were recognised. In spite of the aspects recognised, the use of the native law and custom was progressively reduced to ascertainment of guilt only until 1960 when the Constitution of the Federation [S.21(10) now S.22(10), 1963 Constitution] finally abolished the "unwritten" (i.e. customary) laws. The accompanying sentence was ascertained from the imposed code.

Therefore, the complications and the consequent disjunction of legal knowledge among the local people whose customary law has been swept to the background in

"favour" of the foreign code, cannot be overstated. Events at the turn of this century when the colonial administration was consolidating their "hold" on Nigeria, may be illustrative.

In 1899 and 1901, for instance, the colonial administration in Lagos presented the Criminal Code Bill and Forests Bill, respectively, to the Legislative Council. The ordinary understanding given by the government was that the bills were simply attempts by the administration to codify or collate the existing (indigenous?) laws. But for Sapara-Williams (one of the early Nigerian lawyers) who stepped into the gap between the understanding of the largely illiterate local population, and the sophisticated British measures, the Bills would have been passed.

Sapara-Williams led large protest meetings on March 29, 1899, and September 14, 1901 respectively. At these meetings he read out a number of clauses from the Bills and explained their possible consequences to the audience. Pertaining to the Criminal Code Bill, he characterised it as "most objectionable and injurious in its provisions". "So abstruse and intricate were its provisions," he said, "that the people would more than ever need the services of lawyers to free them from

the many scrapes they would be sure to fall into. A petition followed, immediately, to the Governor of the Lagos Colony and the Bill was withdrawn (Adewoye, 1977).

Similarly, Sapara-Williams made the people to understand the intention of the Government behind the Forest Bill: it was "calculated to destroy and supersede the ownership and property rights of the people.....". The proscriptions were said to aim "a deadly blow at individual rights", by maliciously interfering with their land tenure. At this critical understanding of the law, over 700 people immediately signed a protest which was sent to Sir William MacGregor and the members of the Legislative Council. The Bill was, however, enacted into law in October 1901, but in a modified form (Tamuno, 1971).

It can be seen from the illustrations above that the foreign codes imposed on Nigeria were anything but benevolent. In the circumstances, the need to critically examine the codes with a view to uncovering the philosophical and sociological realities of the proscriptions and prescriptions hardly needs argument.

It is from/against this background that the problem for this study is derived/conceived: to examine

sociologically, the form content, and operation of the Nigerian criminal law. Essentially, the study is a preliminary contribution aimed at stimulating interest in critical investigations into the substantive law with particular focus on the Criminal and Penal Codes. This is viewed as a sine qua non for systematic knowledge of, and effective administration of the law and justice in a country with an imposed criminal justice notion and system like Nigeria.

Needless to say, the problem for this study stems from realising a lacuna which has created a disjunction in legal knowledge in Nigeria. It is an enormous task, particularly for a pioneering effort of this nature. But as earlier noted, the study does not pretend to be more than a foundation for further research and thought in this problem-area.

Research Objectives:

The effort of this study includes an attempt to identify a theoretical frame that would allow for an analysis of the existing legal/academic literature with a view to appreciating their sociological realities, and to conduct an empirical survey on the form, content, and operation of the Nigeria criminal law.

In doing this, one is guided by the following objectives:

1. To identify and describe the form in which the criminal law in Nigeria is cast.
2. To critically examine the contents of the criminal law and their implications for the Nigerian society.
3. To briefly assess the operational units of the Nigerian criminal justice system with a view to bringing into focus the empirical face of the substantive criminal law.
4. To make suggestions for law reform or review based on the data of the first, second and third objectives.
5. To make suggestions regarding the task of, and orientation, for, the sociology of law as an emerging discipline in Nigeria.

Theoretical Perspective:

The issues raised in the foregoing problem specification and the outlined objectives, converge in one's contention in this study that to show how the law is useful in terms of its enforcement and administration, is not to explain how it originated or why it is what it is, and that it is a methodological lapse to attempt

an assessment of its functionality without first examining the substantive rules of the law in their proper context. This contention calls for a specific theoretical orientation or perspective as a frame for their effective grappling. Implicit in them, however, is the fact that the orientation must be the one which conceptualises the criminal law in its origin and its dynamics.

In deciding on this, one immediately confronts radically (or apparently?) differing paradigms: law as a divine or superstitious command (a stoic view represented by Cicero); a utilitarian command (Bentham); a sovereign command (Austin); a collective power of the 'general will' (Rousseau); a rational ordering of things-divine or natural (Aquinas); an external symbol of social solidarity (Durkheim); an instrument of the state/de facto ruling class (Thompson); a bourgeois form of social regulation (Pashukanis); etc., etc[8].

Bewildering as these paradigms may appear, they can conveniently be grouped into three broad categories: the philosophical (i.e. the stoic), the functionalist and the conflict (Marxist) traditions. It is desirable to examine all three traditions before deciding on which of them is most adequate for the problem of this study.

Originally informed by the Greek speculation on law, the philosophical tradition focuses on the question of whether law exists by "nature" or by convention. The product of this focus is the "Natural law" theory which assumes the existence of an ideal legal system, ordained by God or divine/natural reason, of which positive law can be but an imperfect simulacrum (Lord Lloyd, 1979). The laws of the city-states in the classical period were accorded the status of this "higher law" - a fundamental, unchangeable and often unwritten law.

With the decline of the city-states and the rise of large empire and kingdoms in the Greek world, the doctrine of the natural law came to the fore, particularly, by the intellectual activities of the stoic philosophers. When stoicism passed over to, and influenced, Roman thoght, Marcus Tullius Cicero bore the flag. His view, expressed in "De Re Publica" (54 B.C.), has remained a most apt statement of the philosophical conception of law:

> True law is right reason in agreement with nature, it is of universal application, unchanging and everlasting; it summons to duty by its commands and averts from wrong-

> doing by its prohibitions----. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely;----. And there will not be ---- different laws now and in future, but one eternal and unchangeable law will be valid for all nations and all times---- (Quoted in Lord Lloyd, 1979).

Central to the conception enunciated above is the idea of an overriding law expressing a higher truth and a higher justice (than that embodied in manmade laws) which cannot be tampered with. A fuller expounding of this conception was to await Thomas Acquinas (in the thirteenth century) who synthesised Aristotelian philosophy and Catholic faith in a universal divine law.

According to Acquinas, human or positive law ("natural moral law") occupies a lowly place in "the hierarchy of law derived ultimately from God" (Lord Lloyd, 1979). He defined this law as "nothing else than an ordinance of reason for the common good, made by him who has care of community and promulgated" (O'Connor, 1967). This law cannot be changed "except by addition"; it cannot be abolished from the heart of man:" it is promulgated by the very fact that God instilled it into man's mind to be known by him naturally"; and its precepts are self-evident (per se notum). In short, the law is the reflection of the eternal law which is the

plan (laid up in heaven) of divine wisdom directing all things to the attainment of their ends, that of the whole created universe inclusive.

This law, it is asserted, contains all that makes for the preservation of human life, and all that is opposed to its dissolution. By corresponding to the natural inclination in man to good (self preservation), the law is regarded more or less inviolable. In Cicero's words, "we cannot be freed from its obligations----. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment "(Quoted in Lord Lloyd, 1979). This conception held sway until the era of positivism.

Given the "geo-social" context of this study, it is pertinent to relate the foregoing conception of law to the Islamic jurisprudence which, in a similar manner, regards law (sharia) as the expression of Allah's mind to guide man towards attaining paradise. Sharia is said to cover the entire field of man's action (religious or secular), given to promote the welfare of man both in this world and hereafter. It embodies "what is required (ẗwajib"), forbidden ("mahzur"), recommended ("mandub"), disapproved ("makruh"), or merely permitted ("mub ah") [which can be known] from the Book (Quran), the "Sunna",

and such arguments as legists may adduce for the necessary comprehension of the rules of Allah" (Yusuf, 1982).

The Quran provides the theoretical **frame of the law,** containing a series of "revelations" which "descended to Mohammed (the Prophet) at uneven intervals and in specific circumstances, as dictated from an original code, the mother of the Book (Umm-al-Kitab)". The application and expounding of the content of Quran over the years resulted in the development of four schools of Islamic jurisprudence, namely, the Hannafi, Shafi'i, Hanbali, and Maliki schools. However, these schools did not differ over the basic principles of Islamic jurisprudence. Quran has remained, for all of them, the 'grundnorm' sent from Allah for the good of man.

Emerging from all the above is the picture of a conception of law that is transcendental and teleological in orientation. Transcendental, in the sense that it locates the "ideal" law outside human experience, requiring cognition and understanding only through intuition. And teleological, the law being directed at pre-determined purposes. Essentially, it is an idealist conception.

Needless to say, therefore, that this conception gives sanctity to any "positive" law built upon the "overriding law". And, that, it amounts to a sacrosant approach to law, which is more likely to inhibit rather than enhance a critical examination of law as conceived in this study; hence it is unlikely to constitute the proper theoretical frame.

The traditional literature on law (criminal laws in

particular) assume, perhaps uncritically, a functionalist perspective both towards the substantive and the procedural aspects of the law. Hobbes (1651), Bentham (1945), Bredemeier (1962), and Durkheim (1964) all assume, at least implicitly in their analyses of the origin and development of the law, a functionalist orientation.

Hobbes argues that law became necessary in order to attain social harmony in society by curbing the evil passions of man (whose life is by nature "solitary, poor, nasty, brutish, and short"). He sees law as an instrument of self-preservation - an operative law of nature constraining man to a certain pattern of behaviour. This follows man's discovery of the first and fundamental law of nature"..... to seek peace and follow it" as a way to end the state of nature and war. It is clear from this that Hobbes' conception of law vis-a-vis the nature of man, is functionalist.

Bentham, in his contribution to the analytical jurisprudence, expounds the significance and working of the principle of "utility" in law-making (later tagged "the imperative theory"). He analyses the springs of human actions in terms of pleasures and pains, and reduces human behaviour to a "calculus of felicity".

Ultimately for him, law is oriented to the greatest happiness of the greatest number of people. However, he conceded that the principle of utility was itself a metaphysical principle whose truth could not itself be proved, for what is used to prove everything else cannot itself be proved. Nevertheless, his functionalist work laid a solid juridical foundation for much of the reform of the law in the early nineteenth century.

Another person who had made a footprint in the functionalist tradition is Harry C. Bredemeier. He identifies law with the integrative aspect of the four major functional processes postulated by Parsons and Smelser (1956). For him the sole function of the law is "the orderly resolution of conflicts" to avoid disrupting "productive cooperation". This task is handled completely by the court which, according to him, "is dependent upon three kinds of inputs". In the first place, the court needs an analysis of cause-and-effect relationship: the past relationship between alleged act of the defendant and the alleged injury of the plaintiff; and the probable future relationship between the decision and the activities of defendant and plaintiff. This input comes from the adaptive system in return for an immediate output of 'organic' as distinguished from 'mechanical' solidarity (Lord Lloyd, 1979 for

elaboration).

The second "input" consists of the "standards by which to evaluate the conflicting claims and the anticipated effects of a decision on the role structure". This comes from the goal-pursuance or political system in exchange for "interpretation" of the meaning of the abstract language of legislation.

Lastly, the third input consists of a "a willingness on the part of potential litigants to use the court as a conflict-resolving mechanism". This motivation is an input from the pattern-maintenance system and the court's immediate output is what is termed as justice.

It is worthy of note that Bredemeier realised that the "outputs" of the court are based on certain "cognitive generalisations, beliefs, and theories concerning cause-and-effect relationships". His work is however, deficient in many respects.

First, the work is largely an illustration of a "cybernetic" approach to sociological jurisprudence which takes for granted the behaviour of people involved not only in judicial processes but in society as a whole.

Second, Bredemeier, like Parsons and Julius Stone, assumes a value consensus within society on the conception of what the division of labour is, what the goals of the system are, what the desired state of affairs is, etc. The fallacy in this becomes much more disturbing by his assuming such value-homogeneity for a society based on "organic" solidarity.

And third, his work presupposes an analytical separation and/or distinction between legal and political systems. According to him, the political system only provides an input of what the goals of the system are. In exchange for this, "the court's primary output is interpretation (objectively?) of the meaning in a particular case of the abstract language of legislation, or the even more abstract language of the society's ideal". Experience has shown that this distinction is not easy to sustain. For example, there is no gainsaying the political expediency that dominated most of the judicial decisions on the 1983 Nigerian election petitions.

Notwithstanding all this, Bredemeier's work is a solid contribution to the functionalist perspective on law. Moreso, it could be taken that his work was a further development of the Parsonian model, itself rooted in Durkheimian tradition.

Durkheim, a major figure in functionalist sociology, took considerable interest in legal phenomena. For Durkheim, law (penal law) is a mechanism for functional integration: it reproduces the principal forms of social solidarity e.g. mechanical solidarity to be found in homogeneous primitive societies; and organic solidarity which is found in more heter[illegible] and differentiated modern societies. Linked to these forms of integration are two types of law, viz: repressive law in a society based on mechanical solidarity; and restitutive law in a society based on organic solidarity. However, according to him, the forms that these laws take and their surrounding ideologies, are "a veritable celebration of social cohesion".

No doubt, his typology and the direction of the evolution of penal laws, have been a subject of debate. The essential critique is that the typology is rooted mainly in a-priori thinking on which some recent studies have cast some doubts. For example, one of the illustrations for his thesis was a postulated transition in Europe from a punitive medieval practice to the restitutive codes of the 19th century. The understanding from this illustration is that most European penal systems became progressively less barbaric with the

passage of time. It is, however, held that the apparent barbarity on which Durkheim might have based his conclusions, was only exacted for certain categories of offences and offenders. Sodomy, banditry, murder, treason etc., are examples of such offences. The seriousness with which they were regarded is shown by the names with which they were described: "delictas atroces" in Castille; "cas enormes" in France; and "heinous crimes" in Scotland.

These recent studies have also come out with the findings that contrary to Durkheim's postulation, conditions and organs of repression are found in societies with social stratification and state systems like the modern ones (Schwartz and Miller, 1964; Diamond, 1972). In this regard, it is being contended that majority of the societies from which Durkheim took his data were not primitive in the socio-historical or anthropological sense. They included ancient Greece, Rome, Egypt, etc., whose political organisations were on a par with modern nation states. Somehow, Durkheim did not appreciate the role of these state apparatuses in the statistics he employed.

Durkheim's typology may be reversed by these findings.

The foregoing review, demonstrates the concern

that law (criminal law in particular) had received in functionalist tradition. It is largely an uncritical assumption of the position (function) of the law in any society: law in an autonomous position (relative?) reproducing "social integration".

Bredemeier's assertion that "willingness on the part of potential litigants to use the court as a conflict-resolving mechanism" stems from the pattern-maintenance or socialisation system, provides an interesting example. In Nigeria, for instance, it is held that one of the reasons why majority of the populace would prefer not to settle their cases through the foreign legal procedure is that "it threatens an important traditional value, namely: the fostering and maintenance of harmonious social relationships among members of the society". The findings of a research carried out in Ibadan, one of Nigerian large cities (Oloruntimehin, 1977) support this assertion. From the data of this research, "82.5% of the upper class [of the sample] "showed" preference for informal method of settlement while 92.5% of the lower class did so". The analysis by age and sex of the respondents revealed similar pattern of revulsion against the foreign legal process: 100% of the old members of the sample would

not prefer the legal process; 85% of the young members would prefer to avoid the police and the court; 90% of the males in the sample prefer informal settlement method; and 92.5% of the females would prefer same. How do we account for this aversion? Is it lack of proper socialisation of the potential litigants or a reaction to a frustrated expectation of the courts' output?

These issues are mainly fundamental at the operational level of the law. The functionalist perspective, generally, does not address the substantive rules of the law and their sociological background. They are taken for granted: the "how" and "why" of their existence are largely made subservient to "what" they do. And it is in this light that the Marxist sociologists have castigated the functionalist perspective for conservatism and ahistoricity in the conception of law.

The Marxist perspective arose, in the main, as a reaction to the existing socio-economic and intellectual systems. It summarily conceptualises law as an ideological superstructure deeply rooted in historical socio-economic formations.

It is worthy of note that Marx himself never lived to fully develop his theory of the state and legal

relations. Therefore, what emerged as the Marxist theoretical and methodological orientations to law were gleanings from the snippets of his conceptualisations of, and allusions to, law in his general work.

Within the Marxist tradition, criminal law has been conceived as a product of specific forms of interaction (struggle?) among certain historical forces that accompany the development of relations of production. Thompson (1975) giving a kind of Marxist expose of the form, content and operation of the criminal law, says:

> the law is ...a part of superstructure adapting itself to the necessities of an infrastructure of productive forces and relations. As such, it is clearly an instrument of the de facto ruling class: it both defines and defends these rulers' claims upon resources and labour-power; it says what shall be property and what shall be crime - and mediates class relations with a set of appropriate rules and sanctions all of which, ultimately confirr and consolidate existing class power ..... Thus the law may be seen instrumentally as mediating and reinforcing existent class relations and ideologically as offering to these, a legitimation.

Other Marxist theoreticians focus on various aspects of the law with varying degrees of emphasis.

Pashukanis, a Russian legal sociologist, postulated his major thesis that law is fundamentally a bourgeois form of social regulation, and that the logic of legal

concepts corresponds with the logic of the social relationships of commodity exchange. For him, the subject of law is none other than the abstract commodity owner elevated to the heavens (Beirne and Quinney, 1982).

Lloyd observed that for Marx, law is nothing but a coercive systems devised to maintain the privileges of the property owning class. And that the system hides behind the bourgeois legal form (portraying formally equal juridic subjects) which does not reflect the inequality and exploitation characteristic of its production relations.

This view is illustrated in Editorial Collective (1978):

> that to prohibit both rich and poor from sleeping in the park; from begging on the streets; to prohibit the propertied and the propertyless from stealing from each other; to prohibit the wealthy and the downcast from being vagrants (wanderers), is quite simply absurd, far from being equalizing, but, merely criminalizes, harasses, degrades and oppresses further the poor, the propertyless and the structurally disadvantaged.

Balbus (1977) summarizes the contention by saying: "the systematic application of an equal scale to systematically unequal individuals necessarily tends to reinforce systematic inequalities".

The central thesis of this Marxist approach is that whatever the legal machinery used for making a certain type of conduct criminal, most acts which have become crimes are prohibited because they are considered by those with power to be injurious to the vested interests of their class. For example, Hay (1975) says: "What is certain is that Parliament did not often enact capital statutes as a matter of conscious public policy. Often they were the personal interest of a few members, and the Lords and Commons enacted them for the mere asking".

Hay further cites the British Acts of 1753 and 1764 as illustrations of this process of criminalisation. The citations are summarised thus: The Act of 1753 which prescribed hanging for stealing shipwrecked goods was enacted on behalf of the "Merchants, Traders and Insurers of the City of London" whose profits were being diminished by the activities of wreckers. That of 1764 which prescribed death penalty for those who broke into buildings to steal or destroy linen, was to protect the investments of Lord Verney and the Right Honourable Charles Townshend who were then the proprietors of the British Linen Company.

At the level of operation, the Marxist tradition maintains that the judiciary is biased in favour of the

privileged class, usually by, among other things, the manipulation of the principle of "mens rea" (guilty mind). Andrew Hopkins (1981) observed, that while "it is a hallowed principle of law, deeply cherished by the legal fraternity, that a person is guilty of an offence only if the prosecution can establish 'mens rea' "(except in absolute or strict liabilities), it is alleged that this is more strictly adhered to in prosecutions of corporate, and/or privileged white-collar offenders. And that in the case of conventional crime, the law has modified the need to prove intent in such a way as to make conviction far more likely. That is, "for conventional offenders, the burden of proving criminal intent is frequently shifted whenever it would otherwise be an obstacle to 'successful' prosecution". In other words, in the case of conventional offences and offenders, the prosecution is frequently relieved by legislative enactments of "the burdens of proving intent". In some cases, the courts are willing simply to impute intention to defendants regardless of what they claim their intentions were.

In so doing, it has created a bias against conventional, largely working-class criminals, and in favour of white-collar offenders, a bias which is inherent in the very law itself.

The Marxist thesis on the operation of the criminal law is summed up in the assertion that: it is a process rent with enforcement and administrative practices that bolster bourgeois class exploitation.

With regard to the analytical specification of the "form", "content", and "operation" of the law, in this study the Marxist perspective enunciated above, posits a number of crucial issues for consideration.

The perspective maintains that the form of the law is an ideological cloak which obscures power relationships. By its language, construction principles and patterns, the form portrays the right of everyone to enter freely into social contracts. It leaves the impression that the law protects everybody equally, and that all are equal before the law. This to the Marxists, is a mystification which should be demystified for better understanding.

For the contents of the law, the perspective maintains that they are the vested interests of the ruling class - the aggregate of norms universally expressing the will of the dominant class. To know the contents of criminal law therefore implies understanding what the interests or value systems

of the ruling class are.

Given the form and content of the law, therefore, its operation is seen as a way in which the ruling classes preserve their interests. In capitalist societies, it is a way of protecting and promoting the continuation of the capitalist order - the order which assures the social and economic hegemony of the capitalist system.

These postulations of the Marxist perspective, however, raise a number of problems which are noteworthy: Is all legislation, and are the activities of all personnel within the legal system, always to be explained by the convenient "deus ex machina" of the interests of dominant classes? What, in fact, is meant by the ruling (or dominant) class, given the complex of power centres - a pluralist congeries - in contemporary society? Does the law have no degree of autonomy, no internal histories? Can it not be a social force (like in Pound's view) instead of only a social product?

The attempt of the Marxists to answer these problems and others exposes the fact the Marxist perspective on law "is not a monolithic enterprise

consisting of a single theoretical perspective".

The divergent theoretical leanings that emerged seem to have stemmed from the ambiguity in the base/superstructure analogy in Marx's text (Capital Vol.1, 1867). The Classical (orthodox) Marxists take the relationship between "base" and "superstructure" to be that of primary causation or determinism. According to them, the economic base determines the nature of the superstructures like politics, religion, law, etc. This view also underlies the notion that the superstructural institutions are merely tools that can be manipulated at will by the dominant class.

On the other hand, people like Althuser, Renner etc., see law as not merely the product of the economic base. For them, law has a specific place and function within the complex totality of social structures. While Althuser sees law as enjoying a relative autonomy, Renner (1949) asserts that "law might itself become an active agent in reshaping social conditions".

Whichever one of these variances is more accurate can only be determined by empirical research.

Notwithstanding the bias in its expression, the Marxist perspective sheds a new light on the nature of law (criminal law in particular) and its deep roots in

the kind of society within which it evolves and/or operates. It reveals a close relationship between society and law, and by implication, discloses the legitimacy of extending sociological inquiry to law.

Therefore, given the problem conceptualised for this study, we adopt, with full cognizance of its limitations, the Marxist perspective for our theoretical and (mainly) methodological orientation. This is because, it provides, generally, a more adequate frame for analysis. For, as Tumanov (1975) put it,

> The Marxist jurisprudence, beside acknowledging the essential place of the formal logical analysis of the law (typical of the structuralist/ functionalist position), holds that such analysis and subsequent systematization should be carried - in conjunction with concrete historical and sociological methods of investigation - on the basis of the dialectical (material) explanation of the essence, content, and goals of the law.

The significance and relevance of this methodological orientation is reflected in Marx' assertion that "the aim of investigation is to fully appropriate the matter in detail, to analyse its various developmental forms and to trace the inner connexion between these forms.." (Bottomore and Rubel,1961).

Marx summarises the assumption that underlies this methodological orientation when he says: "I was led by my (jurisprudential) studies to the conclusion that

legal relations as well as forms of state could neither be understood by themselves ... (because) they are rooted in the material conditions of life (otherwise called civil society)" (Bottomore & Rubel; 1961). In essence, the orientation adopted in this study is one that locates the law in its historical and sociological contexts which no doubt guarantees a deeper and critical understanding being the main focus of this study.

Explication of Terms:

The problem for, and the objectives of this study as stated previously, indicate the major concepts and variables which delimit the scope of one's present effort. These concepts are "Nigeria criminal law", "form", "content", and "operation". Their import and relevance to this study and the theoretical perspective that informs them are specified in the clarifications that follow below.

Generally, "criminal law is a very wide area in the field of law and even lawyers fear to engage themselves in studying it"[9]. Our seeming foolhardiness is sustained by the realisation that the whole gamut of Nigerian social life is, to a considerable extent, defined, coded and regulated through the

prism of the abstract postulates of a criminal law that is being considered foreign and problematic. The impetus is further sustained by this practical paradox that the criminal law is simultaneously an instrument for safety and destruction depending on how, and against whom, it is evoked.

The body of this Nigeria criminal law is contained in many statute books. The bulk of the law however, is contained in the Criminal Code (Cap. 42, Vol.II, Laws of the Federation of Nigeria and Lagos, 1958) which operates in the Southern States, and the Penal Code (Cap 89. Vol. III, Laws of Northern Nigeria, 1963) which operates in the Northern States of Nigeri..

These codes have Anglo-Australian and Indo-Sudanese origins and orientations respectively: in 1904 Lord Lugard introduced into the Northern part of Nigeria, a criminal Code based on the Queensland Code[10]. In 1916 its application was extended to the rest of the country following the amalgamation of North and South in 1914.

In 1958, the Northern Region[11] became disaffected with the criminal code, and went into search for a criminal code from a country of identical sociological and religious background. They found Sudan's code.

This code was modelled closely after the Indian Penal Code which was drafted by an Englishman - Sir Marcaulay.

Essentially therefore, the two major codes that operate in Nigeria have their origins in the British common law tradition. We focus mainly on these codes in this study. But to effectively grapple with their form, contents and operation would require a theoretical mode that is not only historical but also developmental as indicated previously:

The form of the law is conceived in this study as the total configuration as manifested in the structural organisation of the subject-matter, the language, and the construction principles and patterns of the law. Originating from the Greek philosophy, "form" expresses and defines the spatial organisation of the structure of the body of objects. It can be neglected only at the expense of a deeper understanding of the whole object (Prokhorov, Vol.24, 1975).

The point of departure for our examining the form of the Nigeria criminal law is that such configuration expresses the division of the legal norms into components as objectively necessitated by the particular features of the social relations of the society in which it originates. For, as David et.al.

(1978) observed,

> each system has concepts through which its rules are expressed; categories within which they are organised, and the legal rule itself in each of them is expressed in a particular way..... Of far greater importance to the law student will be a knowledge of the structure within which the rules and concepts are organised, the meaning of these categories and concepts, and the relationship of the rules among themselves..... these elements and features are intimately linked to our civilization and ways of thinking (emphasis added).

Our concern with language as an aspect of the form of the law is based on its significance in social interaction. Auguste Comte, in his effort to build a science of society, came to the conclusion that "language is the vessel in which thought of preceding generations, the culture of ancestors is stored..... Without a common language men could never have attained solidarity and consensus; without this collective tool no social order is possible" (Coser, 1977). The recurring theme of 'technicality' and 'incomprehensibility' of the law in the indigenous legal literature is essentially a question of "language" and a further justification for our concern.

The superimposition of the foreign criminal justice notion and system on the Nigerian indigenous law was through the introduction of legal codes. It is

worthwhile to note that the customary law which formed the basis of social order in Nigeria before the imperialistic contact with the British, was largely uncodified. The significance of the issue of codification in this study derives from our conception of a code as expressed in this analogy: A code is a building in which a particular branch of the law of a country is housed. With the lapse of time some rooms are not inhabited any more, while new part of the law are housed in temporary structures ..... clustered around the main building. When the manager of the building (the legislator) concludes that the situation is getting out of hand and needs correcting, he will remodel his building; evict some tenants and assign others to new quarters, build new annexes and pull down the sheds and shanties that have mushroomed around the building.

This analogy may be an over-simplification of the whole issue of codification, but it raises relevant issues for our consideration in this study.

First it indicates that the form of the law is a product of social construction: There is a conscious effort on the part of the builders to erect structures in which the laws of the nation are housed (both in choosing the materials and in gluing them together).

Second, given the situation in the analogy whereby the manager could "evict some tenants and assign other", it becomes inadequate to determine the nature of the law by its "form" only. It is presupposed that a deeper understanding of the law would involve a meticulous inquiry into the contents also.

And third, the frequency of the procedure of "remodelling", "pulling down shanties", evicting or assigning tenants, is determined not only by the potentialities of the building, but also the moods of the manager. These "moods" to our mind, depend largely on the ideological orientation of the manager. The potency of any of these factors and the frequency of "remodelling" are largely contingent on their social, political and economic contexts. By way of illustration, it is noted that while France still has its code of 1810, Russian penal law had undergone at least six recodifications since 1845.

In general, the foregoing clarification of our conception of the form of the law confronts us with two salient issues. First, do the classification, language and construction principles of the Nigeria criminal law enhance better understanding and appreciation, or a disjunction of legal knowledge and further ignorance, given "the function..... as

one of communicating with the public" (Aubert, 1969)? Second, does the form of the law "represent a veritable celebration of social cohesion at the level of total society" as Durkheim would hold for all laws (Hunt 1978, and Lord Lloyd, 1979 for elaboration)?

It was Chukkol (1980) who observed that "it would be injustice, bordering on tyranny to punish" people for 'breaking' the laws they do not understand or know to exist. This is particularly so under the present impression that most law makers in Africa "are determined to keep as many people as possible in the dark, yet punish them where their conduct does not conform to the law":

> There is no African country where genuine efforts are made to effectively publicize statutes. When the word "publicize" is mentioned in most African countries including Nigeria, it means little more than putting the verbose enactments into gazettes and staking some in the offices of the Ministry of Justice in the Urban centres. Under those circumstances it is sheer fantasy to expect the populace to be abreast with the laws meant to regulate their conduct.

The issue of knowledge of, and/or conformity with, the law as raised above, relates fundamentally, to the following questions: Whose value system constitute the content of the law? Are the norms of this value system internally cultivated or imposed from outside the community in which the law operates?

And how compatible and/or acceptable are these norms to the generality of the citizenry?

The content of the law as operationalised in this study includes, therefore, the following: the proscriptions and prescriptions in the Codes, their scope, and the enunciating principles and theories that inform them vis-a-vis the underlying social structure of the Nigerian society against which they were generated.

Given the traditional function of the criminal law as compelling certain acts and preventing others, it is essentially a function of maintaining an established, or establishing new paths of social action and creating new values. This order or social values is (are) mirrored in the content of the law. The content, in turn, is a product of specific theoretical or ideological traditions. A critical understanding of the law and its operation is usually sacrificed by pushing this interractional context of the content to the periphery. Therefore, the importance of contextualising the content of the law, in the way specified here, for the understanding of the law, needs no argument. It guarantees inter alia, a more effective and just operation.

The category of 'operation' in the study of law may not present much problem of understanding. However, it is specifically conceptualised in this study as the totality of the administration of the law which reveals the true meaning and direction of the law. The scope of the concept is defined to include an assessment of the way the police, the judge, and the prison official, handle the law through the general perception and reaction of the public to the law and its administration.

Rich (1975) had asserted that to understand legal systems we must look behind the written law of a country, to the government that administers the law - for there is often a great difference between the written law and the practices of legal administration. For instance, the criminal law in Nazi Germany or Stalinist Russia compared favourably, on paper, with the law of other democratic countries. But the administration of that law, it is alleged, bore no relationship to the written word.

One has chosen to examine the form, content, and operation of the law together in this study because of their theoretical and operational interdependence. Even among the traditional lawyers, the view is held but not fully appreciated that it is not enough merely to look at the "form" in which a law is cast,

one must also examine its "contents" in order to adjudicate on its legality (Barry, 1981). Bentham, a life-long law reformer "believed that no reform of the substantive law could be effectuated without a reform of its form and/or structure" as an interrelated element of the whole (Lord Lloyd, 1979).

In academic analysis, the categories derive their fuller meaning when examined together: "form (the physical side of law) and content (and operation) presuppose each other and can only in their mutual coherence be the object of jurisprudence." Podgorecki's (1974) representation of the categories in their systemic relationship better attests to the methodological stance adopted in this study. He says: "a legal precept (form) can be regarded as vessel with contents poured into it by the actual conditions of its functioning (operation)."

Significance of Study:

The theoretical and practical significance of this study derive directly from the problem and objectives of the study as stated earlier in this chapter.

At the theoretical level, it is hoped that the research will not only open floodgates to further sociological theorization on the criminal law vis-a-vis

the prevailing social order, but also cause a re-orientation in the teaching of law based on social-scientific materials.

For practical purposes, it is also hoped that the research would unravel the law: by locating it in its historical and sociological perpectives, the realities of the proscriptions and prescriptions in the law may be laid bare for better understanding. This in turn would be valuable for policies on crime-control, administration of justice and corrections. It may also serve as vantage point for critics of the present socio-legal system in Nigeria by leaving them better informed than they have been.

NOTES

1. The thinking that law is either not necessary or a repressive evil to be done away with is contained in many works. These include: Plato's "The Republic" translated by Conford (1941) pp.88, 115 - 118; Adam Smith's(1776) 'Wealth of Nations"; William Godwin's (1793) "Political Justice"; and the sporadic writings of Bakunin and Kropotkin (the leaders of the Russian School of Anarchists). Concise reference has been made to these works in Lloyd, D. (1979): The Idea of Law: A Repressive evil or Social Necessity. Penguin Books, New York. pp. 18 - 25.

2. Such efforts include the works of
   (i) Austin, J. (1832): The Province of Jurisprudence Determined. Noonday Press, New York, pp. 79-80.

   (ii) Holland, T.E. (1916): Jurisprudence. Clarenden Press, Oxford. p.13.

   (iii) Maine, H. (1920): Ancient Law. John Murray, London. p.27.

   (iv) Pound, R. (1959): Jurisprudence. Vol. 3. Quoted in Lord Lloyd (1979): Introduction to Jurisprudence. Stevens & Sons Ltd., London. p.358.

3. It is in this respect that we understand the name the Germans gave to the medieval code of Saxon Common law: Sachsenspiegel, meaning "Saxon Mirror".

4. (1947), 12 W.A.C.A. 141. In accordance with the local customary law, the Gwandu Native Court sentenced Gubba to death on the ground of wilful murder. The West African Court of Appeal set the man free on the ground that the customary law definition of wilful murder did not coincide with the English Criminal Code, and as such the penalty was "repugnant to natural justice .....".

5. (1951), 20 N.L.R. 6. Nameri, a Hausa man, raped a thirteen-year-old girl so violently that she bled to death. Bairamian, J., in the Supreme Court at Kano held that the charge of murder brought against the man could not be sustained under S.316(1) of the English Criminal Code. The man was imprisoned for "manslaughter". No doubt, the ordinary members of the public, including the parents and relatives of this poor girl, were astounded.

6. (1925), 6 N.L.R. 110

7. The question of whose "justice" and "morality" (good conscience) came out clearly in the ruling of Wilson, J. in a Tanganyikan (as it was then called) High Court Case - Gwao bin Kilimo V. Kisunda bin Ifuti, viz: "To what standard.... does the Order in Council refer...., I have no doubt whatever that the only standard of justice and morality which a British Court in Africa can apply is its own British Standard" [(1938) Tang. L.R. (R) 40]7.

8. The extracts which express the views cited are contained in Lord Lloyd (1979): Op. Cit., pp.108, 203, 223, 86, and 109 respectively.

9. This is a confessional statement from a highly placed (doctoral) lawyer during one of the interviews with him.

10. The Queenland Code is the code which Sir Stephens drafted in 1878, originally for England. In the preamble to the Draft Code, Stephens stated that the Code was meant to simplify and consolidate the English common-law of crime.

11. Prior to the political structuring of Nigeria into States (twelve) in 1966 (and later 19 in 1976), there were three main Regions in Nigeria: Western and Eastern Regions in the South, and Northern Region in Nigeria. These Regions

emerged from the original colonial Southern and Northern Protectorates of Nigeria, respectively. The period the people in the North became disaffected with the criminal code coincides with the existing Regional political Structures in Nigeria.

CHAPTER TWO

RESEARCH DESIGN

Law is regarded in this study as a social phenomenon with the centre of its gravity lying not in juristic science but in society (Ehrlich, 1962). The approach is that in order to know what it is, we must know what it has been and what it tends to become (Holmes, 1881). In short it is a product of history.

In addition, it is held that greater understanding is enhanced when law, like any other social phenomenon, is put in its developmental context: the dialectics of the forces that bring it into being, and shape its dynamics (in form, content, and operation). Put another way, it is not enough to observe what happened and when it happened but, in addition, to ask how and why it happened. This is the tradition of critical sociology in handling social phenomena (Turner, 1978; Ake, 1981).

It is within the context of this tradition, and with the stated objectives in mind that the methodology for this study was designed in terms of the location of the study, sampling, variables, methods of data-collection and techniques of data-analysis.

Location:

Even though the topic of this study suggests a nation-wide coverage, the consideration of research economy renders a geographical restriction not only obvious but also rational. In this regard only Kaduna and Benue States were chosen as the study areas. They were chosen for reasons of "accessibility" and convenience. Benue State being the State of origin of the investigator, coupled with one's familiarity with the environment, was much accessible for the collection of the relevant data. Kaduna State is the state of residence of the investigator. It was therefore much more convenient for the investigator to undertake the numerous and necessary visits to the research locations within the state.

Specifically, two towns from each of the States were chosen as the research locations: Kaduna and Zaria from Kaduna State, and Makurdi and Idah from Benue State. In choosing these locations, some factors were considered: Kaduna and Makurdi, being State Capitals, are metropolitan in populations and outlook. Kaduna is an urban multi-ethnic town with a long history as capital of the "north". The existence of many Federal institutions like Banks, Schools, Ministries, Industries etc, lends credence to the

metropolitan nature of its population and general outlook. Similarly, Makurdi, besides being the capital of Benue State, is a multi-ethnic town with some Federal institutions. More significantly, it has recent experience of urbanization; and with the attendant "strain" on the criminal justice system, the opinions of the law enforcement agents and the general public were deemed valuable to the objectives of this study.

Idah and Zaria were included in the research locations for their "provinciality", in addition to general consideration of "accessibility" and convenience. Given the object of this study - to examine in the main, the sociality of the Nigeria criminal law - the "countrified" opinions which these two locations guaranteed, were indispensible. In addition Zaria is distinguished for its historical status as an educational centre.

It should be mentioned that the proposal approved for this study, indicated choosing Lagos as one of the locations to represent the south where the Criminal Code operates, while Zaria was to represent the North where the Penal Code operates. Proper as that would have been, the limited time and

finance at the disposal of the investigator did not allow the study to extend physically to the Southern parts of the country. However, the fundamental similarities between the Codes and their principles of operation as enuniciated in the Criminal Procedure Act and Criminal Procedure Code respectively should nullify any effects of this "apparent" limitation on the findings of this study. Nevertheless, this limitation should be borne in mind especially with regard to the inferences from the empirical data which cover only the north.

Sampling:

The nature of this study is such that the boundaries of the research population were not easy to delimit. As such, the investigator deemed it more appropriate to use the purposive - availability sampling method. While precise representativeness of the research population in the samples was not practicable under the circustances, efforts were made to allow for a fair representation of the various social strata within the sample categories. In order to allow for a wide spectrum of information, heterogenous samples of 190 respondents were drawn from four major categories of people, viz:

(i) The Legal Professionals - A sample of 20 was drawn comprising of 13 Barristers/Solicitors, three Legal Scholars, three Magistrates, and one Upper Area Court Judge. The bulk of this sample came from Kaduna State. The size of and proportions within this

sample, were largely determined by the peculiar, situation posed by the category. To mention one of such peculiarities, lawyers generally speaking hardly agreed to have time for "conversations" that are not directly tied to their "official" duties and obligations.

Therefore, to obtain this sample of legal professionals, specific steps were taken. For the 13 Barristers, the investigator secured a comprehensive list of the legal chambers in Kaduna State, issued from the Secretariat of the Nigerian Bar Association, Kaduna Branch. Out of 51 legal chambers (as at September, 1983) 20 (with about 50 lawyers) were selected, based on the years their "proprietors" were called to the Bar. Preference was given to the chambers whose "proprietors" had been called to the Bar for at least five years as at 1983. In the course of visiting the chambers, only in very few cases were the "proprietors" met: some had died, retired, or were always "on tour". The option was to approach the "younger" lawyers that were met in the respective chambers. For the legal Scholars, the three of them were selected from the Law Faculty of the Ahmadu Bello University, Zaria. The selection was based on those who teach criminal law; and only the three[1] were found to handle that particular course

in the Faculty. All the Magistrates and the Area Court Judge were selected from the Zaria Branch of the Kaduna State Judiciary.

This sample-category was included in our research population to allow for an evaluation of legal professional opinion on the major foci of this study. The Magistrates and the Area Court Judge in particular, were chosen instead of the personnel of higher legal jurisdiction (e.g. the judges of the Courts of Appeal), because it is shown by the existing studies that over 90% of criminal cases in Nigeria are handled at the Magistrate and Area Court level.

(ii) The Police

A sample of 30 policemen was drawn largely from Benue State. It was ensured that almost all the ranks, ranging from constable to Commissioner of Police, were included in this sample. This sample being obtained largely from Benue State finds explanation in the factor stated earlier on a general note: the much needed co-operation was received mainly at Idah and Makurdi Police Headquarters, where the investigator was familiar. However, being a Federal Institution, about 50% of the respondents in the sample indicated that they had served in other parts of the country. It should also be mentioned that a considerable proportion

(about 40%) of the policemen at the time of the interview, were not indigenes of Benue State. The point here is that their opinions could not be categorized as "local".

The police sample was obtained after the investigator had sought for permission from the Divisional Police Officers (D.P.O.) in the respective locations. This was by presenting an introductory letter from the Department of Sociology, A.B.U., Zaria to the Divisional Police Officers, with a brief explanation of what the study was all about. With the permission granted, some of the police who were on duty on the day the investigator visited the Police Headquarters in the respective locations, were selected, bearing in mind their ranks.

Regarding the position of the Police in the Nigerian criminal justice system, there can be no question that it is very crucial. Needless to say, the whole process of criminal justice normally starts from the Police. Therefore, their opinion on the criminal law in Nigeria relative to our objectives is invaluable. Hence the inclusion of this sample in the research population.

(iii) The Prison Inmates

A sample of 50 was drawn from this category of the

population for this study. The size is made up of 30 convicts and 20 on remand-awaiting-trial. In all, 40(25 convicts, 15 on remand) were selected from Idah main prison, and 10(five convicts, five on remand) from Kaduna Central Prison. The respondents were selected from the lists of "court warrants" with which the inmates were admitted. The warrants contained essential information such as the court of referral, the offence committed, the place of committal, the type of sentence, etc. The selection was made from only those convicted for, or accused of, specific criminal offences.

Given the present state of "correctional system" (policy?) in Nigeria whereby a large proportion of convicted and accused persons end up in prisons, it is considered in this study that the opinions of this group of persons would be informative and useful: it is they who have gone through the whole process of the criminal justice system. They are thus the readily indentifiable "end-products" of the system.

(iv) The Public

Whatever conception of law is held, "public opinion is fast becoming the yardstick of legal validity" (Ogwurike, 1979). However, it has not been easy to construe what "public opinion" is. For instance, in

Peel's view, public opinion is "that great compound of folly, weakness, prejudice, wrong feelings, right feeling, obstinacy, and newspaper paragraphs - a confused mixture of wrong-headedness, good sense and ephemeralty "(Quoted in Silvery, 1961). This does not seem to lead us out of the difficulty of what is public opinion.

What is done in this study was to determine the "relatively enduring attitudes" of the public towards specific legal issues in the Nigeria criminal law. It is assumed that these "attitudes" (opinion) rest on the moral values of the society which could be used to socially evaluate the extent to which the form, content and operation of the Nigeria criminal law are rationalised.

For this purpose, a sample of 90 respondents was drawn from Kaduna and Makurdi: 60 and 30 respectively. In drawing this sample, the populations in the two locations were divided into four zone/clusters, respectively. A specific number of respondents was then purposively selected from the various social strata within each zone. The size of each of the various samples is ultimately determined by the researcher's judgement of its adequacy for the present purpose.

Variables:

The pieces of information required from the

various samples identified in the foregoing were based on the following variables. To characterise and contextualise the opinions of the respondents, the variables examined include age, sex, state of origin, religion, level of education, occupation and where necessary, other background variables such as parental education and occupation. In addition to these variables, the following were also examined for the prison immates category: the type of offence, the pre-prison status of the offender, the disposition of the case, and the "grounds" for the sentence given.

However, the most basic variables examined in the study are the following: the structural organization of the law; the statutory language in which the law is cast; and the scope of criminalization. Others include the public conception of the Police, Court, and Prison in Nigeria; and the general orientation of the Nigeria Criminal Law. These variables were selected for examination with a view to ascertaining, describing and assessing the form, content and operation of the criminal law.

It is noted that in examining the variables the data from the primary and secondary sources, collected for this study were also liberally used. However, in

order to streamline the analysis of these data on these variables, a number of specific offences in the Nigeria criminal law were selected for illustration: adultery, bigamy, personation, assault, theft, robbery, burglary, forgery, fraudulent false accounting, corruption, and defamation/sedition. These offences were purposely selected because they are said to be pervasively committed and/or triable in the type of courts sampled for the study.

Where culpable homicide (murder) would illustrate the point better, it was used since the Magistrate Courts have the jurisdiction to hold preliminary inquiries into such charges, or to prepare proofs of evidence (though without the authority to try them) for probable transmission to the High Court.

Method of Data Collection:

Because of the nature and pioneering status of the study, the selection of sources from where relevant and adequate data could be generated had to be eclectic.

(i) Documentary Sources:

These include, the textbooks on the substantive law especially at the stage of background information;

the Codes and Law Reports, in an attempt to "pin down" what exactly the law is; and the Police, Court, and Prison records with a view to mapping the direction of the law in operation. In search of relatively adequate data, a number of other but complementary methods of data collection described in the remainder of this section, were used. The approach proceeds on the assumption that the social researcher severely limits his ultimate ability to understand his subject, who limits himself to a single method.

A few more details on the consultation of legal materials should be in order. In addition to meticulously examining the available legal literature, efforts were made to examine some court records including the "Minute Books" and case files from Idah Chief Magistrate Court, Idah, and the Chief Magistrate Court Daura Road, Kaduna. This was aimed at coming to grips with the court-handling of the criminal law, and the real questions of law and sociology as they relate to the form, content and operation of the law. Similarly, the prison records in both locations were consulted. The concern here was determining the court that, more than others, uses imprisonment as its main mode of disposition; the age and status distributions of those that usually end up in prisons; the model length of sentencing; etc.

In closing this sub-section, it is very important to specify that the Penal and Criminal Codes of Nigeria were studied analytically and synthetically, This was aimed at figuring out the underlying general philosophy for the crime definition, and punishment in the Nigeria criminal law; describing and assessing the scope of the proscriptions and prescriptions; and identifying and describing the way they are cast in the statutory structure and language vis-a-vis the social relations that the law was "designed" to regulate.

The choice of these two codes was influenced by three main considerations: first, they contain the bulk of the Nigeria Criminal law as earlier stated in chapter one; second, they are operated "exclusively" in the Northern, and Southern parts of Nigeria respectively; and third, they contain, mostly, common-law crimes which are more susceptible to the methodological stance adopted in this study. It is argued that an exposition of common-law crimes must set off on an historical path to investigate legal developments. This allows for effective definition of the crimes and the expounding of their essential elements contextualised in their socio-historical realities. Besides, it allows for more utilization of comparative materials which are

very essential to the methodology of the sociology of law. Moreover, by requiring "mens rea" along with "actus reus" (actus non facit reum nisi mens sit rea[2]) the common-law crimes, more than most of the statutory crimes, entail more sociological considerations in their determination.

(ii) Interview Schedules:

Given the fundamental differences between the various samples of the research population, separate structured-interview schedules were prepared and administered accordingly. The Interview Schedules were tailored towards eliciting information on the variables specified earlier in this chapter.

The interviews were held between July and October, 1983. The method was costly (finance-wise, time-wise and travel risks) but the advantages of the "purposive conversation" could be said, in the ultimate, to offset the cost. Though the two-hour average duration of an interview with one respondent was strenous, the face-to-face encounter provided opportunity for guaging the "truthfulness" of the respondents information; for adopting the language better understood by each respondent; and for being flexible to allow for clarification of questions and responses; etc.

It is considered important at this juncture to specifically inform the readers of this study that the investigator could not get the legal professionals to grant audience for interview in spite of the efforts made in that direction. In the circumstances, the only alternative was to leave the interview schedules with them to complete at their own "convenience". The situation was however envisaged. As such, efforts were made at the preparatory stage to structure the schedule meant for this category in a way that it could be filled like a questionnaire when necessary.

In order to assist the investigator, two research assistants were employed and trained to conduct the interviews for the public sample whose Interview Schedule did not entail technical/ professional discussions.

Generally, interview occupies an important position in social science research. Experience from social surveys has shown that:

> the man in the street (or market, office, or house), is unlikely to have any considered basis for evaluating a problem with which he was largely unfamiliar (or even familiar) until faced with an interviewer --------. Yet the ease with which he gives an opinion on most subjects suggests that there must be some underpinnings or precursors of an opinion waiting to be tapped (Silvey, 1961).

This understanding informed the choice of interview as one of the methods for collecting data in this study.

(iii) Direct Observation:

One of the objectives which this study has sought to pursue (i.e. describing and assessing the practical operation of the law) renders "direct observation" one indispensable method for the study. The method has even been regarded, in some circles, as the best. For instance, Barnard holds that

> the best way to learn how the courts work is to go and watch them-------. The rules which govern the process of law enforcement only become comprehensible when they are seen in action: in the abstract, they seem a hopelessly abstruse and confusing muddle (Quoted in Atkinson et. al., 1979).

In the course of interviewing the police in their stations, the investigator had the opportunity to directly observe the goings-on at the stations. Also, visits were paid to the Chief Magistrate Courts (at Idah and Kaduna) particularly to observe the court proceedings. The interviews with the prison inmates also provides an opportunity to observe "day routines" in prison yards: morning parades, instructions and labour; admission and discharge processes; interactions among the prison inmates; and the feeding and other general arrangements.

Techniques of Data-Analysis and Interpretation:

The extensive reading of relevant literature, the examination of documents, and the opinion survey conducted in this study, produced a large amount of data. As such to summarise and describe them in a manner that they could yield "answers" to the problem posed by the study and to link these answers to other available knowledge was onerous and tedius.

At every stage of the analysis and interpretation, various methods were used concurrently. The bulk of the secondary data (from literature and records) was handled manually since they are virtually qualitative.

On the other hand, the bulk of the data from the Interview Schedules were coded and converted into computer-readable form. By using the Statistical Package for the Social Sciences (S.P.S.S.), frequencies, some central tendencies, and measures of associations were obtained. And the extensive background reading provided a solid basis for the interpretations of the data in relation to the objectives of the study.

Difficulties and Experiences in the Course of the Study

It is envisaged that this study would provide a foundation for, or provoke, further research. It is

therefore pertinent to highlight some of the factual difficulties and/or experiences encountered in the course of the study. They could be informative and cautionary.

First, the abstract nature of the "Law in the book" posed a serious problem for the conceptualisation and operationalisation of the research-problem at the initial stages. The consequence was that the "over-ambitiousness" of the study was not realised until one had plunged into it. The reverberation was felt at every stage of the study though in a diminishing sequence. The difficulty could have been minimised were law to be a discipline with a tradition of empirical social research.

Second, the time of the interviews coincided with the 1983 general elections. Therefore asking questions relating to the law of the land and the general morality of the society at such a time naturally generated suspicion from the respondents. Extra time and energy were expended to reduce the suspicion to a controllable proportion.

Third, there was the language problem. In some cases particularly among the prisoners and public samples, some respondents did not understand English

well enough or at all. To translate the Statutory language (which was already technical enough to be ambiguous) into other indigenous languages was immense and tedius.

Fourth, the coding of some Interview Schedule data posed serious difficulties. The situation arose from two sources. One, failure to question and scrutinise the completed Interview Schedules submitted by the Research Assistants at the time they handed them in: they were unable to recall and explain certain inadequacies found in some of the Schedules when their attention was drawn to them later. Two, the conversion of the Interview-Sechedule for the legal professionals into self-administered questionnaires meant that the omissions and misunderstanding of some questions and ambiguity in some answers could hardly be checked and rectified.

And finally, the investigator wishes to express his awareness of McBarnet's (1981) observation that "taking the approach of examining law..... has meant taking on board data, more normally associated with 'lawyers' law' than with sociology". One is also aware that the risks of doing this are many: one, being accused by sociologists of being unsociological, two, being accused by lawyers of intrusion into their

domain by an amateur; and three being accused by 'purists' of being eclectic. In spite of these risks, however, the investigator dared, being of the belief that such indulgence is"necessary ---- if the sociology of law is to..... become truely a sociology of law". It may be recalled that one of the objectives of the study is "to make suggestions regarding the task of, and orientation for the sociology of law as an emerging discipline in Nigeria". More importantly the indulgence stems from the realisation that behind the screen of the formal rules, or the often mystifying disputes of lawyers, stands the real question of sociology.

There is no doubt that the problems identified in the foregoing are important to note. It must however, be emphasised that they did not affect the validity or reliability of the findings of this study. With much reading of related literature, and useful discussions with some academicians of recognition in this study area, one was able to overcome the initial difficulty of conceptualization and operationalisation of the research problem. With patience and tact, the suspicion generated by the prevailing political atmosphere, was brought under effective control. The problems of language

and coding were surmounted with methodological insights. And finally, notwithstanding the risks encountered in the course of traversing the very wide terrain of this study, it is noted that researches of this nature remove one from the academic enclave and expose one to the floodlight of empirical realities.

NOTES

1. Incidentally two of these scholars are non-Nigerians. However, they had each lived in Nigeria for a very long time such that their opinions on the matters under study could be considered largely "Nigerian".

2. This means that there is no crime without a "guilty mind".

CHAPTER THREE

THE FORM OF THE CRIMINAL LAW

Engels rightly observed that "it is the old story (that) form is always neglected at first for content" (Quoted in Cain, et. al., 1979). In other words man's putting of great stress on the content, and quite often to the neglect of the form, of his creation is a practice with a long history. Generally, the existing scholarship in the field of law had consciously or unknowingly subscribed to this practice: most of the references to the form of the law appears only to be incidental to the voluminous works on the operation (and, to a lesser extent, content) of the law. In the process, the importance of the form to the general understanding of the law had usually been neglected.

The effort in this chapter is to identify and describe the form in which the Nigeria criminal law is cast and thereby demonstrate, ultimately, the sociality of the form as a way of enhancing a more proper understanding of the law. This effort proceeds on the expectation that the form of the law in any society is the product of sociological variables such as the level of civilization, the type of socio-economic formation, or the whole socio-historical

experiences of that society. Put differently, it is presumed that "the manner in which a legal system organises into compartments the many types of conduct which it holds to be punishable by the state is the product of its history" (Burchell, et. al., 1970). It is also presumed that even the smaller (basic) units in statutory construction like legal semantics are likely to have this socio-historical context such that "a property-owning society will naturally define deviations (offences) with reference to its property concepts" (Freeman, 1974).

Pursuant to the effort stated in the foregoing, two broad elements of the form of the law are delimited for examination, sociologically: one, the structural organisation of the legal norms; and two, the language of their expression in the Nigeria criminal law. In the end a general explanation is attempted for what is observed in both areas.

The Structural Organisation:

The attempt here begins on a general observation that incongruencies and confusion pervade the classification of offences, and the arrangement of the parts, chapters, and sections in the Criminal and Penal Codes of Nigeria. The remainder of this subsection is devoted to demonstrating the validity of this general assertion.

Broadly speaking, two main modes of classification are identifiable in the Nigeria criminal law: classification according to punishment, and classification according to trial (Fakayode, 1977). These are explicated below.

For the purpose of punishment the offences in the law are classified into "felony", "misdemeanour", and "simple offences". Section three of the Criminal Code defines these categories thus:

> A felony is any offence which is declared by law to be a felony, or is punishable without proof of previous conviction, with death or with imprisonment for three years or more.
>
> A misdemeanour is any offence which is declared by law to be a misdemeanour, or is punishable by imprisonment for not less than six months but less than three years. All offences other than felonies and misdemeanour are simple offences.

In the Penal Code there is no such express classification of offences, similar to that in the Criminal Code. However, the maximum punishments allocated to the various offences in the Penal Code are harmonised with the ones in the Criminal Code such that the offences can be classified using the categories in the Criminal Code. Chapter four, Section 26 of the Criminal Procedure Code which sets out the mode of

Police-Arrest for all offences in the Penal Code also reveals that a similar principle of classification is being observed in the Penal Code. Of the whole 289 offences in the Penal Code, 149 are punishable (as felony) by imprisonment for three years and above; 91 (as misdemeanour) by imprisonment for less than three years but not less than six months; 20 (as simple offences) by imprisonment for less than six months; and 29 by unspecified punishment. It is deducible from this point that the principle of classification according to punishment prevails in the structural organization of the Penal Code much as it does in the Criminal Code, the absence of the use of terms like felony and misdemeanour in the former, notwithstanding.

For the purpose of trial, the offences in both Codes are classified into indictable and non-indictable offences. An indictable offence is "an offence which on conviction may be punished by a term of imprisonment exceeding two years, or by imposition of a fine exceeding ₦400.00, or which is not declared by the written law creating it to be punishable on summary conviction" (Obilade, 1979). All other offences are non-indictable.

The two afore-mentioned modes of classification are of heuristic importance to the purpose of this

chapter. Given their principles, offences such as theft/stealing (S.390 C.C., 286 P.C.); bigamy (S.370 C.C.., 384 P.C.); murder/culpable homicide (S.315 C.C. 220 P.C.); assault (S.252 C.C., 264 P.C.); fraudulent false accounting by servants or clerks (S.438 C.C.); Official corruption (S.98 C.C.; 115 P.C.); etc are felonies and indictable. Adultery (S.387 P.C.); unlawful assembly (S.69 C.C., 102 P.C.); defamation (S.373 C.C., 392 P.C.); etc are misdemeanours. Others such as vagrancy/idleness (S.249 C.C., 405 P.C.); impersonation (S.484 C.C.., 133 P.C.); etc., etc., are simple offences.

The offences specified above are the ones mostly used for illustrations in this study. And by locating these offences in their respective official categories as stated above, the assertion earlier made concerning the nature of the structural organisation of the Nigeria criminal law (i.e. that it manifests incongruencies and confusion) can now be demonstrated. The issues considered include the logical unity, coherence, and the degree of harmony within/among the respective categories of offences in the law on the one hand and between these and the social values and understanding of the Nigerian populace on the other.

Logical unity : in this context is essentially

the issue of relevance and congruence: do the legal norms, by their existing official grouping, reasonably belong to the various parts in which they are located in the Nigeria criminal law? In other words, do they exist in their proper contexts such as would make for easy identification and better understanding? As for coherence, it is used here with regard to the texture (i.e. the manner of composition) of the legal norms, particularly within their official categories. Is the relationship or connection among all the relevant norms intelligible, clear and lucid? Where certainty and clarity are missing in the form of the criminal law in particular, obscurity and confusion would reign. Lastly, harmony as used here refers to systematization and order. Is the arrangement of the parts, chapters or sections in the Nigeria criminal law orderly? Does it signify an order of importance, identifiably setting out the priorities and aspirations of the society?

The examination of the issues specified above, focuses essentially on the extent of their sociological rationalisation. That is to say, it is directed at exposing whether or not the legal norms vis-a-vis their grouping, texture, and order in the law are couched in conformity with, or are adapted to, the social understanding and value system in Nigeria. In doing

this, the opinions of the lawyer respondents are largely relied upon because, by virtue of their training, they should be most familiar with this matter. Table 1 presents their opinions on the logicality, coherence or otherwise of the classification of the Nigeria legal norms.

TABLE 1: LAWYERS' DESCRIPTION OF THE CLASSIFICATION IN THE NIGERIA CRIMINAL LAW REGARDING LOGICALITY AND COHERENCE:

DESCRIPTION	%	N
Logical, Coherent/Neatly arranged	25	5
Illogical, Incoherent/Haphazard, Overlapping.	50	10
No Opinion	25	5
TOTAL	100	20

Table 1 shows that the classification of the legal norms is regarded by two-thirds of the lawyers who offered opinion on the matter as incoherent and haphazard. The strength of this finding is affirmed by the overwhelming positive responses by the lawyers that it is desirable (75%) and feasible (60%) to arrange the offences in a logical and coherent manner (in this case, on an ascending or descending scale of social danger, and with internal unity) instead of what exists at the moment.

In order to illustrate the finding in Table 1, the opinions of the lawyer respondents were also sought

on the classification of two specific criminal offences. The first concerns the lawyers' view on goat-stealing and its conception in the law. In the Nigeria criminal law, all forms of theft are felonious and the treatment given to goat-stealing in most of our courts affirms that it is regarded as a felony. What is the lawyers' view on this matter? On the whole, 65% of them indicated that goat-stealing should be a simple offence rather than a felony as conceived in the law. The reason given was that the seriousness with which an offence is viewed should be commensurate with the position of the object of the offence in the wider economy and society. Goat, in their opinion, does not occupy such a crucial position in the Nigerian socio-economic thinking. Deducing from this opinion therefore, it is illogical to lump together all kinds of theft, including goat-stealing, as a felony without due regard to their peculiar sociological contexts.

The second illustration relates to personation by wearing dress or carrying token used by public servant. Simply put, this offence focuses on the situation where someone who, not being a member of the armed forces, wears a police or army uniform "with the intention that it may be believed that he belongs to that class of public servant" (S.133 P.C.). By

the official classification, this offence is a simple offence. What category did the lawyer respondents consider appropriate for this offence in the Nigerian context? The survey showed that 50% of the respondents considered it more appropriate to classify personation in Nigeria as felony; 30% as misdemeanour; and 20% as simple offence.

Those who would not consider personation as a simple offence, put together, makes the opinion of the respondents on this matter, more overwhelming. As for the reasons for their opinion, while 35% did not give any, the remaining 65% held that personation of the kind discussed here serves as a cover for more serious offences against the state. Therefore, it is illogical and largely unrationalised to view the offence mildly. Again, this finding affirms the general opinion of the lawyer respondents on the nature of the structural organisation of the law in Table 1.

In presenting findings on a general level as done in the foregoing, certain peculiarities, where they exist, may be masked. To avoid this, variations within the afore-mentioned findings, in relation to some independent variables, are considered. It is found that at .05 level of significance, no significant relationships are identifiable. However, given the

exploratory nature of this study, one would like to bring into focus the strong tendencies in some of the correlations. The consideration is that there is a strong tendency where the value of the Crammer's V, is .4 or more. In this regard, two of the correlations are identified and presented in Tables 2 and 3 respectively.

TABLE 2: LAWYERS' OPINION ON THE CLASSIFICATION OF GOAT-STEALING BY AGE OF THE RESPONDENTS

AGE (YRS)	'GOAT-STEALING' A FELONY? YES(%)	NO(%)	DEPENDS(%)	TOTAL(N)
20 - 34	57.2	35.7	7.1	14
35 and above	0	80.0	20.0	6
TOTAL(N)	8	9	3	20

Chi-square = 4.66 (df. = 2); not sign.; Crammer's V=.48

In Table 2, the view that 'Goat-stealing' should not be a felony is stronger among the lawyers of the age of 35 and above than those of 34 and below. Further, it is interesting to note that while more than half of those in the 34 and below age category viewed goat-stealing as a felony, no one among the older generation held such view. This may be difficult to construe, except that the age distribution follows the "state-of-origin" distribution i.e. the younger lawyers are likely to be from the northern part of the country.

TABLE 3: LAWYERS' OPINION ON GOAT-STEALING BY THE STATE OF ORIGIN OF THE RESPONDENTS

STATE OF ORIGIN	GOAT-STEALING A FELONY? YES(%)	NO(%)	DEPENDS(%)	TOTAL(N)
NON-NIGERIANS	0	100	0	2
SOUTH	25	62.5	12.5	8
NORTH	60	20	20	10
TOTAL (N)	8	9	3	20

Chi-Square = 7.10 (df.=4) not sign. Crammer's V = .42

The tendency in Table 3 is not in doubt. Considering Nigerian respondents exclusively, the lawyers of northern origin seemed to favour the existing classification in the law with respect to "goat-stealing" as a felony, than those of southern origin. This does not vitiate the overall position of the respondents which weighted heavily against the existing classification of this issue in the law. The importance of the finding in Table 3 is that it reveals a tendency which is theoretically significant: goat is more valuable in the economy of the north; therefore, the opinion of the lawyers from the north is more likely to be influenced by that fact than it would influence those from the south where goat may not be as crucial.

The tendencies observed above further reinforce the afore-mentioned view of the lawyer respondents on the structural organisation of the Nigeria criminal law.

More importantly, this finding indicates that behind the formal appearances of the lawyers, stand attitudes to law which bear the marks of their social-cultural background.

In order to allow for a more broad-based examination of the aspect of the form under discussion, the opinions of members of the public were sought on similar issues viewed in the Nigerian context. One, should bigamy be in the same class of felonious offences as murder? And two, what should be the adequate reaction to personation? These issues are examined below, one after the other.

In the Nigeria criminal law, the offence of bigamy is committed when "any person who, having husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife" (SS. 370 C.C., 384 P.C.). The offence is punishable with imprisonment for seven years (and with fine, in the Penal Code). Hence, it is a felony and it is indictable. Apart from putting bigamy in the same class with offences like murder, robbery, etc, the provision projects it as more serious than rioting armed with a deadly weapon (S.107 P.C.); unlawful possession of human head S.219 P.C.); theft (S.287 P.C.); etc; etc; by punishing it more severely than any of these other

felonies.

Table 4 presents the public reaction to the validity of the classification specified above.

TABLE 4: PUBLIC RESPONDENTS' OPINION ON THE CLASSIFICATION OF BIGAMY WITH MURDER IN ONE CLASS

BIGAMY AND MURDER IN ONE CLASS	%	N
Yes, they should	11.1	10
No, they shouldn't	76.7	69
Can't say	12.2	11
TOTAL	100.0	90

Table 4 shows that over three-fourths of the respondents did not consider that bigamy should be in the same class with murder. Those who held this opinion against the existing classification maintained that bigamy should not be an offence in Nigeria. Their reasons converge in the positon that it is unreasonable to create the offence of bigamy in a society that is largely polygynous.

The second issue on which the opinion of the public respondents was sought is personation in Nigeria. The approach is to determine the social classification of this offence, using the type of penalty the public consider adequate for it. Table 5 presents the respondents' reaction.

TABLE 5: PUBLIC OPINION ON THE ADEQUATE PENALTY FOR PERSONATION

TYPE OF PENALTY	LENGTH/AMOUNT (MODAL)	N	%
Imprisonment	60 months	73	81.1
Fine/Compensation	₦500	10	11.1
Caning/Warning	24 strokes(cane)	4	4.5
Can't say	-	3	3.3
TOTAL	-	90	100.0

Table 5 shows that, either by the recommended length of imprisonment or the amount to be paid as fine or compensation, the respondents' view puts personation in the felony-category of offences. Those who recommended imprisonment overwhelmingly held that personation by a sane person, whether it is with intent to defraud or not, is dangerous in the Nigerian context. They liberally recollected cases of dubious people going to villages and/or parading the highways in police or army uniforms. The non-rationalisation in the law with respect to this issue is firmly suggested by this finding.

To find out whether the opinions manifested by the foregoing findings were influenced by any social-cultural (e.g. age, religion, ethnicity, etc.) biases in the samples, they were cross-tabulated with a host of independent variables for further analysis: there

was no statistically - significant relationship between the opinions and any of the independent variables. A few of the relationships presented in tabular form (Table 6) should help further in making this point.

TABLE 6: THE RELATIONSHIPS BETWEEN THE PUBLIC OPINIONS ON THE CLASSIFICATION OF BIGAMY, PERSONATION, AND SOME INDEPENDENT VARIABLES

CROSSTABULATED VARIABLES	VALUE OF RELATIONSHIP x^2	df	REMARK
Opinion on Bigamy by Age	3.77	6	Not significant
" " " " Religion	1.01	2	"
" " " " State of Origin	2.92	2	"
Opinion on Personation by Age	11.46	9	"
" " " " " Religion	4.94	2	"
" " " " " State of Origin	5.54	3	"
" " " " by Education	10.78	9	"

Needless to say, with regard to the specified illustrations vis-a-vis the findings, there is a relatively high consensus among the public respondents on which the independent variables could not cast any reasonable doubt: in spite of the varied sociological backgrounds, a majority of the respondents were of such view that essentially indicates incongruencies between the legal and social perception of the issues.

In addition to the foregoing opinion of lawyers and members of the public (which is supportive of the earlier assertion of incongruencies and confusion in the form of the law), a meticulous examination of the Criminal and Penal Codes reveals these very features. That is, the haphazard and/or hairsplitting manner in which the provisions in the law are organised. In the Criminal Code, "Parties to Offences" appears in Chapter Two of Part One, while "Accessories After the Fact" closes the Code in Chapter 55 of Part Eight. By the logic of harmony, the two issues should be in the same chapter because the main ingredients in both provisions seem to be closely related to themselves. The presentation of assaulting and/or obstructing public servant on official duty in the Penal Code reveals similar characteristics. This offence is scattered in three separate Chapters: 9(S.112); 10(S.148); and 18(S.267) which have different titles. Yet the ingredients are basically related: that there was assault and/or obstruction; and that the person assaulted must be a public servant acting in the discharge of his duty as a public servant.

Also within the Chapters in the Codes, offences are seen to be created and put in separate sections just by hairsplitting. Sections 119 and 122 of Chapter 10 of the Penal Code provide an example. In section 119,

> Whoever being a public servant accepts or attempts to obtain for himself ..... any valuable thing without consideration or for a consideration which he knows to be inadequate ..... shall be punished with imprisonment for five years /maximum/ or with fine or with both.

Section 122 also provides that:

> Whoever being a public servant in his capacity as such dishonestly receives from any person any money or other property which he is not authorised to receive or which is in excess of the amount which he is authorised to receive, shall be punished with imprisonment for five years /maximum/ or with fine or with both.

In terms of meaning, the subject matter of these two sections are essentially the same /i.e. abuse of official position (Richardson, 1967)/ and should therefore have been presented in one section.

Another example, this time from the Criminal Code, will suffice to further illustrate this aspect of the form. Section 438 of the Criminal Code provides that a clerk or servant is guilty of a felony and liable to seven years imprisonment who commits fraudulent false accounting. The next section (439) also provides that a public officer is guilty of a misdemeanour and liable for two years imprisonment who commits false

accounting. Here again, the ingredients of the two offences are not different in substance to justify being separately presented. This observation is further sustained when one considers the opinion of the lawyer respondents on how the word servant is usually interpreted in the Nigerian courts. More than half of the respondents who expressed their opinion said that servant has usually been interpreted broadly to include all categories of public employees. This finding would suggest that section 439 is superfluous.

Again, Chapter 13 of the Penal Code is titled Public Nuisance. Among the offences punished under this Chapter are: sale of adulterated food, drink, or drugs (Sections 184 - 193); obstruction of line of navigation (S.194); going on riots by public employees (S.195); singing obscene songs (S.203) etc. These legal norms do not, at least on the surface, belong together. In addition, this Chapter, like many others in the two Codes, contains offences which attract only six months imprisonment alongside with those which attract three to seven years of imprisonment. And it may be mentioned in passing that even though this chapter deals with Public Nuisance, it does not contain idleness and vagabondry which should be parts of a logical whole.

Another example in Chapter 27, of the Penal Code, titled sedition. This chapter deals with sedition in general. In addition, it punishes whoever unlawfully "takes part ..... in any exercise, movement, evolution or drill of a military nature ...." (Section 422). What is difficult to construe here, is how "unlawful military drill" forms a logical part of the offence of sedition.

All the illustrations cited above strengthen the empirical findings that were reported earlier in this subsection. Therefore, they further tend to confirm the general notion about the structural organization of the law which was stated at the beginning, and reiterated throughout the length and breadth of this subsection. The next subsection is an examination of the language of the law as an integral part of the form of the law.

The Language:

By and large, judgements in law have progressively been governed by linguistic factors (Brigham, 1978). Pertinent also is the fact that apart from having its own technical vocabulary, law uses ordinary language in a special way. In either of these situations, language is considered very important to the whole legal enterprise, including the enactment and

enforcement of a law, its social understanding and acceptance as well as obedience to it. The language, in a particular way, gives expression to the kind of consciousness that informed the law and its administration.

In order to better appreciate this importance of language, forming part of the form of the law, this subsection seeks to tackle one main question: does the language of the Nigeria criminal law - the words, the way they are strung together and presented - effectively communicate the ideas behind the law to the average Nigerian? The attempt focuses mainly on the syntax of the legal language.

Generally syntactic processes in constructing sentences demand two things: choosing the words that best convey specific thoughts; and arranging them in an appropriate order (coherently) so that they would, besides conforming to grammatical restrictions, gaurantee the conveyance of those thoughts (Cassan, 1981). The concern with syntax in this study is predicated on the recognition that a code of law is not just a list of words and phrases; the words and phrases take their meanings, significantly, from the structure of the sentences. The sentences in turn take due cognizance of the speech-character of the

community in which they are made. Hence the sociological anchor of language, legal or otherwise.

Upon examination, it is observed that the words and phrases, and their arrangement in the Nigeria criminal law largely manifest convolutedness and technical rituality. There is the preponderant use of connectives, prepositions, and auxillaries over and above nouns and verbs. The consequences of this include avoidable compound and complex sentences; a suspension of the grasp of intention till the later part of the long sentences; and a disruption of the progression of thought. This is illustrated by the following provison in the law. Section 252 of the Criminal Code defines assault thus:

> A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without his consent, or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstances that the person making the attempt or threats has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

Of the 98 words used in the definition fully quoted above, nouns and verbs appear 35 times (35.7%). Being so much long, the provison boringly suspends grasping the gist of the offence until the tail end

(even for the educated minority), and creates three identifiable levels of thought - progression: one, striking or touching or moving; two, attempting; and three, creating belief in the person assaulted. These characteristics make provisions of this nature lose coherence and thus engender unintelligibility and ambiguity. Further examples can be found in sections 115, 119, 123, 262, 346 of the Penal Code, and sections 316, 383, 438, 465, etc of the Criminal Code. The foregoing characterisations also find anchor in empirical findings with particular reference to the opinions of the lawyer, the police, and the public. In general terms, the lawyers were asked, by virtue of their own training, to describe the language of the Nigeria criminal law. Table 7 presents their opinion.

TABLE 7: LAWYERS' DESCRIPTION OF THE LANGUAGE OF THE NIGERIA CRIMINAL LAW REGARDING CLARITY AND COMPREHENSIBILITY

DESCRIPTION	%	N
Plain and Direct	15	5
Technical and Incomprehensible	55	11
No Opinion	20	4
TOTAL	100	20

The characterisation of the legal language, derived from the "content" analysis of the codes as specified in the preceeding paragraph is supported by the data

in Table 7: a significant proportion of the respondents said that the language of the law is technical and incomprehensible even to the lawyers.

The strength of the lawyers' description of the language of the law consists, considerably, in the fact that it is not influenced significantly by the age, sex, religion, state of origin, and the level of education of the respondents as shown by further statistical analysis. Yet, when a follow-up question was thrown to the lawyers for a reaction to the assertion that 'only lawyers and the police are supposed to understand the language of the law, the respondents overwhelmingly (95%) disagreed with the assertion. They said that since the law is made for everybody, everybody should understand its language in order to be able to respond appropriately.

In order to show whether or not "everybody", in fact, understands the language of the law, the opinion of the police, was deemed very important because they deal first and more directly with the populace in law enforcement. About 86.7% of the police respondents said that, from their experiences, the language of the law is not clear to the generality of the populace (i.e. those who have seen and read the law). This finding is corroborated by the evidence from the

public respondents. Summarily stated, about 30% of the public respondents had seen the Codes; 23.3% had read the Codes; and out of this very small proportion that had read the Codes, 14.3% could understand the law very well; 33.3% could understand fairly well; and the remaining 52.4% could not understand it at all. And this distribution is hardly affected by the socio-economic or cultural characteristics of the respondents. Therefore, it can be deduced that the inability to understand the language of the law (given the characteristics earlier observed) cuts across all the social strata - with little or no variations.

Besides the problem identified with the language of the law in the foregoing, there is the additional problem of interpretation which, though normal to any social system, is compounded by the foreigness and technicality of the language in the Nigerian case. A critical survey of the Nigerian Law Reports will show that in many instances, the judicial interpretation of the Nigeria substantive criminal law leaves gap between the language of the law and the social understanding of most of its provisions as illustrated below.

In R v. Michael Unakanjo [(1933)11 N.L.R. 27] the accused was charged with "preparation for forgery contra S.430 (1) (c) of the Criminal Code". In brief, Unakanjo (from Asaba in present day Bendel State) was alleged to have written to some engineering firms abroad indicating his "need of a machine for printing West African Currency Notes". He admitted this on examination, pleaded ignorance of the law and said that he was induced by the "ill circumstances of life". However, the Full Court, Lagos (it was then called) acquitted him on the ground that his action did not amount to "preparation" within the meaning of the relevant provision in the Code. The interpretation implicit in this ruling generated a <u>controversy</u> which led to making "unlawful inquiries for the purpose of obtaining machinery..... for making Currency Notes" an offence. Subsequent rulings in similar cases suggest that the gap in perception (**legal** vs social) was not closed by this additional provision. In R v. Sunday Mac-Ebuh [(1940)15 N.L.R.114] for instance, Brace, Ass. J ruled thus.

> I have little doubt that such was the intention of the accused, and on receipt of the names of the firms requested, he would probably have proceeded to the commision of the offence charged. [But] preparation such as this is not enough. I

consider the proceedings were taken prematurely..
..... /Accused acquitted/.

Another illustration relates to the perception of the scope of the duties of the police. In R v. Kadiri Layole /(1935)12 N.L.R.47/, the accused was arraigned for "bribing a police officer "(Contra S.98(2) of the Criminal Code) to assist him (the accused) conceal the whereabout of a woman, who the accused's brother was alleged to have seduced from the woman's husband. Justice Lloyd acquitted the accused on the ground that the purpose for which the accused bribed the police officer did not form part of the duties of the police. Similarly in Friday Onyekwere v. The State /(1975)5.S.C./, the Supreme Court discharged the Police Constable "who was proved to have received bribe so that he might grant bail to and not prosecute the giver for assaulton the ground that it was not part of his duties to grant bail to the persons arrested by the police "(Clufokunbi, 1982).

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The observation in the foregoing is affirmed by the opinions of the members of the public who were casually confronted with the facts of the cases cited above (without disclosing the judicial rulings on them): over 70% of them said that the accused in each of the cases should be convicted. The data examined so far

in this subsection indicate that the language is an integral part of the general problem of the form of the law. It is not only technical and incomprehensible, but also, the judicial interpretation of its major concepts manifests a detachment from the Nigerian social milieu. In closing this chapter, a general explanation for this situation with the form of the law is attempted.

As mentioned in chapter One of this study, the Nigeria criminal law is essentially the English criminal law bodily transplanted into the Nigerian soil. This is to say that the dominant criminal law in Nigeria did not evolve from the Nigerian sociological background; it was "imported" from England. Therefore, knowledge of certain characteristics of the English law in its home base would shed some significant light on the structural and linguistic problem of the Nigeria criminal law.

With regards to the structural organisation, it should be appreciated unequivocally that one of the eccentricities of the English criminal law is its needless proliferation of finely-divided or overlapping offences. Elliot (1978) reported a revealing dialogue between an English student and a Doctor of English laws. The dialogue is reproduced (in part) below:

STUDENT: I have diligently studied the theft Act and the commentaries of learned men thereon, and

its various provisions are imprinted on my mind. But I remain maladroit at using them,..... I cannot always discover what ills in the commonwealth are struck down. The distinctions between one provison and another are passing subtle. Some malfeasances are punishable under many sections indifferently. Discord still divides the Doctors; confusion afflicts the students.

DOCTOR: You would not say so had you studied the old law. Your generation can count themselves happy. You say the new law is difficult, but I say to you that the old one was worse .....

STUDENT: ..... intricate boundaries between narrow concepts no doubt baffle the tyro... and the very width of those boundaries means that there will be murky places within them where he can easily lose his footing. ..... but where is the need for all other separate offences in the theft Act? [Emphasis added].

Even though this dialogue concerns a specific Act, the characteristics identified are no less applicable to the English laws in general.

The various attempts to explain these characteristics illuminate the historical context of this syndrome. It is held that these characteristics emanated from the haphazard manner in which the evolution of the various crimes in England occurred (Burchell, et. al., 1970). The consequence of this manner of evolution was that "the Statutes (Laws) have been framed, not as parts of a system, but to answer particular exigencies as they occurred" (First Report, 1835, 1970). This was reiterated in a later Report:

> In our view the main cause lies in the traditional nature and historical origins of our institutions. This is very much in accord with our national predilection for the approach which is gradual and pragmatic as opposed to that which is comprehensive and based on general principles. The result is untidiness and a considerable measure of disorder, confusion and inefficiency (Second Report, 1974) [Emphasis added].

Given this background, and the fact of the historical link between England and Nigeria, the present characteristics of the structure of the Nigeria criminal law should become less of an enigma.

Similarly for the language of the Nigeria criminal law, the situation with the English law offers some considerable explanation. Brett, M.R in Hough V. Windus [(1884)12 Q.B.D.224] observed in relation to the language of an English law: "..... I have come to the conclusion..... that the legislature intended

this Act to be verbose and tautologous and intended to express itself twice over.....". Mackinnen L.J. similarly held in Winchester Court Ltd. V. Miller [(1944) K.B. 734]: "I had to grope my way about that chaos of verbal darkness to come to this conclusion". Over and above these experiences, is Chauveneau's embracing comment on the English Law:

> Each sentence is unusually long; it contains the principal and the accessory, the reservations and the counter - reservations, the particular cases and the general rule; and these are inserted in a succession of enumerations and parenthesis which are so intermixed with the minimum punctuations..... (Quoted in Second Report, 1974) .

The historical root of the convolutedness, verbiage, and ambiguity earlier identified with the language of the Nigeria criminal law is, to a considerable extent, brought to light by the observations and comments in the preceeding paragraph. The observations and comments largely indicate that in England, there is the tradition of couching legislations in mechanistic abstrusions and adorning the esoteric art of draftmanship which favours **circumlocutions,** and prefers the double negative over the single positive. This would, to a great extent, account for the aura of "rituality" about the language of the Nigeria criminal law.

By way of reiteration, what this chapter has

attempted is to identify and describe the form of the Nigeria criminal law. The findings disclose the structural organisation of the law which exhibits a lay-out of the subject-matter in a manner appearing to have no internal logic: the offences do not appear in identifiable contexts that facilitate their application to concrete cases. The yearning of the legal professionals for a structural organisation that would show a descending or ascending order of gravity of offences, underscores this point. With regards to the language, it is demonstrated that the thought-patterns behind it do not, as they stand, relate to the ethos and the "definition of situation" of Nigerians. Yet, as Stone (1964) asserted, "lawyer-language is more practised than talked about.....". All this largely finds its explanation in the situation with the laws in England from where the Nigeria criminal law derived.

These findings are of enormous significance when viewed through the prism of the theoretical framework specified for this study. In conjunction with the background explanation adduced for them, they point to the valid question of why Nigeria did not have the form of the law that is sound and related to her sociological realities, even though she had the opportunity. Again, the explanation that this calls for is historical.

It is a stark historical reality that the British did not colonise Nigeria for benevolence, but for exploitation. To be able to do this effectively, they needed a power-structure of super-ordination and sub-ordination. One of the "lubricants" for the engine of this power-structure was the legal system that would engender ignorance and confusion on the part of the subordinated, and/or exploit same to the advantage of their original exploitative design. The superimposed criminal law was at the centre of this whole affair. Adewoye (1973) puts it aptly:

> Law in the form of statutes..... within the colonial territory (Nigeria), served the end of day-to-day administration. Criminal law, and in particular, the Criminal Code of 1916, was a ready instrument of coercion and a suitable measure for establishing and enforcing..... the colonial regime..... The surbordination meant, in effect, an imposition of British social values..... Thus acculturation through the law lent strength to the maintenance of colonial rule.

Bryde (1976) held similar view on the instrumentality of Criminal law in colonial administration. Evidence abounds to the end that this law had been dependent for its workability on the ignorance of the Nigerian populace, arising, at least on the surface, from the structural and linguistic nature of the law.

Essentially, this law had all along, under ideological cloak, mediated and reinforced the power-

structure, and offered it a legitimation in Nigeria. Therefore, it is held, in closing, that the form of the Nigeria criminal law as described in this chapter is explainable not just or merely with regards to its connection with the English legal system, but also with regards to the material conditions under which the law was super-imposed, and which conditions have been, and are being, maintained by the ruling elites in Nigeria.

CHAPTER FOUR

THE CONTENT OF THE NIGERIA CRIMINAL LAW

Crime is a social phenomenon. What crimes there are, the forms they take, and the official reactions to them are, at any point in time and space, determined by the predominant social conditions. Underpining this contention is the view that a critical understanding of the content of criminal law must, of a necessity, look beyond the legal stipulations to the sociological contexts in which they occur.

The task for this chapter, therefore, involves more than a mere review of the present scope of the proscriptions and precriptions in the Nigeria criminal law. An attempt is made to put them in intelligible categories, and assess the relative position of these categories in the light of some empirical data. A general explanation is then attempted for the findings with regard to the particular contents of the criminal law.

Nature and Scope of the Content:

Two major issues are examined in this section: the behaviours that had attracted the State condemnation in Nigeria (as contained in the Criminal and Penal Codes) and the origin of their criminalization. The approach includes specifying the substantive proscriptions and prescriptions in the Codes, and determining the social

relations and values which they reflect as a way of establishing their true source.

The Criminal Code contains eight Parts divided into 55 unequal Chapters. These Chapters are further subdivided into about 521 sections. Part One, containing five Chapters (sections 1 - 36), is introductory. It consists of statements on Interpretation, Parties to Offences, Punishments, and Criminal Responsibility, as conceived in the Code. Part Two (SS 37 - 88) deals with Offences Against Public Order such as treason, treachery, sedition, instigating invasion of Nigeria, promoting native wars etc. Part Three (SS 89 - 203) deals with Offences Against the Administration of Law and Justice and Public Authority. Part Four (SS 204 - 251) deals with acts injurious to the public in general, including insult to religion, witchcraft, offences against morality, nuisances, idleness and vagrancy.

The remaining four parts focus on other offences. Part Five (SS 252 - 381) deals with Offences Against the Person, Marriage, Parental Rights, and the Reputation of Individuals. These include homicide, failure to supply necessaries, assaults, slave-dealing, bigamy and publishing defamatory matters. Part Six (SS 382 - 494) concerns itself with Offences Relating

to Property and Contracts such as theft, obtaining by false pretenses, frauds, false accounting, arson, forgery, personation, corruption, etc. Part Seven (SS 495 - 507) dwells on Miscellaneous Offences such as cruelty to animals, and offences relating to ships and wharves. And lastly, Part Eight (SS 508 - 521) concerns Preparation to Commit Offences, Conspiracy, and Accessories After the Fact.

Similarly, the Penal Code contains 25 Chapters, subdivided into 409 Sections. The first six Chapters deal with General Explanations including the definition of terms, specification of criminal responsibility, defences, punishments and compensations.

The substantive offences and their punishments in this Code begin with "Criminal Conspiracy" and Breach of Official Trust in Chapters Seven and Eight (SS 96 - 99). Chapters Nine to Eleven (SS 100 - 155) deal with Offences Against the Public Peace, Offences by or relating to Public Servants, and Contempts of the Lawful Authority of Public Servants. Chapters 12 to 17 (SS 156 - 219) deal with Offences relating to the Administration of Justice, Public Nuisance, Lotteries and Gaming Houses, Cruelty to Animals, Ordeal, Witch-craft and Juju. Chapter 18(SS 220 - 285) deals with Offences Affecting Human Body/Life. Chapters 19 and 20

(SS 286 - 382) deal with Offences Against Property such as theft, robbery, misappropriation, mischief, trespass, forgery, criminal breach of contracts and services, etc. The remaining Chapters 22 to 55 (SS 383 - 409) deal with offences relating to marriage/incest, defamation, intimidation, insult, drunkenness, idleness, vagrancy and vagabondry.

The punishments prescribed for these various offences are specified in the respective Codes. Section 17 of the Criminal Code provides thus: "Subject to the provisions of any other written law, the punishments which may be inflicted under this Code are death, imprisonment, whipping, fine and forfeiture". Similarly, Section 68(1) of the Penal Code provides that "the punishments to which offenders are liable under the..... Code are death, forfeiture, imprisonment, fine and canning". In addition to these, there is Haddi lashing for Moslem offenders in offences contrary to Sections 387, 388, 392, 393, 402, 403, 404. In terms of "maximum" and "minimum" punishments, it is observed that the penalties in the Penal Code are generally adjusted to conform with those imposed by the Criminal Code. While the maximum is death, the minimum is ₦20.00 (twenty naira) fine[1].

In order to allow for a more effective and critical examination of the offences listed in the

earlier paragraphs, attempt is made here by this investigator to categorise them. In this regard, five main categories are identifiable.

(a) Offences Against the State Security and Order e.g. treason, sedition, counterfeiting, official breach of trust, official corruption, etc. The maximum and minimum punishments in this category are death, and three years' imprisonment respectively.

(b) Offences Against the Person e.g. murder, assaults, rape, kidnapping, defamation, etc. While the maximum punishment in this category is death, the minimum is one year imprisonment.

(c) Offences Against Property e.g. theft, arson, robbery, forgery, embezzlement, frauds, criminal misappropriation, etc. Maximum punishment is life imprisonment, and the minimum, two years' imprisonment.

(d) Offences relating to Family/Marriage and Morality e.g. bigamy, incest, adultery (only in P.C.), homo-sexuality, etc. Maximum punishment is seven years and the minimum is two years' imprisonment.

(e) Offences Against Public Order and Health e.g. unlawful societies, vagrancy, idleness, public

intoxication, prostitution, nuisances (i.e. adulteration of food/drink, pollution, false buoy), etc.. The maximum punishment is seven years' imprisonment and the minimum is six months' imprisonment and/or ₦20.00 fine.

The listing, grouping and specification of the Criminal Code and Penal Code offences and penalties as outlined in the foregoing, are useful in two main respects. One, they show the kind of "behaviours" that had, ab initio, attracted State - condemnation in Nigeria. And two, they put the offences in the contexts that make them more intelligible. Beyond this, it is considered rather pertinent for a socio-logical examination of the law's content to determine the relative positions of the categories identified, in terms of the seriousness with which the State regards them. In considering this, two parameters suggest themselves: the statutory maximum punishment in the categories; and the exhaustiveness in the formulation of the offences within the categories.

The view that maximum punishment can be a measure of the seriousness of offences is usually found in the expressions of some legal luminaries, two of which are cited for examples here. Stephen held that "it is highly desirable that criminals should be hated,

[and that] the punishments inflicted upon them should be so contrived as to give expression of that hatred.. ...." (emphasis added). Denning, in the same source, put it more succintly: "the punishment inflicted for grave crimes should adequately reflect the revulsion felt---- for them" (Quoted in Smith et. al., 1973). What is deducible from these expressions is that the more serious an offence, the greater the punishment should be. This view is also an established stance in elementary Sociology: the strength of a norm is determined by the sanction attached to its violation. To go by this view means that categories "a" and "b" specified above should be regarded as most serious for the fact that the "maximum" punishment for each of them is death. However, the parameter implicit in this view has been criticised for certain limitations, the main one being that the determination of which punishment is maximum and/or severest, has remained largely on intuitive scaling (Greenberg, 1983) not yet fully verified empirically e.g. the assumption that a jail or prison sentence is a more severe disposition than sentences not involving incarceration; or that probation, however long, is a more lenient disposition than a jail sentence, however short. Therefore, this parameter should only be used as a measure of seriousness with this probable limitation

in mind.

The other parameter - the exhaustiveness of formulation - receives one of its most articulate expressions in Bentham's theory of legislation (even though the theory has been criticised as "utilitarian" and seriously deficient): the means of producing the greatest degree of happiness as the objective of law is to define exhaustively the criminal behaviour that constitutes the most serious threat to that happiness. This meant

> the division and repeated subdivision of all possible acts until the categories to which they were reduced were sufficiently small and precise to constitute crimes in a Code; ensuring that at each stage of [formulation] the classes should be so defined that they were a logically complete set of the possibilities within the target class .....(Quoted in Woodman, 1975).

Bentham maintained that the purpose of this exhaustiveness is to ensure that no possible course of action is omitted from consideration if the greatest degree of happiness is the goal. The corollary is massive proliferation and splitting of specific offences into many sections. For a specific illustration it will suffice to briefly consider "theft" and some instances of its splitting.

When "property" became the basis of the dominant social relations and of the "greatest happiness" in some societies, 'theft' was the only offence-type which

underwent massive subdivision into many other distinct offences like larceny, cheating, obtaining by false pretenses, embezzlement, fraud, extortion, forgery, etc. The aim was an exhautive formulation of all actionable property and property-related offences with a view to giving legal expression to the "greatest happiness" of the propertied class. However, the splittings were usually situation-specific. Two of such are cited here as examples, with particular reference to the development of the laws of fraud and embezzlement as some of the offshoots of theft in the 18th century England.

A man named Pear rented a horse from a stable on the representation that he wished to ride to Surrey and back again. Instead, he kept the horse and was charged with larceny by the defrauded stabler. The case gave the judges a lot of trouble: how could the offence be larceny when Pear came into possession of the horse lawfully? The judges, recognising that conduct of this sort posed a serious threat to property and commercial relationships, decided to expand the ambit of the law of larceny: Pear's felonious intention, whenever it came into his mind, can be traced back to the moment he rented the horse.. He was found "fraudulent". The way was opened for the wholesome development of the law of fraud, inspite of the

existence of the law of obtaining by false pretenses earlier passed by the Parliament in England (Johnson, 1975).

The historical origin of the Embezzlement Statute is similar to the case cited in the preceeding paragraph. Bazeley was a teller employed by the Bank of England. A customer handed to him a hundred-pound banknote to be deposited in his account. Bazely pocketed the bank-note. When the defalcation came to light, he was prosecuted for larceny. Under the well established property-law concepts, the money belonged to the bank once it was accepted for deposit. And because the larceny could not be from the customer, it had to be from the bank. But "the bank never got possession of its bank note" because Bazely did not put the money into the cash drawer even for a moment. Therefore, no larceny. Bazeley was acquitted. And the Parliament, aroused by the great threat posed to public confidence in the safety of England's greatest financial monument, passed the first embezzlement statute in 1742. In 1751 the Statute was extended to the South Sea Company; and in 1765, to the officers of England's Postal System (Johnson, 1975). Since then the law of embezzlement has been expanding into other facets of property relations.

By these examples, the strength of "exhaustive

formulation" as a measure of the seriousness with which categories of offences are viewed, is illustrated. It is in this regard that this parameter is considered more adequate in examining the relative position of or the respective categories of offences in the Nigeria criminal law, in terms of the seriousness accorded them by the State. Table 8 shows the space occupied by, and/or seriousness of, each of these categories according to the number of sections into which they are subdivided respectively.

TABLE 8: SPACE/SERIOUSNESS OF SUBSTANTIVE OFFENCE CATEGORIES ACCORDING TO NUMBER OF SECTIONS

CATEGORIES	NO OF SECTIONS: Criminal Code %	Criminal Code N	Penal Code %	Penal Code N
Offences Against State Security	29.5	129	21.1	61
Offences Against the Person	28.6	125	24.6	71
Offences Against Property	25.4	111	34.3	99
Offences Relating to Family & Morality	1.2	5	2.4	7
Offences Against Public Order	15.3	67	17.6	51
TOTAL:	100.00	437	100.00	289

*SOURCE: Raw counting from the Criminal Code (Cap.42, Laws of Federation of Nigeria, 1958) and the Penal Code (Cap. 89, Laws of Northern Nigeria, 1963).

In the light of the distribution in Table 8, the

relative seriousness of the offence-categories becomes evident. While the category of the Offences against State Security tops the list in the Criminal Code, the category of Offences against Property tops the list in the Penal Code. In both Codes, the category of Offences relating to Family/Morality ranks lowest.

The significance of the order depicted above lies in the fact that it conforms to the theoretical frame of critical knowledge, particularly the one which acknowledges the sociality and historicity of crime and content of criminal law. It may be recalled that this frame, being the one adopted for this study, also seeks to explain the how and why of the origin and dynamics of the content of the law. The order in the Codes takes its proper meaning within this frame. The Nigeria Criminal Code was introduced (super-imposed) at the early moments of colonization as a way of consolidating the foreign rule. This function of the law, given the foremost need of the moment in terms of State Security and Order (Tamuno, 1978), explains the preponderance of the related offences such as treason, sedition, instigating invasion, promoting native wars, inciting mutiny, defamation of foreign princes, etc., over and above other types of offences in the Code.

The situation with the content of the Penal Code lends support to the kind of explanation adduced in the

preceeding paragraph. Unlike its counterpart, the Code came into force in September 1960, precisely a day before the Nigerian Independence. The Independence was peacefully celebrated with pomp and pageantry, implying that danger to State security and Order was not imminent. Further, the country at this time had been significantly drawn into the world capitalist economy, based on money and property relations. A crop of propertied group was nascent, alongside with the lot of the under-privileged. Invariably, therefore, the criminogeny in the Nigerian Society became property biased. Hence the preponderance of the property-offences in that Code.

In explaining the situation with the Penal Code, attention is also drawn to an interesting feature in the Criminal Code: the relative prominence of property-offences. Given that the Code was introduced in Nigeria as far back as 1899 when "property" (at least as conceived in the Code) had not acquired such status in the prevailing social relations in Nigeria, its relative prominence in the Code requires an explanation. This is moreso, as the property offences in the Code, do not even include praedial larceny[2] which should have characterised a predominantly agricultural society that Nigeria was at the time. Two explanations are plausible; one, that the Code is merely

reflecting the social conditions of its colonial origin; and two, that the content of the Code, with particular reference to the category of property-offences, was consciously made to be "ahead" of the situation in Nigeria with a view to directing the society to a particular path of development. These can be verified through a socio-historical analysis as will be attempted in the next section. Suffice to hold here that property - offence - type is a relatively dominant feature in the Nigeria criminal law.

The dominant characteristic of the contents of the Codes as specified in the foregoing will now be linked to some empirical reference by examining two related issues. What form of criminality is considered most dominant in Nigeria by the respondents? And what are the factors considered to be the cause(s) of the observed criminality? The opinions of members of the Public and the Police and the types of offences for which the sampled prison inmates were charged are deemed most handy for the answering of the first question. Tables 9 and 10 present the respective opinions of members of the Public and the Police on the most dominant offence in Nigeria.

TABLE 9: PUBLIC OPINION ON OFFENCE MOSTLY COMMITTED IN NIGERIA

OFFENCE - TYPE	%	N
State Security Offences	4.4	4
Person-Offences	19.0	17
Property-Offences	72.2	65
Can't Say	4.4	4
TOTAL:	100.00	90

TABLE 10: POLICE OPINION ON OFFENCE MOSTLY COMMITTED IN NIGERIA

OFFENCE TYPE	%	N
State Security Offences	6.7	2
Person-Offences	43.3	13
Property-Offences	50.0	15
Can't Say	0.0	0
TOTAL:	100.00	30

The opinions of the members of the Public and Police as shown in Tables 9 and 10 support the position that property-offences are the dominant offence-type in contemporary Nigeria. The character of the offences for which the prison inmates were charged, lends further support to this position as can be seen in Table 11.

TABLE 11: TYPES OF OFFENCES FOR WHICH THE PRISON INMATES WERE CHARGED:

OFFENCE - TYPE	%	N
State Security - offences	2	1
Person - offences	44	22
Property - offences	54	27
Others	0	0
TOTAL:	100.00	50

Further analysis shows that at the .05 level the independent variables (e.g. age, religion, ethnicity etc.) had no statistically significant relationships with the opinions of the public and police respondents on the dominant form of criminality.

On the second question (i.e. the cause(s) of the dominant form of criminality) the distributions of opinions within the samples of lawyers, police, and prison inmates, are shown in Table 12 below. Majority of the lawyers, the Police, and the Prison in-mates locate the source of the dominant form of criminality in "socio-economic" factors. By this, they mean that people commit the crime because of unemployment, quest for quick wealth and the like. It is noted in passing, that these opinion underscore the theory of "Economic Pressures" by Radzinowicz (1968).

Again the opinions expressed in the foregoing are not affected by the independent variables.

TABLE 12: OPINIONS OF THE LAWYERS, POLICE AND PRISON IN-MATES ON THE CAUSE OF THE DOMINANT OFFENCE-TYPE (i.e. PROPERTY)

	OPINIONS ON CAUSE						
	MORAL		SOCIO-ECONOMIC		CAN'T SAY		TOTAL
SAMPLES	%	N	%	N	%	N	N
Lawyers	35	7	60	12	5	1	20
Police	16.7	5	83.3	25	0	0	30
Prison in-mates	18.0	9	58.0	29	24	12	50

Generally, the effort in the foregoing portrays a convergence between what has been empirically determined to be the dominant form of criminality and the category of offences regarded most seriously by the State. More importantly, however, the effort forcefully suggests a characterisation of the Nigeria criminal law as predominantly property-biased in substance. In other words, it is shown that the manner and matter of criminalisation in the law depict a content, erected with "bourgeois" socio-economic "blocks", and permeated by social relations which were essentially foreign to the Nigerian culture. The opinion of the lawyer-respondents on the origin of the law's content is noteworthy in this regard.

On the issue of whether the content of the Nigeria criminal law emanated from the Nigerian culture, the lawyers overwhelmingly responded in the negative: 30% Yes, 70% No. Their reasons can be summarised thus:

a lot of the offences in the Codes have no social roots in the Nigerian "customs"; rather they reflect a culture largely alien to Nigeria. The offences cited as examples include bigamy, forgery, embezzlement, fraud, vagrancy, breach of contract services, etc. Even with the offences that were allegedly "known" to the indigenous laws, their conceptualisation in the Codes further betrays the "foreignness' of the content of the law.

In order therefore to grasp an effective understanding of this content, one must of necessity trace how and why it came to be what it was in England before its transplantation in the Nigerian soil. It is in this regard that the socio-economic formations and their corresponding criminality, are surveyed below in a fairly detailed manner. The ultimate aim is that the substance of the Nigeria criminal law will be located and better appreciated within the appropriate explanatory socio-historical context.

Socio-Economic Formations, Criminality and Law:

This section provides a sociological profile of the contents of law and the socio-economic conditions under which they occur. It proceeds on the thesis that both the forms of conduct and the legal system that develop in response to them reflect the fundamental character of the structure, institutions and the stage of civilization of the society that experiences them.

In the primitive communities, the socio-economic conditions were largely determined by the most elementary needs: the exigencies of survival and race preservation. The predominant principles of social relations was that of family and kinship associated with communism. This affected the two principal factors of production - land and labour - as well as the system of distributing products.

The labour of the individuals was consciously applied as the combined labour-power of the community. The product was a social product shared by a mode of distribution based on communal system or organisation. In this period, historically referred to as "the dawn of civilization", the productiveness acquired by labour was small, but so too were the needs and wants which developed with, and by, the means of satisfying them. Further, at this early period, the portion of society that lived on the labour of others was 'infinitely' small compared with the mass of direct producers (Marx, 1873, 1954).

In the societies where these social conditions were prevailing, specific forms of conduct were considered hostile to the foundations of the communities. These include abduction of women, incest, "theft", etc (in terms of intra-community relations), and homicide,

bodily injury, assaults, etc (in terms of extra - cummunity relations). And against them, action was taken by the family, tribe, or gens guided by the community "laws" of theft, abduction, adultery, homicide, etc. The point is that the content of the "laws" in these societies derived from the values on the family and a morality dictated by that socio-economic formation.

The emergence of slave-holding as an institution marked the disintegration of the primitive community and the disappearance of whole "free" population. It occasioned fundamental changes in the productive activities of hunting, fishing, food-gathering, into cattle-breeding and agriculture. With it, came another form of social relations of differentiation based on the position occupied by the individual/group in the society. Property - relations became dominant over and above joint (tribal) ownership; and barter trading and commercial activities set in. The communities on "family" basis gave way to societies on "class" basis relative to the ownership of the means of production.

Slavery became the basis of the entire production process in which slaves were treated as a mere "inorganic and natural condition of production":

> The slave stands in no relation at all to the objective conditions of his labour. It is rather labour itself, both in the form of the slave as of the serf, which as an inorganic condition of production, is placed among the other natural creatures alongside the cattle or as an appendage of the land (Marx and Engels, 1979).

Implicit in the above citation is that the slave under this formation, is regarded as a 'thing', occupying a "property-status". With this, arose the slave economy where, in amassing wealth, "money" was used to appropriate the labour of others through the purchase of slaves, land, etc.

Special machinery to preserve this order of social co-existence became an exigency. Appropriate laws to guarantee the order were therefore evolved, containing various codes which in sharp contours, reflected the emergent economic, social and cultural relations in these societies. "The promulgations of the laws of Manu, the laws of Esnunna, the Code of Hammurabi, the Assyrian and Hittite law books, the Laws of the Twelve Tables (Leges duodecim tabularum), etc" were landmarks in this development, reflecting the growing differentiation in social relations (Vermes, 1979).

The laws of Manu, for instance, were the ancient Hindu collection of rules that sustained the ancient Indian slave-holding society. Written in Sanskrit and containing 2,650 couplets (slokas - divided into twelve books), the laws preserved the differentiated private

and social life based on the system of religious dogmas of Brahmanism. The contents of the ninth and tenth books, for instance, reflect this system of differentiation (particularly in "family" relations) as well as punishment for different crimes, and the rules for members of the Varnas (Kane, 1977). Similarly, the Laws of the Twelve Tables which were promulgated as a result of the Plebians' struggle against the Patricians reflected the stratification of the ancient Roman society, the development of slavery and the formation of the Roman slave-owning state. The class character of their contents could be inferred from the composition of the commissions (the Decemvirs - mainly the Patricians) who compiled the laws. They were the property owners with claims to slaves and servants. Hence the laws they compiled were underlaid by the philosophy of "property" relations and private ownerships.

It is evident in the above that the criminal laws in the various slave-holding societies contained proscriptions and prescriptions that bolstered and safeguarded the new social conditons. The offences against property "attracted ferocious sanctions; and against mutinous or fugitive slaves, incitement of slaves to mutiny or desertion, and hiding of fugitive slaves, were prescriptions of 'draconic rigour'". These were far from being abated in the next age, i.e.

the feudal age.

Feudalism, dominant during the greater part of the Middle Ages in Europe, is a distinct mode of production based on a system of lordship and serfdom. The term "feudalism" has been conceived in various ways. To the constitutional historian, it is a system in which landholding constitutes "the source of political power"; to the lawyer, it is essentially a system of "status determined by tenure"; and to the economic historian, it is the system whereby "land was cultivated by the exercise of rights over persons" (Dobb, 1963). The sociological conception is synthetic, giving a broad characterization of feudalism as a system of lord-vassal relationships; of land holding consisting of the granting of fiefs in return for service and security; and of seigneurial and manorial rights of the lord over the peasants. The village, and later the manor, were the basic economic units of this type of societies, with the serfs sharing out the land and work, and the landlord of the manor appropriating the surplus product of their labour.

The feudal payment of services by the enserfed peasantry to the lord (in form of labour rent, rent in kind, and money rent , which was extracted either by the use of force or by custom backed by the

threat of force provided by an army of retainers), constituted the basis of the system (Nadubere, 1977). Corresponding to this system of social relations were particular forms of behaviour that were considered inimical to the survival of the system. These include, mainly, the migration of labour, agitation for higher wages by the labourers, theft of "property", trespass, etc.

It is noteworthy that the Black Death of 1348 swept the whole of Europe, killing off half of the population (as was the case in some places). There was therefore the shortage of labour on the feudal lands. This, coupled with the pressure of other economic forces, occassioned rapid movement (migration) among the serfs. In some cases this led to peasant revolts such as "those in West Flanders in 1320, Northern France in 1358, and England in 1381" (Nabudere, 1977). Dobb (1963) puts it more succintly:

> The result of this increased pressure was not only to exhaust the goose that laid golden eggs for the castle, but to provoke, from sheer desperation, a movement of illegal emigration from the manors: a desertion en masse on the part of the producers, which was destined to drain the system of its essential life-blood and to provoke the series of crises in which feudal economy was to find itself engulfed in the fourteenth and fifteenth centuries.

Consequent upon the high mobility and chronic shortage of labour, there were general tendencies towards rise in labour wages, actual competition among the lords to

entice and steal the serfs of a neigbouring domain; the forcing of the lords into the sale of franchises, in return for a rent or cash payment, to repeople their land, etc, etc.

In an attempt to salvage the system of feudal formation from collapsing, various laws were promulgated whose contents reflected the prevailing social relations. In general, the feudal laws openly established legal inequality and different rights for different classes. For instance, in the Law Code of Beki and Agbugi (rulers of the principality of Saintskhe - Saatabogo in the fourteenth Century) regarded as the most outstanding monument of Georgian feudal laws, fines were imposed in relation to the social status of the victim: 30,000 pieces of silver for the murder of a nobleman, and 400 for the murder of a peasant (Vilnius, 1980).

The feudal laws were, essentially, laws of privilege whose import consists in the norms that regulated feudal ownership of land and kept the peasants in a dependent status. The immunity rights of the lards developed as an inalienable attribute of the system. Examples of these laws include the Statute of Labourers of 1351; the Poor Law Act of 1388; the Law Code of Casimir of 1468; the Japanese Taiho Code; the Sudebniks of 1497 and 1550; the Carolina of 1532; the Statute of

Apprentices of 1563, etc, etc. Some of the stipulations of these laws are briefly surveyed to further illustrate the point that the content of any criminal law necessarily reflects the social conditions of the age.

The Statute of Labourers of 1351 was an English law enacted to control labour wage in an attempt to sustain 14th Century economy of England that was being "rocked" by chronic labour shortage. This Statute not only provided for the control of wages, but also made service to a master compulsory for all the poor persons whether bonded or free. In addition, it placed restrictions on their freedom of movement. This was reinforced by the Poor Law Act of 1388 which, inter alia, prevented any mobility of labour that would cause wages to rise (Fraser, 1973).

In Japan, the Taiho Code was the feudal law that consolidated the changes introduced by the "Taika Reform" (under Emperor Kotodu). The Code determined and clarified the system of land allotment and taxation, the government structure, the rights and responsibilities of "civil servants", and the relations between the privileged feudal aristocracy and the exploited peasantry. Similarly, the Sudebniks of 1497 and 1550 were enacted primarily to consolidate the forces of the feudal lords and the suppression of popular uprising among peasants

in Russia. In consonnance with the policy of further enserfment of the peasantry, the Sudebniks defined, in details, the legal status of "Kholopy" (slaves) and introduced a new fee for transport (Za povoz) levied on peasants who refused to carry out their obligations.

In Germany, the Carolina (a criminal Code) emerged seven years after the peasant war. It was promulgated by Charles V in 1532 to preserve the age-old inherited customs of privileges of the princes and feudal estates. It was particularly harsh towards the poor (peasantry). Among its provisions, the Code held that movement from the estates by the peasant was vagrancy, and the offender was to be executed as soon as he was taken to prison. For the state security, religious, and property crimes, it provided for burning at the stake, quartering, breaking on the wheels, hanging, drowning, burying alive, dragging, torture with red-hot tongs, and cutting off of hands, ears, noses, etc. (Chernilovskii: in Prokhorov, 1973. Vol 2). Vermes (1978) observed that "none of the provisions of the criminal Code of Charles V, the Carolina of 1532, was left unpractised by the gracious lord-master at his pleasure".

On the whole, the feudal laws besides reflecting,

by their contents, the nature of the social conditions and the official response to them, also manifest the intensification of class antogonism that characterised their societies. The laws were imposed to curtail wages, limit labour mobility, and safeguard the institution of private ownership of land. The severity and class-nature of these laws were most evident in the numerous restrictions on the movement of labourers and the punishments that accompanied their violations. In some places, to leave the "parish" and go elsewhere virtually required the permission (the testimonial under the seal of the Constable) to make the departure of the labourer lawful. That this kind of law applied only to the exploited peasantry needs no argument. An English Statute of 1388, for instance, held that "no servant or labourer, be it man or woman, depart..... to serve or dwell elsewhere unless he carry a letter patent containing the cause of his going and the time of his return....., under the kings seal" (Dobb, 1963).

But, the laws "could not halt the movement of history" (Nabudere, 1977). The old feudal organisation based on natural economy broke up under the pressure of socio-economic and historical forces. A new socio-economic formation was to emerge: the bourgeois society.

The rise to dominance of the bourgeoisie in Europe,

marked the peak of disintegration in the feudal economy and society. Towns began to emerge based on trade and handicrafts. The trade being relatively dynamic, impersonal, and active, challenged the status quo of the stabler rural economy and the feudal privileges. It also promoted greater specialisation of labour based predominantly on money relationship.

This historical process culminated in the development of monopolies and exclusive corporations. The commercial and manufacturing bourgeoisies emerged. The process pulled labour to the town and therefore created an abundance. In the circumstance, the bourgeoisie could assemble people under one roof who worked with the means of production and the raw materials which the entrepreneur provided. But instead of the entrepreneur (bourgeosie) buying the product as hitherto was the practice, he paid these workers a wage. The precursor of the modern wage-labour system was born.

Specific forms of social relationship accompanied this new system: entrepreneur/wage-earner interactions became relationships de jure. An oligarchy of the rich few (the bourgeois nouveauxriches) developed from the "democratic" merchant guild, via "the patriciate" (a kind of plutocracy); and in alliance with local

nobility, it siezed the political power of the area. The exchange relationships (obviously by no means between equivalents) emerged, largely dictated by the merchants who had acquired monopoly rights and corporate status. The hegemony of the merchant capital was established.

In concomitance with this process was a move towards the separation of the real producers from their means of production, and turning them mainly into producers of surplus value. In Marx's words, the process that clears the way for the capitalist system can be no other than the process which takes away from the labourer the possession of his means of production; a process that transforms on the one hand the social means of subsistence and of production into capital, and on the other the immediate producers into wage - labourers. Products and labour became commoditised and circulated through commerce.

Subsequent to these developments was the industrial revolution (based on major inventions) which stimulated rapid multiplication of the proletariat in the emerging industrial centres. The accompanying urbanization process produced two immediate results: one, the break with the vented cultural environment of the emergent proleteriat; and two, the difficulties of adaptation by

the immigrants to the new living conditions of the metropolis. These results inevitably converged in the destruction of all security of employment for the workers as well as their massive demoralisation. From them arose new forms of conduct and the official reactions to them. In describing the American experience, Pound (1930) presents the dynamics graphically:

> In other words, the homogeneous rural communities..... had ceased to be the dominant type. A whole new community had arisen, of which our legal institutions had had no experience. In these communities the the character and environment of crime are new and the demands upon enforcing agencies.... gave shape to our criminal law (Quoted in Tannenbaum, 1938).

For our purpose, it is noted that the dominant form of criminality that characterised the age under consideration became "property offences". As Shelley (1981) observed, property crimes comprised 82% of all offences in the bourgeois countries. The increasing complex nature of these bourgeois societies and the intensification of business (commercial and manufacturing) activities combined to produce a wave of economic and financial crimes, characteriesed by a growing number and sophistication of offences. There was greater access to goods in cities and towns which emerged as commercial and manufacturing centres. The concomitant development of affluence on one side and

the abject pauperization on the other, made many forms of "thievery" rather common.

As Lenman, et. al. (1980) said,

> .....theft steadily became by far the commonest crime before the courts. NO less than 85% of all indictments heard by the Paris criminal courts between 1750 and 1789 concerned theft -----. Similar figures could be presented for almost every European town, and this "crime wave" alarmed the propertied classes, in whom political power was largely vested, and set up a powerful pressure for changes in the criminal law on property..... (Quoted in Gatrell, et. al, (ed), 1980) (Emphasis added) .

The assertion of Peoples (1978) is illuminating in terms of the background and nature of the criminality of that age. He said:

> With the emergence of market economy in the eighteenth and nineteenth centuries, the law became of necessity, increasingly sensitive to the claims of property. Nowhere has the criminal law been more conspicuous than in the law of theft. Where there were once just a few ways by which a man could steal or cheat, there are now literally hundreds. ------- a massive proliferation of crimes including embezzlement, larceny by trick, fraud, extortion, blackmail, false pretenses, deception and forgery.

The view in the citation above, was preceded by a similar observation by Tannenbaum (1938) that "the answer to the complexity produced by the new industrialism (and the bourgeois economy) was an attempt to secure order by an increase in the number of laws to meet the new forms of criminality". Ante-dating these two observations were the findings

of Kirchwey (1931) that:

> Out of 100,000 persons arrested in Chicago in a recent year, more than one half were held for the violation of legal precepts which did not exist twenty-five years before. Of the inmates of the prisons of the Federal Government.....76% are there for crimes which were not crimes fifteen years ago (Quoted in Tannenbaum, 1938) .

Reviewing the laws of Rhode Island, California, Illinois, Missouri, Ohio, etc, Pound similarly arrived at the conclusion that:

> There are now more than four times as many punishable offences prescribed by the title on crimes as there were one hundred years ago, and there has been an increase of 60% in this title in fifty years. But this is far from the whole story. Today the Title "Of Crimes and Punishments" does not contain half of the offences that may be prosecuted by the state. (Quoted in Tannenbaum, 1938 op. cit.) .

Needless to say, the bourgeois laws emerged and developed substantially along the contours of these new forms of conduct. They were part of the efforts to sustain, regulate and reinforce the socio-economic and political conditions that gave birth to these forms of conduct. Most of the 18th to early 20th century European legal Codes bore the unmistakable marks of this bourgeois system of social relations and the attendant criminality. Examples include the 1753 and 1764 British Acts; the 1810 French Code Napoleon; the 1813 Bavarian Code; the 1889 Italian Zanardelli Code, the 1916 English Larceny Act; etc., etc. Unlike the laws in the preceding social

formations, these Codes put up ideological cloaks that concealed the specific form of relations that characterised their age. What cannot be mistaken, however, is the fact that their contents exhibited disproportionate concern for property relations over and above others.

The foregoing socio-historical profile would suggest that the content of the Nigeria criminal law as earlier identified, mirrors considerably, the situation in a bourgeois society and the legal response to the corresponding forms of conduct. It should be noted that it has been observed earlier in this work that the Nigeria Criminal and Penal Codes have their origins and orientations in the British Common law tradition which consists mainly of the bourgeois (commercio-industrial) system of relations that promotes contractual relations, impersonality, and individualism. With this analysis therefore, the sociological context for the content of the Nigeria criminal law can be said to be identified - namely, the bourgeois socio-economic formation of the 19th century Europe, the forms of conduct arising from this formation and the official reactions of them. The implications of such bourgeois-oriented legal content for the Nigerian society will be discussed

in the final chapter of this study. Their manifestations are however, glaring at the level of the operation of the law which is the focus of the next chapter.

N O T E S

1. The notion of the 'maximum' or "minimum" in this assertion is largely on the face-value. Certainly, more will be required to objectively assess the severity or otherwise of dispositions than intuitive scaling can allow.

2. Praedial Larceny is the offence of stealing, cutting, breaking, uprooting, or destroying any tree shrub, plant or vegetable production.

CHAPTER FIVE

THE OPERATION OF THE NIGERIA CRIMINAL LAW

The real face of the substantive criminal law is largely discernible in the actual workings of the criminal justice system. This view underlines the position that in examining the operation of the law, the focus of legal sociology is mainly on "what the operational units of the system can teach us about the substantive law" (Black, et. al., 1973). From this premise this chapter seeks to ascertain and assess the main units of the Nigerian criminal justice system with a view to bringing into clearer focus the real face of the substantive criminal law.

Generally, the organisation for the administration of law and justice consists of six functional units - the police, the prosecution, the law courts, the prison, the probation services, and the parole services (Waldron, et. al., 1976). Of these units, three exist in Nigeria (the police/prosecution, the law courts, and the prison) and are hereby examined to locate their operations in proper socio-historical contexts.

It should be mentioned here that in handling the substantive criminal law in Nigeria (all along shown to be problematic), these units face additional problems

of technicality, ambiguity and inconsistency in the accompanying laws of procedure and evidence (Jones, 1969; Adeyemi, 1970; Ibironke, 1977)[1]. These problems manifest themselves mostly in the rules on arrest and charging, "selection" and plea-taking, bail, relevance and admissibility of evidence, etc., etc., and further heightens the perceived problem of "failure of justice" inherent in the largely alien substantive criminal law. The case cited below partially illustrate this point.

Michael Elenuwa (a 20-year old man) appeared before the Chief Magistrate Court, Abakiliki on the charge of raping a four-year old girl. The dramatic end to the trial came when the girl (as the principal prosecution witness) stepped into the witness box to testify before the court, but could not talk when asked questions - not even to give her name. When all the effort to get the little girl to talk failed, Mr Clement Ozoigbo (the prosecuting police inspector) declined, procedurally, to continue with the case. Mr. Chidume (the Magistrate) ruled thus:

> It is very unfortunate that the complainant------ could not talk when called upon to give evidence ------. I am sad about it, but the law says no one can talk for her and I will not hear any other witness in view of this said development-------. With the greatest grief in my heart I am stopping this proceedings and accordingly discharge the accused, but not on merit-------.
> [To the accused] You have not been set free on merit, you devil (Lagos Weekend, Friday, September 9, 1983).

The "anguish" shown in the ruling cited above may not be a rare phenomenon with the Nigerian justice operational units where procedural and evidentiary laws stand on the way of substantive justice.

"Beset with such problematic legacy", Adeyemi (1977) observes that "public co-operation in or enthusiasm towards the administration of criminal /law and/ justice has been rather minimal". This is the frame for the discussions that follow.

The Police:

That the Nigeria Police Force occupies a most crucial position in the Nigerian criminal justice system is not arguable: in law and in fact, it initiates the whole criminal justice process and therefore, provides the "inputs" for the other units of the system in administering the law.

The police operation of the criminal law as conceived in this study can be assessed with respect to two basic but related variables: the amount and quality of protection it offers the people as measured by the degree of confidence and co-operation it enjoys from the average citizen (Mark, 1977; Davis, 1978; Odekunle, 1979). For such an assessment, two issues are considered: the extent to which members of the

public feel secure with regard to their person and property; and the satisfactoriness or otherwise of those who have had direct contact with the police. Tables 13, 14 and 15 present the empirical findings on these matters.

TABLE 12: "FEELINGS" OF MEMBERS OF THE PUBLIC WITH REGARD TO SECURITY OF THEIR PERSON

FEELING	%	N
Secure	35.6	32
Not secure	52.2	47
Can't say	12.2	11
TOTAL:	100.0	90

TABLE 14: "FEELINGS" OF MEMBERS OF THE PUBLIC WITH REGARD TO SECURITY OF THEIR PROPERTY

FEELING	%	N
Secure	32.2	29
Not secure	65.6	59
Can't say	2.2	2
TOTAL	100.0	90

TABLE 15: FEELING OF MEMBERS OF THE PUBLIC ON POLICE - HANDLING OF CASES

FEELING	%	N*
Satisfactory	30.0	12
Not Satisfactory	70.0	28
TOTAL:	100.0	40

*Only 40 of the public sample had had direct contact with the police.

It is clear from the data in Tables 13, 14, and 15 that the public feeling of security (in relation to their person and property) and satisfaction (in relation to the performance of the N.P.F.) is rather low. Furthermore, most of the respondents said that the presence (if at all) of the police does not appear to deter crime, especially property-crimes; and that where crimes have been committed, the police performance does not yield any appreciable results in terms of bringing the offenders to book, and/or recovering the property involved.

The above is strengthened by the findingsson the level of public confidence in, and respect for, the police; the public preference regarding method of settling victimization even where the offender is known; the opinion of the prison in-mates about the way the police handled their cases; and the lawyers' view on the police performance in law-enforcement and prosecution. These are presented in Tables 16 to 20 below.

TABLE 16: LEVEL OF PUBLIC CONFIDENCE IN THE N.P.F. WITH REGARD TO GENERAL POLICE PERFORMANCE

LEVEL OF CONFIDENCE	%	N
High	5.6	5
Average	37.8	34
Low	47.8	43
Can't Say	8.9	8
TOTAL:	100.0	90

TABLE 17: AMOUNT OF PUBLIC RESPECT FOR THE N.P.F. WITH REGARD TO GENERAL POLICE PERFORMANCE

AMOUNT OF RESPECT	%	N
A great deal of respect	0	0
Some respect	38.9	35
No respect at all	55.6	50
Can't say	5.5	5
TOTAL:	100.0	90

TABLE 18: PUBLIC's PREFERRED METHOD FOR HANDLING CRIMINAL VICTIMIZATION

PREFERRED METHOD	%	N
Informal resolution	73.3	66
Formal resolution	25.6	23
Can't say	1.1	1
TOTAL:	100.0	90

TABLE 19: FEELING OF THE PRISON IN-MATES WITH REGARD TO THE WAY THE POLICE HANDLED THEIR CASES

FEELING	%	N
Satisfactory	26.0	13
Not Satisfactory	68.0	34
Can't say	6.0	3
TOTAL:	100.0	50

TABLE 20: LAWYERS' OPINION ON THE PERFORMANCE OF THE POLICE WITH REGARD TO LAW ENFORCEMENT AND PROSECUTION

OPINION	ENFORCEMENT %	N	PROSECUTION %	N
Very well	5.0	1	0.0	0
Fairly well	45.0	9	40.0	8
Inefficient	40.0	8	55.0	11
Can't Say	10.0	2	5.0	1
TOTAL:	100.0	20	100.0	20

The data in the Tables above strengthen the earlier findings that the level of confidence in, and satisfaction with, the way the N.P.F. operate the criminal law is low. Members of the public were of the view that the manner of police arrest and remand of the citizens in Nigeria is arbitrary (i.e. inconsistent with the rule of law) and usually against the poor and those ignorant of "the sophisticated mechanisms involved in the legal procedure" (Oloruntimehin, 1977). With regard to their choice of "informal resolution" in preference to the "legal process", the public respondents said that the police-handling of criminal cases in Nigeria is costly (in time, money, and social relationships).

The lawyers' opinion of the police arises from their experience that "many people escape justice

because of the carelessness of the police" which emanates from either their human or corrupt desire to help the accused or their incompetence in framing charges. Adeyemi (1970) sums it up when he said: "a disappointing feature of trials of criminal cases is the habit of the police to blunder in most of their best cases".

How do the police, on their own part, perceive this situation? Table 21 presents the data.

TABLE 21: POLICE OPINION ON THE AMOUNT OF PUBLIC CONFIDENCE THEY ENJOY

AMOUNT	%	N
A great deal	10	3
Some confidence	56.7	17
No confidence at all	33.3	10
TOTAL:	100.0	30

Even though the data in Table 21 imply that the public confidence for the police is fairly high, it must be realized that self-evaluation is involved. Consequently, that a whole one-third of the police respondents admit that the police does not enjoy public confidence at all assumes greater significance than that proportion would ordinarily signify. And this interpretation is supported by the findings of some earlier studies of the matter.

In a small scale research, Oyakhilome (1970) found that majority of the public and the magistrates in Nigeria do not co-operate with the police because they "see nothing good in what a policeman does" and that this is manifested in unwillingness to report cases to the police and the "vehement public criticisms of the police" by the migistrate. More recently, Kore's (1980) study in Kafanchan shows that over 60% of the police admitted that the members of the public have no respect for, and trust in, the police; about 90% said that the public saw the police as corrupt; and over 75% of the police interviewed were aware of the public allegations that "Police take bribes" and "manipulate evidence in court".

The independent variables do not weaken the strength of the aforementioned findings as most of the associations are statistically insignificant at .05 level. The few associations that are relatively strong (i.e with Crammer's V value of about .40), depict specific patterns of variations that further lend support to the findings. Tables 22 and 23 present these associations.

TABLE 22: "FEELINGS" OF MEMBERS OF THE PUBLIC WITH REGARD TO SECURITY OF PERSON AND RESPONDENTS' OCCUPATION

	FEELING (%)			
OCCUPATION	SECURE	NOT SECURE	CAN'T SAY	TOTAL(N)
No occupation	25	0	75	4
Peasant farmers	63	33.3	3.7	27
Artisans	33.3	50	16.7	36
Senior Civil Servants	12.5	87.5	0	16
Business Executives	0	85.7	14.3	7
TOTAL (N)	22	47	11	90

Chi-square = 37.11 (df=8) Not Sign. at 05;
Crammer's V = .45

TABLE 23: LEVEL OF PUBLIC CONFIDENCE IN THE N.P.F. AND RESPONDENTS' OCCUPATION

	LEVEL (%)				
OCCUPATION	HIGH	AVERAGE	LOW	CAN'T SAY	TOTAL (N)
No occupation	25	0	50	25	4
Peasant farmers	7.4	66.7	18.5	7.4	27
Artisans	5.5	41.7	50	2.8	36
Senior Civil Servants	0	6.3	81.3	12.5	16
Business Executives	0	0	71.4	28.6	7
TOTAL (N)	5	34	43	8	90

Chi-square = 34.12 (df=12) Not Sign. at .05
Crammer's V =.36

In Tables 22 and 23, where opinions on the police were correlated with the occupation of the respondents, the data suggest an inverse relationship between the public

sense of security/confidence in the N.P.F. and occupational status: the higher the occupational status, the lower the feeling of security/confidence in the police. The main explanation for this is perhaps the educational attainment of the respondents. In this study, there is a positive correlation between occupation and level of education. Therefore, those with higher occupational status could assess the police more critically and confidently because of their educational attainment. In addition, they are the ones who probably care most about security of their persons and property.

The reasons given for the low level of public confidence and satisfaction can be summarised as follows: non-commitment on the part of the police; police-brutality (e.g. profane and abusive language, physical malhandling, undue detention); ineptitude/undue delays in prosecution; and evidence-exaggeration or suppression to secure conviction (mainly against the lower class) or discharge respectively. These practices find explanation largely in the narrow simplistic "we-are-only-here-to-enforce-the-law" philosophy which generally produces a reactive police department that responds only to "figurative fires". The root of the prevalence of this philosophy in the N.P.F. is historical as shall be shown later in this chapter.

The Courts:

Central to the notion of law and order in modern society is the promise that it will provide the formal machinery for just and orderly allocation of reward, opportunity structures, and access to the means of life (Blumberg, 1967). Where disputes arise in the course of this allocation, the State usually turns to the law courts for settlement (i.e to determine the guilt and innocence of the parties involved and allocate "rewards" according to the fixed rules); hence the decisive position of the courts, particularly the criminal courts in modern Nigeria. Given this fundamental role expectation, an assessment of the court-handling of the law should consider the opinions about the success with which the courts convict the guilty and acquit the innocent. In this regard, this study seeks to focus upon the workings of only the Nigerian Magistrate and Area courts.

It may be recalled that these courts are said to be significant to the administration of the law not only by the sheer numbers of the defendants who pass through them but also by their jurisdiction over many of the offences that are most visible to the public.

As Pound (1922) observed concerning the Municipal courts in America, the Magistrate and Area courts in Nigeria

> are the points of contact with the administration of /law and/ justice of the overwhelming majority of the inhabitants who come into any contact with courts--------. There, the great bulk of the population receives its impressions regarding the speed, certainty, fairness and incorruptibility of /law and/ justice as administered (Emphasis added).

The approach is to assess the "worth" of these courts in relation to the public impressions about them, the veritable aspect of which is the degree of public confidence in, and respect for, them.

Among the public respondents, 73.3% have "a great deal" of respect for the courts; 17.8% have no respect for them at all; and the remaining 8.9% cannot offer an opinion either way. A similar distribution is shown in the public opinion on whether or not, from experience or observation of the official practices of the courts, they think any person(s) is above the law in Nigeria: 34.4%, "yes", 60%, "no", and 5.6% "can't say". The police express similar view: 43.3% say that some people (the rich and those with political immunities) are above the law; 50% say that nobody is above the law; the remaining 6.7% cannot offer opinion either way.

In the light of the wider social reality, the

high opinion of the public with regard to their respect for these courts (apparently confirmed by these other findings) is contestable. This is moreso as further analysis shows that only 32.2% of the public respondents have had direct contacts with the courts. And among these, 58.6% were not satisfied with the way the courts handled their cases in terms of speed and fairness. Therefore, the public indication of an overwhelming respect for these courts requires a critical explanation as attempted below.

When put side by side with the widely-perceived "poor" police performance, the courts and their operations are likely to be regarded highly by the public. And this advantage of relativity is further compounded by the low visibility of the courts and their operations. A typical modern Nigeria criminal court approximates a closed community in "design" and in process. The nature of this "closeness" can be seen by the fact that even the press is zealously determined to report only that which will not offend the court. It is additionally observable that the aura built around these courts scares not only those with cases, but also interested observers. As Adeyemi (1970, op.cit.) put it, "the court-hall is regarded as sacred--------- it is unlawful to laugh

or smile in court. It is even an offence to yawn or whisper, cough or sneeze unless one is prepared to go to jail"

Over and above these advantages of relativity and low visibility is the myth of impartiality of the courts, relentlessly propagated by the legal profession - the bench and the bar. Ruling in R."v. Thomas H. Jackson [(1925) 6 N.L.R.57, Combe C.J. remarked:

> It is, I think, generally recognised that one of the greatest blessings brought to this country (Nigeria) by the British Administration is the establishment of an absolutely impartial judiciary, and I have every reason to believe that the inhabitants of this colony and Protectorate..... rejoice in having courts to which they can come with certain knowledge that justice will be administered without fear or favour..... I cannot imagine any greater evil ..... than to render this court contemptible in the eyes of the public (Emphasis added).

While condemning the wave of violence in some parts of the country during the Nigerian 1983 general elections, Mr. Anyamene (President of the Nigerian Bar Association) "appealed to all aggrieved parties to go to law court in accordance with the Constitution of the country" and "expressed his association's implicit and unshaken confidence in the country's judiciary and its ability, integrity and impartiality" (New Nigerian, Monday September 5, 1983).

Such comments as the ones cited in the preceding paragraph project an unquestioning faith in law and the courts, and when successfully propagated, they orient, positively, the impressions of the public about the legal process in general and the courts in particular. Thus, the public respect for the courts, particularly as it is with regard to speed and fairness should be considered in these contexts.

Even though one would not expect any person convicted by a court to have good impressions about that court, carefully elicited opinions/feelings of prison in-mates may signify, to some extent, the public perception of the worth of a court as an effective diagnostic instrument. Majority of the in-mate respondents (62%) did not desire their cases taken to court, because they were "dreadful" of the courts. Among these, 54.8% alleged to have "bribed" to stop the police from taking them to court. Among those that were convicted, 63.3% expected penalties other than imprisonment; and about 56.7% considered the lengths of their jail terms "too harsh". With regard to their general feeling in the court-handling of their cases, 70% were not satisfied and regarded the courts as partial and/or inhuman. Again, bearing in mind that one should be wary in using in-mate opinions to assess the courts of referral, this analysis shows

of the prison in-mates were convicted; and two, the demographic and socio-economic characteristics of these in-mates. The relevance of these issues consists largely in uncovering the empirical face of the content and bias of the substantive law which lies at the base of the arrest, trial, disposition and sentencing of the in-mates.

The analysis, in this study, of the offences for which the in-mates were incarcerated shows the preponderance of property-and property-related-offence type, over the "person" and other types. This finding is, in essence, in line with the conclusions of available works on this matter. In their study of Kirikiri and Agodi prisons, Okediji and Okediji (1968) found that property offences (e.g. robbery, burglary, larceny, etc.) dominate (61.36%) the "types of offence committed by Inmates.....". Obafemi's (1977) study in Ilorin also "shows that the largest category of offences - 60% and 87.5% for which respondents were committed for last and present imprisonments, respectively, was property". "This category" continues Obafemi, "consisted of theft, burglary and counterfeiting, the single largest being theft". Analysing the character of "common" crimes in the study of samples of prisoner-populations in six Nigerian major cities, Odekunle (1978) concludes: "Not surprisingly, most of these are 'property'

TABLE 26: IN-MATE RESPONDENTS' NUMBER OF CHILDREN ALIVE

NUMBER OF CHILDREN	%	N
No child	11.4	4
1 - 2	37.2	13
3 - 5	17.1	6
6 and above	34.3	12
TOTAL:	100.0	35*

*Only the married and Divorced/Widowed

TABLE 27: EDUCATIONAL ATTAINMENT OF THE IN-MATE RESPONDENTS

EDUCATION	%	N
No formal Education	38.0	19
Primary	40.0	20
Secondary	20.0	10
Post-Secondary	2.0	1
TOTAL:	100.0	50

TABLE 28: OCCUPATION OF THE IN-MATE RESPONDENTS

OCCUPATION	%	N
No occupation	20.0	10
Peasant farmers	34.0	17
Artisans	34.0	17
Senior Civil Servants	6.0	3
Business Executives	6.0	3
TOTAL:	100.0	50

TABLE 29: OCCUPATION OF THE IN-MATE RESPONDENTS' FATHERS

FATHER's OCCUPATION	%	N
No occupation	6.0	3
Peasant farmers	64.0	32
Artisans	20.0	10
Senior Civil Servants	4.0	2
Business Executives	6.0	3
TOTAL:	100.0	50

All the information in Tables 24 to 29 above, put together, will depict a profile thus: the typical in-mate respondent is in the prime of his/her youth, married (even if nominally) with an appreciable number of livin, children; and of a low educational and occupational status and family background. He is the underprivileged in modern Nigerian society.

That is the typical man upon whom the Nigeria criminal law, under the auspices of the criminal justice system, focuses. Yet, this law is couched in a structure that is incoherent, haphazard, and in an esoteric language that portrays all as equal juristic subjects.

The effort made so far in this chapter has been geared towards increasing the critical understanding

of the Nigeria criminal law through examining the operations and characteristics of the units of the criminal justice system. The way one has gone about this is to assess the value and worth of these units which invariably reflect the nature of the substantive law they are required to operate. It will be seen from the analysis that the worth of the Nigerian criminal justice units with regard to the public impressions about their operations is minimal. And by this fact, it is derivable that the substantive criminal law may not be, essentially, in tune with the ethos of the society which it is meant to serve. In line with the theoretical position in this study, it is contended that this "discrepancy" finds more effective explanation in the circumstances under which the units emerged and the orientations given to them.

With respect to the police, Tamuno (1970) and Odekunle (1979) have contributed immensely to this perspective. There is a consensus between these writers that the origin, development and orientation of the modern police in Nigeria, are colonial. The present study only needs to reiterate the fact that the N.P.F. has not divested itself of the philosophy and orientation dictated by the colonial interests of

the British. In odekunle's words, "the N.P.F. was of, and for, the colonial administration, not for the people; its orientation was 'containment' and its stance was 'military'; it was not meant for service to the community..... the primary task then was to keep order and maintain law". The outcome of this is the narrow simplistic "we're-only-here-to enforce-the-law" philosophy which does not meet the people's indigenous sense of policing. Hence their low opinion of the modern N.P.F.

Viewed in their larger contexts, the law courts were also part of the British armour in her conquest and control of Nigeria (Adewoye, 1977). The fact that the system of Magistrates' Courts showed no clear distinction between the administrator and the judge in the early period of their establishment indicates that the courts were greatly used as instruments in the political subjugation of Nigeria (Unobe, 1983).

Needless to mention that these courts not only struck at the sovereignty of the indigenous judicial institutions but also administered the laws that bore little resemblance to the ones known to the pre-contact Nigerian societies. The colonial laws responded mainly to the needs of commerce, growing white population, and political subjugation as indicated by the first types

of formal courts of justice established in Lagos colony, namely, the Police Court, the Criminal Court, the Slave Court, and the Commercial Court. All of them were evidently designed to serve areas of pressing needs in the life of the colony.

Another prominent feature of these courts was the orientation of the courts which implied the servicing of the interest of those who wielded power rather than the interest of "justice". The ensuing differential treatment is indicated in the allegation that "Prejudice of colour exists to such an extreme that often times in our courts of law we (Africans) sue entirely in vain for the impartial administration of justice". Instances of "unjust and iniquitous verdicts" in the courts abound (Adewoye, 1977, for elaboration). Thus the courts were established with an orientation that engendered much dissatisfaction among the indigenous populace. And that orientation persists till today.

The character of the prison in Nigeria is no exception to the foregoing historical survey. The modern prison system was part of the colonial arrangements to institutionalise the colonial government. Initially, the prison was viewed not only as a custodial house but also as a reservoir of labour. Prisoners were used for public works and the general cleaning of

surroundings of the home of the colonial administrator (Owomero, 1981). Generally, the social-profile of prison in-mates in Nigeria has remained largely similar to the one earlier focused upon.

On the whole it becomes evident that the agencies of the criminal justice system in Nigeria which were consciously designed and armed with the "relevant" law to serve the interest of the colonial administration had been inherited and deliberately maintained by our ruling elites as beneficiaries - which latter fact explains the non-review, fundamentally, of both the substantive criminal law and its operational agencies more than twenty years after independence.

NOTES

1. This is with particular reference to the Criminal Procedure Act, Cap. 43, Vol. II of the Law of the Federation, 1958 (for the Southern States); the Criminal Procedure Code, Cap. 30, Vol.I of the Laws of Northern Nigeria, 1960 (for the Northern States); and the Evidence Ordinance (Federation), Cap. 62, Voll. II of the Laws of the Federation, 1958.

CHAPTER SIX

SUMMARY, DISCUSSIONS, AND CONCLUSIONS

In this Chapter, all the efforts made in this study are brought together and further discussed. In conclusion, specific problem-areas emerging from the general picture of the law and a proper basic orientation for sociology of law in Nigeria are outlined.

The problem for this study hinges on the contention that the lógical point of departure for any systematic scholarship on law, its enforcement and administration, is a critical and verifiable investigation into the substantive rules of the law. And that there is, generally speaking, a deviation from this logic in the existing legal scholarship; one which results in a concentration on the procedural and correctional aspects of the law along the Austinian positivistic approach. Therefore, this study, having regard to the vitiating effects of this orientation for theoretical and practical purposes, attempts a sociological examination of the substantive criminal law in Nigeria with a view to making a preliminary contribution to systematic

knowledge and rational administration of the law. The choice of the criminal law is predicated by its crucial position in the social ordering of the nation and the fact of the consensus among the indigenous legal scholars that it is, as it now stands, problematic.

To effectively deal with the problem specified above, one needs a theoretical perspective that seeks not only to say what law there is and when it evolved, but also to explain how the law originated and why it is what it is. Of the various paradigms, the Marxist perspective is found to offer this tool: besides acknowledging the essential place of the formal logical analysis of the law (typical of the structural-functionalist position), it holds that an examination of law should be done through the concrete historical and sociological methods of investigation. Its essence, therefore, consists in recognising the developmental relationship between law and society, and stressing proper contextualisation of law for a deeper and critical understanding. This perspective underpins the methodological orientation for data collection, analysis and interpretation in this study.

In collecting the relevant data, documentary sources (e.g. texts, the Nigerian Criminal and Penal

Codes, Law Reports, the official records of the Police, the Court, and the Prison, etc.) and interviews (with the public, the prison in-mates, the police and the lawyers) were mainly relied upon. The basic variables upon which the data were collected include the structural organization of the law, the statutory language in which the law is cast, the nature of criminalization in the law, an assessment of the police - and court - handling of the law, etc. Demographic and socio-economic variables (e.g. age, religion, ethnicity, etc) were used mainly to measure variations in the opinions of the respondents on the various issues.

The analysis and interpretation of the data collected provide specific findings on the afore-mentioned variables. With regard to the classification of the legal norms, two-thirds of the lawyers who offered opinion described the structural organization of the law as incoherent and haphazard. By way of illustration, 65% of them said that "goat-stealing", conceived as a felony in the law, should be a simple offence; 50% said that "personation" should be a felony in the Nigerian setting rather than a simple offence as it is in the law. The opinions of the members of the public on the official classification of " bigamy" and "personation" further support the description stated

above: three-fourths said that bigamy should not even be a crime in Nigeria, let alone a felony. Again, by recommending 60 months (modally) imprisonment for personation, the respondents showed that the offence, in their opinion should be a felony.

In addition to the empirical findings in the preceding paragraph, a meticulous examination of the Criminal and Penal Codes reveals the incoherent and/or hairsplitting manner in which the legal norms in the law are organised. Either incompatible offences are lumped together in one chapter (e.g. Chapters 13 and 27 of the Penal Code), "acts" that are basically similar are put in separate sections of one chapter by hairplitting (e.g. SS 119 and 122, Chapter 10 P.C.), or scattered in separate unrelated chapters (e.g. 9(112); 10(148) and 18(267). All this supports the assertion made in this study that the form of the Nigeria criminal law, with regard to its structure, is "chaotic".

The other aspect of the form of the law found to be problematic is the language, particularly its syntax. About 68.7% of the lawyers who offered opinion described the language of the law as too "technical" and "incomprehensible"; 86.7% of the police respondents said that, from their experiences,

the language is not clear to the generality of the Nigerian populace. This is affirmed by the fact that more than half (52.1%) of the members of the public who had read the Codes could not understand the language at all. And upon a close examination of the Criminal and Penal Codes, their language (particularly of the former) is found largely to be convoluted and esoterically technical (e.g. SS 115, 252, 346 of the Penal Code, and 316, 383, 465 of the Criminal Code).

The explanation attempted for the findings in the last three paragraphs shows that the structural and linguistic nature of the Nigeria criminal law reflects the eccentricities of its English legal parentage. Further, it is shown that the circumstances of the importation of the law and the unchanging predisposition of the Nigerian ruling elites have left the form of the law the way it is.

With regard to the content of the law, this study examines the kind of behaviour that had, ab initio, attracted State-condemnation in Nigeria, thus identifying the general orientation of the criminalization pattern. In doing this, the investigator tries to group the haphazardly presented provisions into five major categories: Offences against State security and order; Offences against the Person; Offences against Property; Offences

relating to Family/Marriage and Morality; and offences against Public Order and Health. It is then observed that each of these categories occupies a specific position of "seriousness" as conceived by the State and the analysis of this ranking shows the orientation of criminalisation in the law. Using "exhaustiveness of offence-formulation" (i.e. the quantity of law) as a parameter of "seriousness", "Offences against State Security" and "Offences against Property" top the lists of offences in the Criminal and Penal Codes, respectively. It is also observed that "Offences against Property" is relatively prominent in the Criminal Code.

The ranking shown above suggests that the pattern of criminalization in Nigeria is predominantly property-biased; and is supported empirically: about 72% of the members of the public said that the most common offence in Nigeria is property; 50% of the police offered similar opinion; and about 54% of the offences with which the in-mate respondents were committed to the Prisons are of the property-type. On the whole, this characterization is further affirmed by the socio-historical framework of analysis/explanation which discloses a close affinity between the content/orientation of the Nigeria criminal law and the enduring 19th-century bourgeois socio-economic

formation in England from where the law was imported.

In examining the real face of this substantive law, the actual workings of the Nigerian police, courts and prisons are assessed. This study finds that, given the way the N.P.F. handles the criminal law, the public sense of security of their person and property is low. This is further suggested by the rather minimal level/amount of public confidence in, and respect for, the police; and the overwhelming choice of informal method of dispute-settlement in preference to the formal (legal) process: about 80% have "average and below" confidence in, and more than 50%, no respect at all for, the police; and 73.3% chose informal method of settlement. The reasons given by the members of the public for this low inclination towards the police and the legal process in general include police-brutality, undue detention, evidence-exaggeration or suppression to secure conviction or discharge respectively, etc. These practices are found to emanate from the "we-are-only-here-to-enforce the law" philosophy as clearly shown by the history of the N.P.F.

The courts are to determine the guilt and innocence of the parties brought before them in accordance with the provisions of the law. This study examines the

public impression about the success with which the courts perform this role and finds that 73.3% have "a great deal of respect" for the courts; and 60% do not observe impartiality with these courts. However, the fact that this finding appeared inconsistent with the wider social reality led to further analysis which shows that only 32.2% of the public respondents have had direct contact with these courts. And of these, 58.6% were not satisfied with the way the courts handled their cases. The explanation that follows from this inconsistency shows that the courts enjoy perceived competence in comparison with the widely - perceived "poor" police performance because of their low visibility, remoteness and "closeness". These are further compounded by the "myth" of impartiality of courts propagated and/or ingrained in the minds of the people by the legal profession. Together with the unfavourable "feelings" of the persons sent to the prisons by these courts (used here with much caution), these findings show that the overwhelming public respect for the courts is perhaps more apparent than real.

With regard to the features of the prisons, a survey of the offences for which the in-mates were committed and the demographic and socio-economic characteristics of the in-mate respondents shows the

preponderance of property offences, and persons in the prime of their youth with low educational and occupational statuses, respectively. This further unveils the nature of the content and bias of the substantive criminal law that essentially underlies the operations of the police and the courts which culminated in the committal of these in-mates.

The afore-mentioned findings with regard to the workings and features of the police, the courts and the prisons are found to be rooted in the socio-historical circumstances under which those units emerged and the type of orientations dictated by the substance of their legal framework. The units are colonial in origin, and are part of the British armour of conquest and containment.

It should be mentioned however, that prior to the introduction of these colonial instrumentalities, viable laws and justice systems existed in Nigeria. The indigenous laws were not book laws; they were oral, direct in formulation and their principles expressed in everyday language which the ordinary citizen could understand such that minute textual criticism, debates about the meaning of a section, etc., were not common, if they existed at all (Allot, 1968).

In other respects, the substances of these pre-colonial laws generally reflected the dynamic cultures and aspirations of their societies. They were to a large extent consistent with the community practices so that the people could align their behaviour to them with minimal violation. In terms of operation, the approach that dominated these laws was "rendering essential justice in the particular case in conformity with the general principles and appropriate patterns of behaviour recognised by custom for each relationship or transaction" (Allot, 1968 op. cit.). The persons who traditionally performed "police" duties spoke the same language and shared the customs of their various communities (Tamuno, (1970).

With regard to the indigenous courts, "the overall picture is of large numbers of men and women attempting an honest job in the administration of justice ..... at remarkably small cost and in the closest touch with the people and their tradition and customs" (Keay, et. al., 1966). In Tamuno's (1970) words, the "justice obtained through the law enforcement institutions in pre-colonial Nigeria appeared cheap, convincing, and quick". The general orientation was that, in Buxbaum's (1967) words, "the

courts in traditional societies have an ideological preference for conciliation".

It is upon these systems of laws and justice administration that the English law and notion of justice were super-imposed. As its history shows, this English law "was made by Englishmen for Englishmen, and expressed the spirit of England....., built up day by day by the courts in deciding disputes between living people with full knowledge of the effect the decisions will have on their destinies" (Kiralfy, 1958). This was echoed by Staurt J. in Daywood v. Carlson (30 Am. S.C., Washington) when he said that "the common law grew with society and not ahead of it, as society became more complex and new demands were made upon the law..... the courts originally in England out of the store-house of reason and good sense declared the common law".

In the Middle Ages, this law became "capricious in operation", and by the 18th century, had "reached an incoherence which seem to defy even the modest order of the alphabet; and at its serious level, was perhaps dependent for its workability on the ignorance of all concerned" (Milson, 1969). The incoherence of the form and capriciousness of the operation notwithstanding, the emphasis of the law on property was consistent. Scarman's

(1974) observation indicates that "at the bar of international opinion, the law would admit a weakness in its protection of human rights which had been limited only to the right of property. It only provided a framework of freedom in which men, women and children may work out their destinies.....". This is, in essence, the nature of the law after which the Nigeria criminal law is modelled.

And, true to the thesis that colonial civilization developes obedient to the principle of imitation of parent-model, "contempory African [or Nigerian] legal systems bear the marks of their colonial origins.... in the sense that the explanation both for [their] style and content must be sought in legislations enacted in the colonial era" (Allot, 1970). The riddle of technicality, the inherent presupposition of socio-economic and political system different from those of Nigeria, and the problematic nature of the operational units of the justice system clearly show the "foreigness" of the Nigeria criminal law in form, content, and operation.

Perhaps a valid question at this juncture is this: why the whole-sale importation of a law developed in a different environment, motivated by different objectives and following procedures removed from those

of Nigeria when there was no legal vacuum? The popular justification proceeds from the argument summed up in Justice Thompson's comment in Olayemi v. Lawani that:

> If we make allowances for expatriate Judges in the old colonial days, theirs was a difficult task -- highly cultured sophisticated gentlemen learned in the common law, were called upon to adjudicate on a system of native law found upon customs which have not been nurtured or improved by modern judicial reasoning..... (Quoted in Rubin, et. al., 1968).

In other words, the expatriate judges needed the law they could handle, so they had to import the law (modern and sophisticated) of their own country. Be that as it may, the question still remains as to why the British "imported" laws that were "more than required" for the prevailing situation in Nigeria. In Blackstone's (1787) words,

> colonialists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony, inheritance and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people..... and a multitude of other provisions are neither necessary nor convenient for them and therefore not in force (Emphasis added)

On the strength of available evidence, one would contend that, rather than in the predicament that the expatriate judges would have faced, the explanation for the importation of a technical and property-biased

(with irrelevant distinctions) criminal law to a predominantly "simple" and agricultural society properly lies in the singular purpose of colonialism in Nigeria, i.e. to institutionalise and legitimise the rights of the British to control and supervise the exploitation of their colony largely through commerce. Morel once said: "commerce took us to West Africa,..... It is the fons et origo of our presence in West Africa....." (Quoted in Tamuno, 1978).

And, accusing the British Government in Nigeria. Fox-Bourne said: "The essential fact to be borne in mind is that within the past few years..... there has been scores of punitive expeditions against troublesome native communities..... but all having for their real object the development of British commerce" (Quoted in Tamuno, 1978, op.cit). Allegedly, the British did not find the indigenous legal content and framework conducive to this purpose; hence the importation of their own commercial-and-property-oriented law.

The fact of the protection of the British trade and property being fundamental to the super-imposition of the English law and justice system could be gleaned from a 'Report' preceding the introduction of the English law and justice system into Nigeria (submitted

to the Secretary of State for Foreign Affairs in 1860 by Campbell Brand, a Special Consul for Lagos and Bight of Benin):

> Lagos at present may be said to have no Government; there is no effective protection to property, no mode of enforcing the payment of debts applicable to Europeans..... but in a large and increasing commercial community, there are questions of great importance affecting trade and property frequently arising which the Consul has not the means, even if he had the authority of dealing with in a satisfactory manner..... (Quoted in Elias, 1963).

By 1862 a Police Court was opened at Olowogbowo (Lagos); and in 1863, the first Supreme Court of the colony was established to operate on the basis of the accompanying English legal principles. In 1899, the Criminal Code Bill was presented to the Legislative Council in Lagos, but was rejected. In 1904, Lord Lugard enacted the Schedule to this Bill in the Northern Protectorate and following the unification of the Northern and Southern Protectorates in 1914, the Criminal Code was made applicable to the entire country in 1916 (Okonkwo, et. al., 1964). Since then, the picture that is depicted in the evolution of the interaction between the indigenous law and the English law, "is one of the constant interplay of the forces of the law and /property-protection/" (Elias, 1973). Thus a fundamental understanding of the form, content and operation of the Nigeria criminal law should be sought against this background.

The picture that emerges from the foregoing discussions allows for broad derivations, perhaps, best represented in the following allegory (abridged from Fuller, 1964):

> Rex came to the throne filled with the zeal of a reformer (with particular attention on law). His first official act was dramatic and propitious. Since he needed a clean slate on which to write, he announced to his subjects the immediate repeal of all the exisiting law. He then set about drafting a new code. [Later] he announced that he had written out a code and would henceforth be governed by it in deciding cases, but that the contents would remain an official state secret. The subjects resented, that it is very unpleasant (unjust?) to have one's case decided by rules when there is no way of knowing what those rules are. There was no escape from a published code declaring the rules.
>
> When the code became available, it was discovered, to the dismay of the subjects, that it was truely a masterpiece of obscurity. Legal experts who studied it declared that there was not a single sentence in it that could be understood either by an ordinary citizen or by a trained lawyer: How can anybody follow a rule that nobody can understand? The code was withdrawn.
>
> The revised code contained stiffened requirements and a long list of new crimes e.g. it is now a crime punishable by 10 years' imprisonment to cough, sneeze, faint or fall down in the presence of the King.
> [Reaction] to command what cannot be obeyed is not to make law; it is to unmake law, for a command that cannot be obeyed serves no end but confusion, fear and chaos.
>
> The King assumed the judicial powers in his own person. In this way he could directly control the application of the code that was unacceptable to the subjects. As the bounded volumes of Rex's judgements became available and were subjected to closer study, his subjects were appalled to discover that there existed no discernible relation

> between those judgements and the code they pupported to apply. The new code might just as well not have existed at all.

This allegory may not correspond in every detail with what one has done in this study, but it graphically alludes to our points of arrival.

Regarding the form, the Nigeria criminal law, taking after the English law, is found to be in Archer's (1956) words, "an untidy mosaic with its overlapping, its irrelevant distinctions and its anomalous survivals. It defies any scientific classification; and /Tike Rex's code7 those who have spent a life-time in its services do not pretend to understand all its detail". Aptly put, it is generally unorderly, obscure and incomprehensible. The seriousness of this characteristics will be better appreciated when it is realised that "cognoscibility" (i.e. the principle of knowing and understanding to be able to orient one's behaviour accordingly) is a necessary ingredient of the rule of law: it is an "unreasonable thing to oblige men to obey a body of laws that are.... so dark as not to be read and understood by every one of the subjects" (More, 1516).

The situation with the form is compounded by the nature of the content of the law which is largely in "disharmony" with social realities in Nigeria: the

law is predominated by individualistic philosophy and property and property-related offences "incident to great commercial/industrial people", thereby occassioning incongruence with the practices of the largely communal and agricultural societies of Nigeria. In addition, it should be mentioned that beside the offences that are more or less "unknown" to the Nigerian ethos, there are offences whose conception differs considerably from the indigenous understanding. For instance, it may be difficult for a native mind to understand how marrying more than one wife would be felonious (State v. Ezeago Nweke [1971] 0/11c)[1]; how raping a 13-year old girl who bled to death (R. v. Nameri - [1951] 20 N.L.R.6) would not be murder; how a woman contemptuously exposing her bare buttocks to the husband who killed her (State v. Nomeh - unreported decision of the Supreme Court [S.C. 469/63]) would not be sufficient to establish the defence of provocation; etc; etc. All this aggravates the disharmony.

In so far as the criminal law contains certain rules concerning the basic conditions of social life in Nigeria, the law may be valuable. However, the contention emanating from the findings of this study is that to command (criminalise) more than what can

be obeyed and/or enforced may be, generally, to unmake the law. The premise is this "a law honoured in the breach than in the observance (for lack of harmony with social realities) does no good to itself" and to the society (Weeranmantry, 1975).

The situations with the form and content as shown in the foregoing compound the problem of the Nigerian criminal justice system. Apart from the fact that the operational units of this system are unable, by virtue of their origin and orientation, to sustain public confidence, the law they are required to operate is untidy and considerably removed from the Nigerian socio-economic conditions. The implication of these general characteristics of the law for the Nigerian society are enormous. While those of the form (in terms of cognitive dissonance) and operation (in terms of absurd justice and social disaffection for law) may be obvious, those of the content are often elusive.

It is therefore pertinent to focus more on the content here for further critical understanding by paying particular attention to the way in which the content of the law reaches far beyond its own apparent sphere to interact with social attitudes, processes and structures in Nigeria. The premise

for the attempt is that the imposition of the bourgeois-oriented English criminal law on Nigeria was not a haphazard or accidental phenomenon. It was, as earlier shown, consistent with the wide-spread belief of the imperialists that law could be used to establish and protect their purpose (Pospisil, 1979). The implications are examined at two related levels: social structure and societal structure[2].

At the level of the social structure, it is observed that the embodiment of the Nigeria criminal law would affect, considerably, the rights and obligations conferred upon individuals by the indigenous systems of belief, cultural norms and established modes of behaviour. In the pre-colonial Nigerian society these individual rights and obligations were asserted, generally speaking, through family and other collectivities, and were recognised as such by the prevailing laws. In other words, individuals found their "essence" (super-ordinate or sub-ordinate) largely in communal and/or family groupings. This is distinct from the social relations which the imposed criminal law conveys: by the manner and matter of criminalization in this law, individuals are isolated and brought into atomistic relationship with one another and with the State. The law addresses the individual (rather than the family or community) in so far as his

acts or omissions are called into question in particular cases. Invariably, individualism and formal contractual relationships are promoted over and above the indigenous systems of relationships, with the result that the latter diminishes in effect, paving way for the emergence of the social (relational) structures consistent with the former.

The implication of the embodiment of the criminal law for the indigenous societal structure is similar to the one observed above. By fostering a laissez-faire economy and society (after the model of classical property - relations) in predominantly communal and semi-feudal organisations, the "law" affects the . . character of the existing socio-economic grouping in the following ways. One, the divisions in the society are reduced, in the main, to an easily identifiable dichotomy: the propertied and the property-less. And two, the necessarily accompanying conflict is intensified. The provisions on idleness, vagrancy, gambling, drunkenness, and most of the property-related offences in the law underpin both effects. The substance of these provisions reflects the emerging social inequalities which is tilted in favour of the vested interests of the privileged class in the society. The argument that such inequality is supported by the

substance of the criminal law received expression in Lester's (1970) observation that "the harshest inequalities exist less in the machinery and procedures of the legal system than in the very stuff and substance of the law". In this sense, the restructuring impact of the content of the Nigerian criminal law on the Nigerian indigenous societal structures can be better appreciated.

The prescriptive aspect of the content of the Nigeria criminal law shows the imprint of the equity principle of justice (i.e. balancing reward to input) which essentially reflects the English capitalist economic orientation. The prescriptions are built, largely, upon the philosophy of the exercise of free will and individual responsibility, one which has no interest in studying the sources of criminal behaviour. It is largely positivistic.

It is pertinent to note that "free will" has remained a very vague metaphysical notion. And that "responsibility" defined in its terms would be equally vague and very difficult, if not impossible, to determine in practice (Oruka, 1976). All that has been done so far in concretising the conceptualisation of this notion within the legal circle is to regard "free will" as acting intentionally or voluntarily. The proof has

remained whether or not the criminal was at the time of his action, insane or unable to exercise his "free will" or otherwise. It is glaring that this conception has no respect for the sociality of crime for which the punishments are alloted.

Again, this philosophy would have enormous implication for what was widely accepted to be the indigenous prescriptive philosophy and practice. In the various pre-colonial communities of southern Nigeria, for instance, the view of society was said to be "holistic". The administration of justice was aimed at inter-personal reconciliation, victim compensation and the restoration of communal equilibrium. Parties to a suit (usually represented by families or communities) often left the "court" "not puffed up nor cast down, for each a crumb of right, for neither of them the whole loaf" (Quoted in Elias, 1956). The criminal responsibility was not conceived, wholly, in terms of the state of the mind of the individual.

The effect of the super-imposed prescriptive philosophy is therefore determinable: the indigenous prescriptive philosophy and practices give way to the ones embedded in the embodiment of the present Nigeria criminal law with values and perception (with regard

to the aims of punishment) which favour deterrence, retribution and reformation over and above inter-personal reconciliation, victim - compensation and the restoration of communal harmony.

The implications observed in this section seem to place the criminal law well ahead of the Nigerian society and to indicate that this law is likely to orient Nigeria to the largely different social order that it embodies (further studies may be necessary before this can be more adequately examined and determined). Indeed, the fact that the Nigerian ruling elites have maintained this law intact up to this day presupposes their inclinations towards the social order (inherent in this law) that serves the interest of the privileged few.

Considering the foregoing analyses, explanations and discussions, one broad recommendation may be inescapable: a complete reconstruction of the Nigeria criminal law using as "blocks", the prevailing socio-cultural and economic conditions modified by the aspiration of the society as embodied in the set of national objectives (e.g. a just and egalitarian society). "You want good laws?" Voltaire once exclaimed. "Burn yours (i.e the existing ones) and make new ones" he said (Ehrmann, 1976). Apart from the content being essentially indigenous, the new law

should depict a structural arrangement that signifies coherence and new order of importance, and a language that sacrifices "esotericism" and subtelty to blunt statement of principles and rules.

It may be impossible to begin with a clean slate (as Rex attempted in the allegory earlier cited and as indicated in Voltaire's assertion cited above) in formulating a new law for Nigeria. But the findings of this study suggest a yearning for a new body of laws that emanates not from the technical (and essentially foreign) learning of the lawyers but from a substantially sociological understanding of, and sympathy with, the habits, feelings, values and social relations of the ordinary man in Nigeria in recognition of the thesis that "each distinct culture [generates] a legal system in its image, one that suits its own style and own needs like a costume cut to specifications" (Friedman, 1975).

The above presupposes a long-term fundamental planning and research, involving the active participation of the "layman" to develop a new criminal law that would be in line with the ethos of the Nigerian society. In doing this, there is the need to note some issues of primary importance, two of which are stated as follows.

One, the existing law should be "restated" to bring together, clarify, connect and re-arrange in a more logical and comprehensible way all the provisions "under the aegis of a **regime of Plain** Words". Further, the law should be "consolidated" to eliminate anomalies and reduce the number of separate provisions on a subject. In this regard, a simple tripartite division of the provisions of the criminal law may be proposed as shown in Appendix A (attached).

And two, the government should embark on massive educational measures to bring the existing law to, at least, the minimum knowledge/awareness of the citizens in Nigeria. For one thing, the age when the list of crimes, broadly speaking, represented current morality (mala in se) is gone, and now there are many other crimes that are the result of administrative or social regulations (mala prohibita). Yet, in the Nigeria criminal law, ignorance of the law is not a defence (SS 22 of the Criminal Code and 45 of the Penal Code. And, on a broader note, the conditions of modern living render it imperative for the citizen to have some basic familiarity with his rights and duties given that ignorance is more expensive than ever before.

Therefore, it is recommended that the Nigerian government design, as a matter of concern, an effective legal educational campaign, moving on a two-wheel programme: exemplary conduct by government officials and dissemination of information.

On good examples by officials, knowledge of what the law says should not be enough; the commands of the law must be seen to take deep root in the conscience, behaviour, and habits of those who occupy positions of leadership (legal, economic political or social) and are generally regarded as the custodians of the law. This is based on the thesis that where bribery, corruption, fraud, "paid-murder", arson etc., are rampantly perpetuated by "officials" like it happened in the last civilian administration in Nigeria, the generality of the masses will be striving in vain to grasp the legal morality of the day. And, if protracted anomie may result. The need, therefore, for the officials to live up to the law as a way of functionally fostering legal knowledge, cannot be over-emphasised.

And with regard to the dissemination of information for legal education, the government may use any available means to reach the generality of the populace, especially people at the grassroot level. In ancient

Rome, the Twelve Tables were posted up in public meeting places on tablets of bronze; the Swedish Ting (the governing assembly) commenced each meeting with a reading of the law by the "lagman" (i.e. the law man); and in Japan, the code of rules of each village was read aloud by the district magistrate on the first day of each year and signed by every house-holder (Weeramantry, 1975, op.cit.). All this was done when life was simple and law more immediate; and the authorities of the time did what they could to make these laws known.

In more recent times, Russia's legal education programme is an outstanding illustration. Polyanskii, a member of the ruling Presidium (renamed Politburo) presented the criminal reforms of 1958 to the U.S.S.R. Supreme Soviet with this comment: "criminal repression is not the only or chief way to fight crime in the socialist state. More important are preventive and educational measures....." (Juviler, 1976). The government of that time called on the Znanie society (for adult mass education), jurists, Ministry of Internal Affairs, Schools, Radio, Television, and the Press to promote legal education. Jurists helped to give over one million public lectures on law a year and taught about two hundred and fifty thousand part-time students at 1,586 evening People's Universities

of Legal Knowledge. In 1972, the Moscow press published over 1,200 articles on legal themes and a pocket-sized tabloid titled "People and the Law" (Juviler, 1976, op.cit.). The Nigerian government could use government printers, the Press, Schools, University, Bar and Bench, to run an effective legal education programme with a view to bringing the criminal law to the people in a simplified version.

These "sub-recommendations" have two related implications. One, they will dymystify the existing law (particularly its form), expose the citizens to the nature (i.e. the substance) of the law with which their lives are guided and thereby enable them to appreciate better the way this law is operated. And two, armed with the knowledge accruing from these recommendations, the masses might be better informed to demand, not only "that the tables be brought down from the mountain and their meaning made clear, but also to smash and replace them" (Scarman, 1968) with the laws that are "in consonance with their norms, aspirations and personality characteristics" (Commission, 1980); and if this happens, the broad recommendation emanating from this study as stated earlier would have materialised.

In conclusion, one argues that this expectation will be hard to comeby given the present type of

orientation of the legal scholarship in Nigeria which is predominantly positivistic and/or structural-functionalist. Its main task largely consists in elucidating or explaining the meaning of the precepts which are valid in the given field of law, in ineffectively trying to make them consistent and arranged in orderly patterns; and in suggesting new solutions concerning matters on which the law is ambiguous, etc, etc. It generally lacks or overlooks an awareness of "socio-historical concreteness" and the "humanness" of laws and legal activity.

Therefore, lawyers can hardly provide a critical understanding of the close relationship between law and society in general and the implication of the colonial tradition of the Nigerian laws in particular as examined in this study - an understanding necessary not only in assessing the existing laws but also in exposing their direction and/or working towards new laws. What is crucial for an effective understanding of the Nigerian legal situation, then, is an orientation that is critical, "developmental" and demystifying, one that has a set of consistent principles linking law with other concrete socio-historical, economic, and political variables (Quinney, 1974; Greenberg, 1983).

For this, any critical model which applies scientific principles to the study of human institutions recommends itself. Such a model sees law as "distilled out of socio-economic order which gave rise to it, and [as] an institutionalised form of the prevailing ideology....." (Lloyd, 1964), and thereby sheds a new light on the nature of law, its deep roots in the kind of society within which it evolves, and the direction the law takes. A Sociology of Law carefully designed and operationalised within this theoretical frame will be more valuable for proper understanding of the Nigerian legal system than that conceptualised by Jhering (1924), Pound (1942), Black and Mileski (1973), Podgorecki (1974), Black (1976), etc., etc; for charting the emergence of the suggested re-structured body of laws; and for monitoring it for continuous improvement as society develops or changes.

NOTES

1. This was an unreported case, decided by the High Court, Onitsha. The accused was married to "A" under customary law when she was a young girl. She later married "B" under customary law without the first marriage being dissolved. While the two marriages were subsisting, she married "C" under Marriage Act in 1950, and had lived with him for 20 years when the charge of bigamy was brough against her. Further details are in Okonkwo, C.O. "Bigamy in a Polygamous Society" in The Nigerian Juridical Review. Vol.I 1976. UNN Press, Nsukka. pp 76 - 87.

2. The investigator adopts the conceptual distinction made between social and societal structures, by Pospisil (1979). He views "social structure as the structure of ego's social relations with the matrix of the society; and "societal structure" as the structure of segment (subgroup) relations within the society.

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APPENDIX A*

PROPOSED STRUCTURAL RE-ORGANISATION FOR THE EXISTING NIGERIA CRIMINAL LAW

PART I

CRIMES AGAINST THE STATE AND COMMUNITY

Section A: General

1. High Treason
2. Sedition
3. Public Violence
4. Bribery and Corruption

Section B: Crimes Against the Administration of Justice

1. Perjury
2. Defeating or Obstructing the Course of Justice
3. Contempt of Court.

Section C: Crimes Against the Morality of the Community

1. Incest
2. Unnatural sexual intercourse
3. Public Indecency
4. Blasphemy

PART II

CRIMES AGAINST PERSON

Section A: Crimes Against Human Life

1. Murder

2. Culpable Homicide

3. Abortion

Section B: Crimes Against Bodily - Security and Reputation

1. Rape

2. Assault

3. Trial by ordeal

4. Kidnapping

5. Defamation

PART III

CRIMES AGAINST PROPERTY

Section A: Theft and Kindred Crimes

1. Theft

2. Robbery

3. Extortion

4. House-breaking

5. Receiving stolen property

Section B: Fraud and Kindred Crimes

1. Fraud

2. Forgery and Altering

3. Personation

4. Arson/Malicious Damage to Property

*(Adapted from Burchell et. al., 1970).

APPENDIX B

STRUCTURED-INTERVIEW SCHEDULE FOR THE PUBLIC

1. From your observation, what type of offences would you say is mostly committed in Nigeria (since 1970 for instance)?

   1. Property offences (theft, robbery, arson etc.)
   2. Offences against the person (murder, assault, forced labour, rape etc)
   3. Offences against Public Order (Vagrancy riots, demonstrations etc).
   4. Corruption (stealing/embezzlement/fraud/ smuggling etc).
   5. Moral offences (adultery, prostitution, drugs etc).
   6. Others

(Give reasons)_____

_____

2. In your own opinion, what act/behaviour in Nigeria do you consider most harmful to Nigeria as a country?

   1. Bribery and/or corruption
   2. Tribalism (ethnicity)
   3. Religious discrimination
   4. Political victimization
   5. Armed - robbery
   8. Others (specify) _____

9. Don't know

(Give Reasons) _____

_____

3. Do you know if there is a law in Nigeria against the act/behaviour you have mentioned above (in question 2)?

1. Yes
2. No

4. In your own opinion, do acts like murder and Bigamy belong to one class of offences in terms of the degree of social danger in Nigerian society?

1. Yes
2. No
9. Don't know

(Give Reasons _____

_____

5. In your own personal opinion, what punishment would you consider adequate or socially necessary for the person who commits adultery in Nigeria?

1. Imprisonment (specify length)
2. Fine (specify amount)
3. Canning
4. Warning
8. Others (specify)
9. Don't know

(Give Reasons _____

6. What punishment would you consider adequate for the person "wearing dress or carrying token used by public servant with the intention to impersonate" (S.133 P.C) in Nigeria?

1. Imprisonment (specify length) _____
2. Fine (specify amount) _____
3. Forfeiture of the dress or token
4. Canning
5. Both 1, 2, 3 & 4 above
6. Warning
8. Other (specify)
9. Don't know.

Give reasons _____

_____

7. What punishment would you consider adequate for a servant or clerk who steals any property of his master or employer in Nigeria?

1. Imprisonment (length) _____
2. Fine (amount) _____
3. Canning
4. Both 1, 2, & 3 above
5. Dismissal
6. Warning
8. Others
9. Don't know

Give Reasons _____

8. How would you, personally, rate the level of your confidence in the law enforcement practices/performance of the Nigeria Police Force?

1. High 2) Medium 3) Low 4) No confidence at all.

9. (If "low" or "none" to question 8) What reason would you give for the lack of effective performance of the Nigeria Police force?: _____

_____

_____

10a. In the light of the law enforcement performance by the police, do you feel secure with your property?

1. Yes
2. No
8. Others (e.g. "it depends") specify _____
9. Can't say

(Give Reasons _____

_____

10b. Do you feel free from the threat of harm to your person or life from other people?

1. Yes
2. No
3. Can't say

(Give Reasons _____

_____

11. How much respect do you have for the Nigeria Police in your area, as a law enforcement agent?

1. A great deal of respect
2. Some respect
3. Little amount of respect
4. Hardly any respect
5. None at all
8. Others
9. Don't know

(Give reasons: _____

_____

12. How much respect do you have for the Judges/ Magistrates in your area?

1. A great deal of respect
2. Some respect
3. Little amount of respect
4. Hardly any respect
5. None at all
8. Others
9. Don't Know

(Give reasons for your choice _____

_____

13. Have you ever seen the Nigerian Criminal Code Book or Penal Code Book before?

1. Yes
2. No

14. (If yes to Question 13) Have you ever read the Codes before?

1. Yes
2. No

15. (If yes to 14) How well could you understand the language of the law?

1. Very well
2. Fairly well
3. Not at all
8. Others
9. Don't say

16a. It is said that the Nigeria Criminal law applies to all citizens of Nigeria.

From your own experience or observation of the official practices of the police and the courts in Nigeria, do you think any person or a group of persons, is above the law in Nigeria?

1. Yes
2. No.
9. N.A.

16b. If Yes: Which person or group of persons?

17. How would you want to settle a case with somebody who, you know, has stolen your most valuable property?

1. Dialogue with the family of the offender

2. Report to community Head.
3. Legal action (i.e. report to police)
8 Others
9. Can't say.

(Give Reasons) _____

_____

18a. Have you ever had contact (official dealings) with the Nigeria Police before?

1. Yes (number of times _____)
2. No

18b. (If yes) For what reasons?

1. To complain/report
2. To defend/arrested
3. To witness
4. To answer questions on being suspected.
9. Others
9. N.A.

19a. Have you ever had contact with the Nigerian Courts (i.e. Area or Magistrate) before?

1. Yes (Magistrate) - (Number of times _____)
2. Yes (Area - (Number of times _____)
3. No (Magistrate)
4. No (Area)

19b. (If yes) For what reasons?

1. As complainant/Plaintiff

2. As defendant/Arrested

3. As witness

8. Others

20. Were you satisfied with the way your case(s) was (were) handled by the police?

1. Yes

2. No

8. Other (specify) _____

Give reasons for your answer: _____

_____

21. Were you satisfied with the way your case(s) was (were) handled by the court?

1. Yes

2. No

8. Other (specify) _____

22. Give any general comments about the Criminal law in Nigeria: _____

_____

_____

_____

_____

PERSONAL DETAILS

1) Age _____ 2) Religion _____ 3) Sex _____

4) Marital Status: _____ 5) Ethnicity _____

6) State of Origin _____

7) Highest Level of Education: _____

_____

8) Main Occupation: _____

9) Father's Highest Level of Education: _____

_____

10) Father's Main Occupation: _____

_____

APPENDIX C

INTERVIEW SCHEDULE FOR PRISON INMATES AND THOSE REMANDED AWAITING TRIAL

SECTION A: Personal Details (From Records, and Supplemented by Interview)

(1) Case No _____ (2) Offence Committed:

_____

(3) Place of offence committed _____

(4) Place and Date of Apprehension _____

(5) Court of Conviction _____

(6) Date of Admission to prison _____

(7) Length of Imprisonment _____

(8) No of previous imprisonments (if any) and Length

_____

(9) Age _____ (10) Sex _____ (11) Marital Status. _____

(12) No of Children Alive (if married) _____

(13) Ethnicity _____ State of Origin: _____

(15) Highest Level of Education _____

(16) Occupation at arrest _____

(17) Income per month before conviction _____

(18) Father's highest level of education _____

_____

(19) Father's main occupation _____

SECTION B: Administration of the Nigeria Criminal Law

1. When you were arrested by the police, were you told of your offence in the language you understood?

1.. Yes

2. No

APPENDIX C

INTERVIEW SCHEDULE FOR PRISON INMATES AND THOSE REMANDED AWAITING TRIAL

SECTION A: Personal Details (From Records, and Supplemented by Interview)

(1) Case No _____ (2) Offence Committed:

_____

(3) Place of offence committed _____

(4) Place and Date of Apprehension _____

(5) Court of Conviction _____

(6) Date of Admission to prison _____

(7) Length of Imprisonment _____

(8) No of previous imprisonments (if any) and Length

_____

(9) Age _____ (10) Sex _____ (11) Marital Status. _____

(12) No of Children Alive (if married) _____

(13) Ethnicity _____ State of Origin: _____

(15) Highest Level of Education _____

(16) Occupation at arrest _____

(17) Income per month before conviction _____

(18) Father's highest level of education _____

_____

(19) Father's main occupation _____

SECTION B: Administration of the Nigeria Criminal Law

1. When you were arrested by the police, were you told of your offence in the language you understood?

1.. Yes

2. No

2a. Did you desire that your case was not taken to court?

1. Yes
2. No

(Give Reason _____

_____

2b. (If yes) What did you do to stop the case being taken to court?: _____

_____

3a. In the Court, did the police present your case as in the statement you made in their station?

1. Yes
2. No
9. Can't Say

3b. (If no) What did you do?: _____

_____

4a. While in court, did you understand what was going on there?

1. Yes
2. No.
9. Can't say

4b. (If no) Why? _____

_____

5a. When the court told you your offence(s), did you plead guilty or not guilty?

1. Yes
2. No

Give Reason _____

5b. If not guilty, what was your defence? _____

_____

6. Did the Judge/Magistrate tell you the grounds of his judgement over your case?

1. Yes
2. No
3. Can't say

7. Did you expect a different penalty other than the one given to you?

1. Yes
2. No
3. Can't say

(Give Reasons _____

_____

8. Generally, how satisfied were you with the way the police handled your case?

1. Very satisfied
2. Fairly satisfied
3. Not satisfied at all
4. Others
9. Can't say

(Give Reasons _____

_____

9. Were you satisfied with the way the court treated your case?

1. Yes
2. No
9. Can't say

(Give Reason _____

_____

SECTION C. BACKGROUND INFORMATION

10. Did you ever hear or know of the criminal law either as recorded in the codes or as expressed in the actual working of the police and court, before your contact with them?

1. Yes
2. No

11. Did you know that what you did was an offence in the Nigeria Criminal law before you were told by the police or the court?

1. Yes
2. No
3. Can't say

12. Why did you commit the offence(s) with which you were charged?

1. _____
2. _____

3. _____

8. _____

9. _____

13a. Have you learnt any lesson since you came to this prison?

1. Yes
2. No
9. Can't say

13b. (If yes) what lesson(s)? _____

_____

14. With your experience in the prison, what do prison inmates think about the society outside the prison?

_____

_____

15. From your experience or interaction with other prison inmates, what do you think is the major cause(s) of crime in Nigeria? _____

(Give Reasons): _____

_____

16. From your experience or observation since you came to the prison, what can you say is the central goal or aim of prison system in Nigeria?: _____

_____

17. From your experience or observation of the prison life, to what extent do you think the aim of prison is being achieved?

1. To a very great extent
2. Fairly
3. Very little
4. No achievement at all
8. Others
9. Can't say

(Give Reasons _____

_____

_____

18. Briefly describe the prison life generally: _____

_____

_____

APPENDIX D

STRUCTURED - INTERVIEW SCHEDULE FOR THE POLICE

1. In your personal opinion, do you consider most of the definitions of offences in the Nigeria Criminal Code/Penal Code, clear enough for every police man in Nigeria to understand?

   1. Yes
   2. No
   8. Others
   9. No Answer

2. From your experience or observation, do you consider the language of the Nigeria Criminal Code/ Penal Code clear enough for lay/ordinary Nigeria people (i.e. those not trained in law) to understand?

   1. Yes
   2. No.
   8. Others
   9. No Answer

3. From your experience or observation, which type of offence, more than other types, would you say is mostly reported to the Police in Nigeria?

   1. Offences against Public peace/order.
   2. Offences against person (e.g. assault)
   3. Offences against property, (e.g. theft)
   4. Offences against morality (e.g. adultery)

8. Other

9. Don't know.

4. From your experience or observation, for what type of offences, more than other types is the Police most earger/likely to make arrests) in Nigeria?

1. Offences against public peace/order.

2. Offences against person (e.g. assault)

3. Offences against property (e.g. theft)

4. Offences against morality (e.g. adultery)

8. Other

9. Can't say.

5. From your experience or observation what type of offence more than other types would you say the Police takes to court for prosecution in Nigeria?

1. Offences against public peace.

2. Offences against person (e.g. assault)

3. Offences against property (e.g. theft)

4. Offences against morality (e.g. adultery)

8. Other

9. Don't know.

6. (If 1 or 2 or 3 or 4 to question 5) Is this type of offence matched with appropriate penalty in the criminal law?

1. Yes; 2. No; 9. Don't know.

7a. From your observation, what type of offence do you think is committed mostly in Nigeria?

1. Offences against public peace.
2. Offences against person.
3. Offences against property
4. Offences against morality
8. Other
9. Can't say

7b. What do you think is the major cause of this crime? _____

_____

8. What offence do you consider most serious in terms of harm to the Nigerian society?

1. Assault
2. Official Corruption
3. Theft
4. Culpable homicide
5. Arson
6. Robbery
8. Other, (Specify: _____
9. Don't know.

9. From your experience or observation, what is the major reason you would give to explain why people, in most cases, break the Criminal law in Nigeria? _____

_____

10. What, in your personal opinion, is the single most important official function (duty) of the Police in Nigeria? _____

_____

11. When an offender is arrested and brought to the Police Station, what happens at the Police Station?

_____

_____

12. A part from arrest and prosecution, are there other ways the Police deal with offenders in Nigeria?

1. Yes (specify): i _____

ii _____

2. No
3. Don't know

13. At the level of prosecuting cases in the Nigerian court by the Police, how cordial, from your personal observation, would you describe the relationship between the police and the courts in Nigeria?

1. Very cordial
2. Somewhat cordial
3. Not cordial at all
8. Others
9. Don't know.

14a. From your own observation, how well, in terms of quickness, would you say the Nigeria Judges/

Magistrates, perform their official duty(ies)?

1. Very well
2. Fairly well
3. Not well at all
8. Other
9. Don't know.

4b. Ask also in terms of "fairness".

1. Very fair
2. Fair
3. Not fair at all
9. Don't know.

15. From your observation of the way the Nigeria Criminal law is operated in the courts, would you agree or disagree with the rule that "Nobody is above the law"?

1. Agree
2. Disagree
9. No opinion

Give Reasons: _____

_____

16. From your experience or observation, how much confidence and co-operation of the Nigerian citizens, does the Nigeria Police force enjoy?

1. Very great deal
2. Quite great

3. None at all
8. Others
9. Don't know.

17. Briefly describe the role of the Police in operating the criminal law in Nigeria _____

_____

_____

_____

18. What would you say is the most important objective that guides the police performance of this role? _____

_____

PERSONAL DETAILS

1) Age _____ (2) Religion: _____ (3) Sex _____

4) Ethnicity _____ (5) State of Origin _____

6) Highest Qualification _____

7) Place of Primary/Initial Training as a Police: _____

_____

8) Place of Subsequent Training (if any) _____

_____

9) No of years in Police Service _____

10) Area of Specialization if any _____

_____

11) Father's highest level of education _____

_____

12) Father's main occupation _____

APPENDIX E

STURCTURED - INTERVIEW SCHEDULE FOR:

(a) Lecturers in Law

(b) Magistrates and Judges

(c) Private Legal Practioners

SECTION A: The Form of the Nigeria Criminal Law

1. By a Provision in the Nigeria criminal law (S.289 P.C., & S.390 C.C), theft of any kind is a felony.

In your own personal opinion, is the classification of "stealing a goat" as a felony appropriate in Nigeria?

1. Yes
2. No
3. Depends
9. Don't know

(Explain your answer) _____

_____

2. (If not appropriate to Question 1) In what category of offence would you personally classify the offence of "goat stealing"?

1. Misdemeanour
2. Simple Offences
3. Don't know

(Give reasons _____

_____

3. In your personal opinion, is the grouping of "adultery" (SS 387 & 388 P.C.) as misdemeanour in the Nigeria criminal law, consistent with Nigerian cultural/moral values?

1. Yes
8. No
9. Don't know

(Explain your answer) _____

_____

4. In what category would you personally classify "wearing dress or carrying token used by public servant with the intention to impersonate" (S.133 P.C.) in the Nigerian context?

1. Felony
2. Misdemeanour
3. Simple offence
8. Others (specify) _____
9. Don't know

(Explain): _____

_____

5. How would you personally describe the classification of offences in the Nigeria criminal law, - in terms of unity or coherence of legal norms within each of the classes (felony, misdemeanour, simple) of offences?

_____

_____

6. In your personal opinion, do you think it would be desirable if the offences in the Nigeria criminal law are arranged on a scale of social danger?

1. Yes
2. No
3. Don't know/can't say.

(Give reasons: _____

_____)

7. Do you think it is feasible to **arrange** the offences in the existing Nigeria criminal law on a scale of social danger?

1. Yes
2. No
9. Don't know/can't say.

(Give reasons: _____

_____)

8. With reference to the definitions of offences like "assault" (S.252 of C.C), "official corruptions" (S.115 of P.C) etc, how would you personally describe the language style of the Nigeria criminal law?

1. plain and direct
2. ritualistic/technical
3. vague/verbose
4. incomprehensible/tricky
8. Others (specify)
9. Can't say

9a. In dealing with "fraudulent false accounting", Section 438 of the Criminal Code provides that "any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant does any of the following acts with intent to defraud,..... is guilty of a felony".

From your experience or observation, has the phrase "clerk or servant" usually been interpreted, in the Nigerian Courts, broadly (i.e. to include all cadres of high and low employed workers) or narrowly (i.e. restricted to only the lower cadres of employed workers)?

1. broadly
2. narrowly
8. others
9. Can't say

9b. In your own personal opinion should the phrase be interpreted broadly or narrowly

1. Broadly
2. Narrowly
9. Can't say

(Give reasons: _____

_____

10. Would you personally agree or disagree with the assertion that "only lawyers and judges or Magistrates, and the police are supposed to understand the Nigeria

criminal law"?

1. Agree
2. Disagree
8. Others (specify)
9. No opinion

(Give reasons: _____

_____

_____

SECTION B: The Content of the Nigeria Criminal Law

11. In your own personal opinion, what constitute the main instrument of social control in present day Nigeria?

1. the formal, written coded laws
2. a body of social (conduct) norms and values
3. Religious precepts and injunctions
8. Others (specify) _____
9. Can't say

(Give reasons: _____

_____

12. Often times, it is said that law emanates from the culture of the society in which it exists. What is your opinion on this saying with regard to the content of the Nigeria criminal law?

1. Agree
2. Disagree
8. Other

9. Can't say

(Give reason: _____

_____

13. What is your personal opinion of the provision that "ignorance is not an excuse before the law" (S.22 of CC & 45 of P.C.) in the Nigerian context? _____

_____

14. Do you agree or disagree with the assertion that our criminal codes, taken together as a whole, gives "more legal protection to property than to human life"?

1. Agree
2. Disagree
3. Other
9. No opinion

15. In your personal opinion, what is the single major cause of crime in Nigeria? _____

_____

SECTION C: The Operation of the Nigeria Criminal Law

16. In your own personal opinion, what mode of punishment do you consider most effective for property offences like "theft" vis-a-vis the most fundamental objective of the Nigeria Criminal law?

(Give reasons: _____

_____

17. From experience or observation, what would you say on the assertion that "the Nigeria criminal law is, as it stands, capable of realising its fundamental objectives"?

1. Agree
2. Disagree
8. Others
9. No opinion

(Give reasons: _____

_____

18. (IF 2 to question 17) What alternative instruments, in your own opinion, are there for achieving the fundamental objective of the law? _____

_____

19. From your experience or observation, what major factors, beside provisions of substantive and procedural laws, do you think influence the law enforcement practices of the police in Nigeria? _____

_____

20. How well do the Nigeria Police Force perform their function of "enforcing laws" in Nigeria?

1. Very well
2. Fairly well
3. Ineffectively
8. Others
9. Can't say.

21. From your experience or observation, how well do the Nigerian Police Force perform their function of prosecuting cases in the law courts in Nigeria?

1. Very well
2. Fairly well
3. Ineffectively
8. Others
9. Can't say.

(Reasons: _____

_____

22. From your experience or observation of the official performance of the police in Nigeria, what would you say is their dominant guiding principle? _____

_____

23. What would you say is the dominant guiding principle in the official performance of the Magistrates?

_____

_____

24. In your personal opinion, how best can Nigeria crime-problem be handled? _____

_____

25. Please identify any three major problems with the Nigeria criminal law as it now stands:

1. _____
2. _____
3. _____
9. Can't say.

SECTION D: Personal Details

1. Age _____ 2) Religion _____ 3) Sex _____

4. Ethnicity _____ 5) State of Origin _____

6. Highest Qualification in Law: _____

7. Place of Primary Legal Training _____

_____

8. Place of Subsequent Legal Training _____

_____

9. No of years of Law Teaching _____

10. No of years of Private Legal Practice (bar) _____

11. No of years of Public practice (bench) _____

12. Area of Specialization (if any) e.g. Criminal, Constitutional, Land, Commercial, Civil etc) _____

_____

13. Father's highest level of education _____

14. Father's main occupation _____