

LEGAL PRACTICE IN IBADAN, 1904-1960

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The city, wrote the eminent urban historian Lewis Mumford, is at once "a container and transmitter of culture." [1] In the context of Africa, Thomas Hodgkin has invoked the same theme to depict the dual role of the African city in modern times; as a solvent, 'weakening traditional social ties and loosening the hold of traditional beliefs and values," and as promoter of new associations, new ideas and a new social ethos. [2] Concerned with the growth of African nationalism, Hodgkin understandably has put the accent on the political, without paying close attention to those more subtle influences which have underpinned the phenomenon of national consciousness with which he is concerned. I have in mind, in particular, the development of a new legal culture, which like so much in modern Africa, resulted from contact with Europeans in a colonial setting.

The primary agencies of the new legal culture were the European-type courts, including the so-called "Native" courts. A number of writers have described how they were introduced into Africa. [3] There is now very little debate about what motivated their introduction: they were basically part of the instruments of "pacification" and colonial administration.

In sharp contrast to the traditional African legal philosophy which puts such a premium on the maintenance of social equilibrium the European system of law and justice extols the rights of the individual. [4] In traditional Africa, "a litigant comes before the judges not only as a right-and-duty-bearing persona, but also as an individual involved in a complex of relations with many other persons." [5] In contrast, in European legal theory, legal relationships exist only between "persons" (natural or juristic); their social status, or, in Radcliffe-Brown's expression, their total social personality, is entirely irrelevant.

A concept of justice based on technical rules of law was incompatible with the traditional notion of justice, which heavily depended on moral considerations. In spite of the influence of equity, English, indeed European, justice still is legal justice, imbued with elements of morality but not necessarily coterminous with moral justice. A notion of justice that may be devoid of

LEGAL PRACTICE IN IBADAN, 1904-1960
O. Adewoye

moral considerations is part of the new legal culture, inevitably introducing a new factor into inter-personal relations. The outcome of litigation may depend not on the moral rectitude of the parties, but on the logic of technical rules of law.

The technical rules of European law, both civil and criminal, and the need to interpret them in the light of the changing circumstances of the society, gave rise to the emergence of "practitioners" of the law. The legal profession was not specifically imposed by the colonial administration, as has been suggested; [6] it was the natural concomitant of the European law and law-courts that came with colonialism. The profession, in turn, reinforced the emerging climate of legality.

The thesis of this paper is that the African city has been a factor in the development and spread of a new legal culture on the continent. If the unique role of the city has been "to increase the variety, the velocity, the extent, and the continuity of human intercourse", then, ipso facto, it can, and it does, facilitate the spread of new ideas, including European legal ideas and processes. A case in point is Ibadan, the largest black metropolis in sub-Saharan Africa.

English-type courts preceded English law in Ibadan. A prototype of a court, a Council of Chiefs, was set up in 1897 by the first colonial Resident, F.C. Fuller. The Council made rules for keeping the city clean and provided for jail and for "holding open courts and generally putting the administration of justice on a better footing than before." [7] Four years later, in 1901, the "Advisory Court" was built outside the town and near the Residency. It was designed "to meet a long-felt want for a place in which to hold meetings and investigate the various charges brought from time to time by chiefs and people who had anything to complain of." [8] This court exercised limited jurisdiction. When, in July 1901, the Resident tried a murder case without consulting the traditional court of the Baale (paramount ruler) and his chiefs, he was rebuked by the colonial administration in Lagos. His position, he was told, was that of Adviser, and not of judge. [9]

But the expansion of British jurisdiction in Ibadan - and with it, the spread of the English legal system - was inevitable for reasons that are both economic and social. From the moment Lagos became a British colony in 1861, the opening up of the Yoruba hinterland to foreign trade and economic exploitation seemed to be only a question of time. Between 1886 and 1893, the colonial administration in Lagos signed treaties of commerce and friendship with various Yoruba authorities, including the Baale and

chiefs of Ibadan,[10] which guaranteed British subjects freedom of trade in the hinterland.

In March 1896 a railway line was begun to link Yorubaland and beyond to the port of Lagos - a major step in the economic exploitation of Nigeria as a colonial estate. The line reached Ibadan from Lagos in 1900, and by the end of 1909 it had extended as far as Jebba.[11]

Following the construction of the railway, Ibadan witnessed an unprecedented growth in the modern sector of the economy. In 1903 Captain C.H. Elgee, the British Resident in the city, wrote of "the rapid strides of late made by the people in economical and political progress".[12] He noted that the work of the Post Office "has increased and is day by day so doing," with money orders and parcel post forms - veritable vehicles of commerce - being "in frequent demand." Since 1901 there had been "increasing demand for plots of land either for trading or for other purposes." [13] By 1903 land leases for fifty years had been granted to six European firms "at the small rental of from £4 to £8 per acre according to the situation".[14] By 1906 there were some twenty-five German, English, French, and Brazilian firms in Ibadan including Messrs. Paterson, Zochonis & Co. (the oldest), G.L. Gaiser, Witt & Busch, John Holt, J. Walkden & Co., G. Gottschalk, Ashton Kinder & Co., Lagos Stores Limited, and Alex Miller Brothers.[15] Indigenous merchants were not left out: there were four "native" mercantile establishments in the first decade of this century at Ibadan, holding their own in competition with others.

Official reports between 1901 and 1906 indicated visits to Ibadan province by "numerous merchants." A measure of the growing economic importance of the city was the fact that, as early as 1901, it had within its walls "some 400 strangers" - Europeans, Brazilians, Lagosians, Egba, Ijebu and others - who had "settled here for trading purposes." [16]

The increasing tempo of economic activities in Ibadan, as well as the migration of European and African traders into the city, accentuated the problem of law and order within the fragile administrative and judicial framework existing at the beginning of this century. Captain Elgee summed it up:

By this time [1904], court cases were getting so numerous and so involved that it was felt necessary, if the chiefs were still to rule it with dignity to themselves and satisfaction to the Europeans and other aliens in their midst, that some alteration in judicial procedure

LEGAL PRACTICE IN IBADAN, 1904-1960

O. Adewoye

must be made ... It was clear that an illiterate court of native chiefs was incompetent to deal with the technicalities incidental to cases of fraudulent book-keeping and the like, and it was also clear that it was neither possible nor advisable for a native court to sit in judgement over such cases where one of the parties was an alien, nor could they be held to be competent judges in such possible cases of the murder of a native by a European or vice versa.[17]

It was this obvious inadequacy of the indigenous legal system and of the "Advisory Court" to cope with the problems connected with the economic and social development of Yorubaland (as exemplified by developments in the city of Ibadan) that necessitated the introduction of English law and judicial processes into this part of the country.

Steps were taken to build a more effective legal and judicial machinery. Pursuant to agreements signed between the colonial administration and a number of Yoruba authorities, including those of Ibadan, between January and September 1904, Britain formally acquired jurisdiction in Yorubaland to try various categories of civil offences involving non-natives and certain categories of criminal offences committed by any persons, indigenes and foreigners alike.[18] The full implications of these agreements for the independence of the Yoruba ruling authorities have been spelt out elsewhere;[19] it is sufficient here to note that they made a major inroad into the traditional judicial system, and, to this extent, undermined the virility and independence of the traditional ruling authorities.

To undergird the effectiveness of the newly acquired jurisdiction, English law and the English judicial processes, in a modified form, were introduced into Ibadan as well as to other parts of Yorubaland. The Yoruba Jurisdiction Ordinance (No.17, of 1904) specifically applied to Ibadan and Oyo and their satellite towns. Section 5 extended to these areas the laws relating to criminal offences "for the time being in force in the [Lagos] Colony." Similarly the laws relating to civil matters "for the time being in force in the Colony" were deemed to have been extended to Ibadan and Oyo, "but ... so far only as the jurisdiction of the court and local circumstances reasonably permit and render such extension and enforcement suitable and appropriate." Section 6 provided for the observance of "the laws and customs existing in Yorubaland" only in so far as they were not "repugnant to natural justice, equity and good conscience." That the traditional laws and customs were being subordinated to English law in the new scheme of things also can be inferred from the same section 6. In

causes and matters between indigenes and non-indigenes of Yorubaland traditional laws and customs would be applicable "only when it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law."

As for a judicial machinery appropriate to the changing circumstances of the Yoruba hinterland, the Supreme Court of the Lagos Colony was vested with the new jurisdiction, acquired by the colonial administration.[20] The Court was to try indictable offences with the aid of assessors "not being ordinarily less than four." The Chief Justice was empowered to make any rules that might facilitate the work of the court.[21] After 1904 District Commissioners (as the colonial field officers were called even when they had no formal legal training, began to exercise the powers of the Supreme Court in civil and criminal matters.[22] In Ibadan the Resident continued to preside over sessions of the Advisory Court with at least two chiefs in attendance. The Supreme Court itself exercised original and appellate jurisdiction in the hinterland by holding assizes. By 1906 such assizes were held four times a year, necessitating the absence of the Chief Justice from Lagos for at least eight weeks.[23]

Modifications were made in the machinery of justice from time to time throughout the colonial period. There were country-wide judicial reforms in 1914, 1933, 1943, and 1954, creating new courts or modifying the powers and jurisdictions of others to cope with the exigencies of colonial administration or to meet the social needs of a growing, increasingly sophisticated population.[24] By the late 1930s, for instance, Ibadan had four grades of "native" courts, a "native" Land Court, a Police Magistrate Court, and a Protectorate Court (the last replaced by a High Court by the judicial reform of 1943). Until the regionalization of the judiciary in 1954, the Supreme Court (in Lagos) continued to exercise its appellate jurisdiction in Ibadan through assizes.

In spite of the introduction of English law into Yorubaland, and the establishment of English-type courts in Ibadan, the practice of law as a profession was rather slow to develop in the city. A possible explanation could be the unwillingness of the Ibadan and other Yoruba authorities to see a full flowering of the English legal system in their territories. In the agreements signed with Ibadan, Abeokuta and Ijebu-Ode, their respective authorities voiced "their strong desire that Barristers and Solicitors shall not be allowed to practise in the court exercising the civil jurisdiction" granted to the colonial administration.

As early as 1893 the rulers of Ibadan had expressed their fear that the establishment of an English judicial system within the city might "undermine the authority and respect of the Baale and chiefs." [25] The concern of the indigenous authorities in Yorubaland about the possible harmful effect of "a wholly European court with all its accessories of lawyers and technicalities and complexities of English law and practice" would seem to have been shared by the colonial administration. Anxious to build up the traditional authorities as pillars of "Indirect Rule" the colonial government of Nigeria, for reasons that have been fully discussed elsewhere, [26] strove valiantly almost throughout the colonial period to curtail the jurisdiction of English courts outside the colony of Lagos. This was the cardinal principle of the judicial reforms of 1914 and 1933, the primary objective of which was to minimize the "disruptive" influence of English law and judicial process. For instance, until after 1933, no legal practitioner could represent a party in any court in Ibadan except the Supreme Court holding its quarterly assizes. It required the judicial reform of 1943 to remove this constraint and, consequently, to give full rein to the practice of the legal profession throughout Nigeria. [27]

It is possible, then, that the slow development of legal practice in Ibadan was at least partly a result of official restrictions on the profession. In this connexion, it is perhaps no coincidence that the first resident legal practitioner, a Greek Cypriot named Efithios Hagge Lambrou, did not appear in the city until 1933, [28] the year that saw the abolition of the Provincial courts and the establishment of the Protectorate courts, which permitted legal practice.

But official restriction can only be a partial explanation for the slow development of legal practice in Ibadan. A more fundamental explanation is perhaps the relatively agrarian nature of the city's economy. After all, advocacy in court is only one aspect of legal practice and not always the most lucrative or important. In a developed economy there are numerous situations calling for the services of a lawyer. No modern business can be conducted on any reasonably large scale without such services. Not surprisingly, in a developed economy like the British, solicitors (whose practices are oriented towards the world of commerce and industry) overwhelmingly outnumber advocates who argue cases in the courts. [29] It is perhaps trite to observe that there is a direct correlation between the scope and variety of a country's legal practice and the level of its economic development. This would explain why, as late as 1937, 47 of the 69 lawyers practising in Nigeria were concentrated in Lagos. [30] The

picture has not changed much since then, for Lagos remains the nerve centre of the Nigerian economy.

Compared with Lagos, with its relatively large industrial and commercial establishments,[31] Ibadan, like most other Nigerian cities, had few opportunities to offer lawyers. The large majority of the population settled their disputes in the traditional way through the community's elders or at the so-called "Native" courts, where lawyers could not appear. Although the tempo of commercial activities increased over the years, offering some scope for legal practice, the city did not succeed in attracting many industries. As late as 1963, Ibadan had only 47 industrial enterprises employing more than ten persons.[32] The vast majority of industrial establishments - over 2,000 of them - were small-scale industries employing no more than five people: tailoring, baking, barbering, dry-cleaning, shoe-repairing, photography, petrol-selling, corn-milling, printing, etc.[33] Their requirements for legal service understandably were limited.

The impression should not be created that legal practice commenced in Ibadan only in 1933, when E.H. Lambrou moved into the city as the first resident legal practitioner. Mention was made earlier of the assizes of the Supreme Court. Since 1904 it was a common practice for lawyers to "go on circuit" to much provincial towns and cities as Ibadan and Abeokuta to handle specific cases at the assizes. In August 1912, for instance, Sapara Williams, J. Egerton Shyngle, Kitoyi Ajasa, Eric Moore, Charles Foresythe and R.F. Irving - all prominent names at the Bar in Lagos[34] - went to the hinterland "for a few days" together with the Chief Justice, A.W. Osborne. Shyngle, Ajasa, and Foresythe were in Ibadan "to defend cases at the Criminal Assize sitting there", while R.F. Irving, a European solicitor, prosecuted for the Crown.[35] At the assizes held at the Township Court, Ibadan, on 26 July 1926, Olayinka Alakija and some other lawyers were present "in the interest of their clients".[36] Similarly, Kitoyi Ajasa, E.M.E. Agbebi, R.F. Irving, A. Latunde Johnson, S.H. Baptist, Adegunle Soetan, W. Wells-Palmer and J.O. Coker were at the March 1929 assizes.[37] "Five criminal and several civil cases" were set for trial at the August 1929 assizes. Messrs. Johnson, Franklin, Coker, Soetan, Thomas and Soluade were the lawyers at the court presided over by W.C. Webber, Acting Chief Justice.[38]

By the end of 1936 there were four properly qualified legal practitioners resident in Ibadan: E.H. Lambrou, R.A. Wright, K.A. Soluade, and A.A. Majekodunmi.[39] In the 1930s (and, indeed, up to the 1960s) land claims were a major staple of practice, providing a basis for relatively lucrative "specialization" by such lawyers as Adegunle Soetan, A.M.A. Akinloye, and

LEGAL PRACTICE IN IBADAN, 1904-1960
O. Adewoye

S.B. Adewunmi.[40] Obafemi Awolowo, who came back to Ibadan in 1947 to set up his legal practice, considered land cases the most profitable aspect of legal practice in the city.[41]

Although the colonial administration did all it could to ensure that land matters were kept in the "native" courts and the "native" Land Court (created in 1936), before which lawyers could not appear, lawyers still were involved in land matters, thanks to the loopholes in the Native Courts Ordinances of 1914 and 1933. Applications were sometimes made to the District Officer for transfer of cases from the "native" Court or the Land Court to the Supreme Court.[42] At other times lawyers asked the latter court for interim injunctions to stay execution of a judgment by the Land Court, or to deal with irregularities in the proceedings in particular cases at a "native" court or the Land Court itself.[43]

It was almost inevitable that land matters should predominate in the practice of most lawyers in Ibadan. Since the introduction of cocoa into the city and its environs in about 1890,[44] land had gained considerably in value. By 1900 the cocoa industry was firmly established, supplanting rubber in the export trade.[45] In 1920 cocoa was fetching the producer £21 per ton, almost £30 ten years later.[46] By 1920 Ibadan and its environs had some 6,515 acres of cocoa plantation. By the late 1940s, observed Obafemi Awolowo, "about one-third of the total output of cocoa in Nigeria is produced in Ibadan district, while Ibadan town is the collecting centre for over 50 per cent." [47]

Cocoa accelerated the pace of economic development in the city. Not only did the earnings from cocoa bring about a change in the consumption patterns and life styles of the population,[48] but the industry also accentuated the tendency (visible since the turn of this century) towards sale of land and individual land ownership. Lawyers, however, had practically no influence in this development; at least in Yorubaland they could not be said to have encouraged "the commodification of individual land ownership" to provide a source of litigation and thus of legal business.[49] The commercial accent on the value of land was unmistakable. H.L. Ward Price, Resident for Ibadan Province, 1931-1934, noted:

In former days land was granted readily because a grateful adherent was thereby added to the family, and the family's prestige and power increased. Sites were granted in perpetuity so long as they were occupied, which really means, except in rare cases, an outright grant. In modern times the head of the family realises

that such a grant really amounts to an outright grant, and that under the new administrative and judicial system, there is not much advantage in possessing grateful adherents of the family. He therefore comes to the conclusion that it is wise to make the occasion an opportunity of adding to the family's resources as he stands to gain nothing by not doing so.[50]

Town sites and farm lands that were being pegged out for sale usually were not surveyed or properly demarcated. Nor was there a system of land registration. In the circumstances land disputes were inevitable. On account of the increasing value of land such disputes could be intractable, the outcome depending on the financial resources available to either party. Awolowo told of a land case which began in 1898, went through a gamut of "native" courts, including the Land Court, was adjudicated by H.L. Ward Price, District Officer in Ibadan in the 1920s, then brought up again before the "native" court in a new guise in 1944, and was among the first few briefs he handled as a lawyer in the city in 1947.[51] In general the new cash economy was the operative factor; in stimulating litigation in land matters, it redounded to the benefit of lawyers.

The cocoa industry also provided legal practitioners with materials for some "commercial" practice. By 1920 there were about seven European firms engaged in cocoa export trade in Ibadan.[52] They operated by advancing large sums of money to African middlemen (or dealers, as they were often called) at the beginning of each buying season. Various disagreements between the dealer and the firm could arise, which might lead to litigation or the intervention of a legal practitioner in a negotiated settlement. The dealer could renege on his commitment to deliver the requisite tonnage of cocoa; he could adulterate his cocoa; he could abscond with the capital outlay provided by the firm. Similarly a lawyer would be retained by a dealer to press a claim against the firm. In virtually every case, of course, an initial contract would have been drawn up to govern the whole transaction between the firm and the dealer.

Legal relations also could subsist between the dealer and the African producer, again requiring the professional intervention of a lawyer. The dealer often found it profitable to advance the farmer a sum in exchange for a security interest in his farm. It was up to the dealer to have a mortgage agreement prepared by a legal practitioner (or a public letter-writer) for the farmer to sign, or more usually, to mark with his thumbprint. John Olaoya, clerk to E.H. Lambrou for many years, has indicated that during

LEGAL PRACTICE IN IBADAN, 1904-1960

O. Adewoye

the cocoa season up to ten such agreements could be prepared by his boss on a working day.[53]

There was another side to commercial legal practice. Most of the European firms engaged in the cocoa export trade also imported consumer goods - motorcycles, bicycles, biscuits, flour, cigarettes, corrugated iron sheets, textiles, and the like.[54] The distribution of such goods through African agents also could occasion litigation: breach of contract by either party, recovery of debts for goods sold, and disagreements over the terms of sale.

In commercial legal practice in the 1930s and 1940s A.A. Majekodunmi was said to have enjoyed a good practice in Ibadan, while E.H. Lambrou had the retainer of each of the more important European firms in the city at an annual fee of £1,000.[55] Majekodunmi made news in December 1941 when he completed his two story building - one of the first in Ibadan - in the Oke Padre section of the city.[56] How much of the cost of the building he earned from purely commercial practice is difficult to say.

A semi-profession in Ibadan also was public letter-writing, involved in commercial practice, though at a somewhat rudimentary level. The origins and development of public letter-writing in Southern Nigeria in the colonial era have been examined elsewhere.[57] Here I will focus on its practice in Ibadan.

In the heyday of letter-writing in the 1940s, there were some thirty-five public letter-writers in the city, including Akinola Allen, S.B. Aribisala, P. James King, J. Kofo Adeyinka, Frank Adeyemi John, C.B. Thompson-John, S.M. Dosumu, J. Ade Oke-owo and A.A. Bablola - to mention only a few of the most celebrated.[58] Although not formally qualified in law, they generally had a good working knowledge of the basic principles of English law and legal processes, judging from the kinds of petitions they addressed to colonial administrative officers in their judicial capacities. The best of them - like P. James King, Frank Adeyemi John, S.B. Aribisala, Akinola Allen and J.A. Adeyinka - had been lawyers' clerks before they turned letter-writers. As "wigless lawyers" they played a notable role in facilitating the development of new economic relations in the city.

Such relations arose in the rapidly changing economy of Ibadan and its environs. Cocoa was bringing in more cash, and the cash nexus was coming to rule economic relations. Cocoa or palm tree farms were being sold or "pawned" to dealers by farmers seeking to raise more cash for diverse purposes;[59] shops were being leased in the city to prospective traders; cash could be loaned

for trading or other purposes. New skills like typewriting, book-binding or bricklaying were being acquired by apprentices who had to be "bonded" to their masters by formal agreements.

Lawyers and letter-writers were the handmaidens of the nascent capitalism that was developing in the city. The letter-writer, for his part, drew up all kinds of agreements - for the sale of goods, lease of shops, pawning of farms, loans, trade apprenticeships, and the like.[60] Indeed letter-writers were so closely associated in the public mind with the preparation of all kinds of documents that their workshops were known by the generic name of "Documentary Offices." [61]

Part of the commercial practice of letter-writers was rent and debt collecting. For this aspect of their work, some of the more sophisticated letter-writers, like Messrs. Adekoya, Bamiloshin & Co., a firm of "debt and rents collectors and legal documents preparers" - devised their own form, by which a debtor of their client could be "hereby commanded to attend before [their] office ... to come and answer or settle your Account." [62] The summons could end with the threat of a "legal step" that would be taken against the debtor should he fail to comply. [63] It would appear that such rent and debt collectors took a commission of 10% on whatever was collected. [64]

One area of new economic activities where the influence of letter-writers was particularly significant was the disposition of landed property. They documented the sale of land outright and the mortgage of land and other property as security of loans. Witness this text of a 1931 agreement for the sale of land, typical of many that were prepared by public letter-writers:

This is to certify that I, the undersigned Mr. Oni Giwa presently residing at Ijoko station hereby sold absolutely and for ever portion of my farmland to Asani Agboke presently residing at Ijoko station for the sum of £8 (eight pounds sterling) and four bottles of gins (sic) (the receipt whereof I hereby acknowledge) and that under no circumstances whatever be disturbed in the peaceful occupation and undermolested, utilisations of the said farmland by my heirs and assigns for ever. Boundaries of the farm are as follows. Front side by Yesufu, right side by Rayimi, left by Sanusi, bottom by Bale Olokemeji. This farm inherited by me from my late father. [65]

The language evidently diverges from the precision and syntax of legal usage, although it portrays a degree of familiarity with

English law. This "agreement", like most such documents, would have been of limited avail in litigation with third parties. But, on the whole, it served the purposes of the vendor and the purchaser in effecting a transfer of land.

The sale of building sites in the city almost invariably entailed preparation of an appropriate document by a letter-writer, once the agreed sum for the transfer had been paid by the purchaser to the family of the vendor.[66] As in the text above, there would be an indication of the location of the land, possibly by naming neighbouring tenants or land owners, the size of the plot, and the price paid. The plot was then declared to be the "bona fide personal property" of the purchaser absolutely. Written by a sophisticated letter-writer, such a document would "vest the land in the purchaser, his heirs and assigns for ever." [67] No matter how the transaction was conveyed in writing, the document was then signed or thumbprinted by the vendor (or, more usually, his mogaji, head of the family) and the purchaser. A veritable "deed of conveyance" thus came into being, which the purchaser could use at least against the vendor.

If the preparation of deeds conveying real property was not yet a common feature of legal practice in the 1930s and 1940s,[68] the reason could be that letter-writers dominated this field. They were more accessible to the local population than lawyers, and they charged less to draft an appropriate document to effect a transfer or mortgage of property. In any case, the stage of the development of the economy (or is it the general level of public enlightenment?) did not demand anything more sophisticated than the letter-writer's "Document". The requirement of proper deeds of conveyance (prepared by qualified legal practitioners) did not emerge until the mid-1950s or later. That requirement was enforced by law,[69] and it was this law that apparently broke the dominant position enjoyed by public letter-writers.

No such law immediately affected what the letter-writers themselves generally regarded as "the soul of the business", the writing of petitions to colonial administrative officers in their judicial capacities within the "native" court system. No lawyers were allowed to appear before the "native" courts, as indicated earlier, and only very few such courts in Southern Nigeria were linked to the higher English-type courts by way of appeals. There were none in Ibadan city. Thus the only way a dissatisfied litigant could seek a review of his or her case was to approach a letter-writer to address a petition to the local administrative officer.

Public letter-writers reaped a golden harvest and played a crucial role in the "native" court system. To be sure, not all the petitions were of high quality; some were no more than "a garbled collection of sheer verbiage".[70] There were reports that letter-writers were no less extortionate than lawyers.[71] But against these failings must be set numerous instances of wrongs and injustices righted through their activities.[72] They did expound customary law, where it was involved, to the enlightenment of administrative officers. The better sort pointed out errors in the trial of cases at the "native" court.[73] On the whole, it is fair to say that the work of the letter-writers made the "native" court system less oppressive than it otherwise would have been.

But the glorious days of letter-writing soon were at an end. By the 1950s the general rise in the level of education had made their literacy less scarce. The judicial reorganization of 1954 created many Magistrates and High Courts, thus opening up more avenues for litigants to have a hearing before the English-type of courts, represented by a legal practitioner. The legal practitioners themselves had increased in number; there were some thirty-one in the city by 1956.[74] Perhaps the final blow was the law (referred to earlier) that restricted the preparation of conveyances of land to legally-qualified persons, depriving letter-writers of much of their business.

What was the state of the legal profession in the 1950s? The decline of letter-writing did not necessarily mean a boom for the legal profession. It is important to note that the colonial economy did not seem to be keeping pace with the growth in the number of lawyers in the city. Between 1946 and 1960 there were only fifty-nine industrial and commercial establishments, most of them employing less than ten people.[75]

Most lawyers found their primary employment in litigation at the courts. And the fact that some of them were resorting to less than honourable methods of securing cases to plead in the courts suggests how difficult the situation could be. Richard Abel's suggestion that lawyers could turn their energies "to stimulating demand" for their services[76] has limited application in a nascent, rather inelastic capitalist economy like that of Nigeria.

Highlighting unethical practices at the Bar became a major pre-occupation of the Western Nigeria Bar Association (centred mainly in the city), which was formed in December 1954.[77] For instance, at the second meeting of the Association, held on 29 January 1955, almost all the sixteen lawyers present spoke of

"the growing practice among members of 'snatching' briefs from their colleagues contrary to the established usage and tradition of [the] Honourable Profession".[78] At a meeting on 2 April 1955, the Association had to write three members who were alleged to be employing touts in their chambers. A meeting of the Executive on 10 March 1956 discussed fully the varieties of unethical practices that were said to be in vogue: colluding with Registrars and other officials of the courts, including the "native" courts, for the purpose of securing prospective clients; running down colleagues as quacks to boost one's practice; inducing clients to desert one lawyer in preference for another; charging as little as half a guinea to plead for leniency in criminal cases and to obtain a default judgment in civil matters; "colluding with Police constables investigating criminal cases, and bargaining with them to share on [an] equal basis the proceeds accruing from defending particular cases if the constables could persuade the accused persons to employ their services"; and charging for their services "ridiculously low fees to the disadvantage and prejudice of other colleagues".[79] These malpractices, the meeting concluded, "tend to [reduce] and have, in fact, reduced incomes of barristers, debased [the] practice of law and effaced the traditional honour, dignity and respect which are the heritage handed down by the older generations of barristers".[80]

Unethical practice at the Bar is an index of the relatively poor state of the legal profession in the city. Although a number of lawyers in the 1950s are said to have had lucrative practices at the Bar in Ibadan, especially in land cases, many others had to struggle hard to make a living from the profession. In a stagnant urban economy that, as late as the 1960s, was dominated by a small elite of bureaucrats, petty traders, lorry owners, produce buyers, retail-shop owners "with little knowledge of bureaucratic organisation or industrial technique", [81] it would be unrealistic to have expected the profession to do more than passively serve the economy; a role in stimulating economic development was not available to it.

Nevertheless, although hard to document in detail, there is no doubt of the impact on the city of legal practice (and the allied occupation of letter-writing). The change in the concept of landownership, for instance, though stimulated by the introduction of commercial agriculture (among other economic factors), was a by-product of European legal conceptions of real property and contract, [82] transmitted by lawyers and letter-writers. The modern notions of lease and mortgage are direct borrowings from the language of European law, although certain forms of lease and mortgage were not unknown in traditional land use. [83] How wide-

spread these modern notions were in the city, even as early as the 1940s, can be gathered from the records of the "native" courts and the petitions addressed to administrative officers by letter-writers. Set in the wider context of Nigeria as a whole, the practice of the law could be said to have contributed to the development of the legal conceptions associated with modern capitalism.

The individualistic spirit of the English law together with the growth of the money economy and new economic activities, also served to reinforce the sense of personal freedom. In the new dispensation under colonial rule, law could be an instrument of personal aggrandizement; the lawyer in his chamber or the letter-writer in his "Documentary Office" was out to educate his clients about new rights that could be won or how the claims of others could be resisted. There is justification for the assertion by J.A. Oke-owo, a letter-writer with many decades of experience in Ibadan, that, in the process of educating their clients, letter-writers gave the people confidence.[84] What was true of letter-writers applied a fortiori to lawyers who, by virtue of their superior education, were even more assertive in pressing a legal approach to social problems.[85]

In reinforcing the confidence of the common man and increasing his individual self-awareness, an important factor was the posture of the new judicial machinery (beginning with the Resident's Advisory Court of 1897) and the independence of the law from the traditional ruling elite. Unlike customary law, the English law administered by the courts was not the monopoly of the chiefs and elders; it was independent of them, and they knew little of its mysteries. Before the new law and the judicial machinery (including even the "native" courts over which chiefs were supposed to preside), chiefs and commoners were equals. Cases such as Chief Kobiowu v. Yesufu Adedeji and others,[86] Ojo Mogaji v. Babalola and others,[87] Ogundoyin v. Shitta,[88] Alli Adetoro v. Olowu of Ago-Owu,[89] show that even in the "native" courts common men were questioning arbitrary actions by chiefs. G.H. Findley, then Senior Resident for Oyo Province, undoubtedly was right that by 1935 "control by the law" already was supplanting control by executive order of the chiefs.[90] The happy chief was one "who adjusts himself to circumstances ... and who takes the lead in directing the general advance". In observing that this change "was due as much to pressure from below on the part of the people as to imposition of alien customs from above",[91] he was putting his finger on the catalytic role of the law and of the people themselves in employing the machinery of justice to advance their individual interests.

The "native" courts in the city, as well as in the country at large, though charged with administering customary law, seem to have caught the spirit of English law. They perceived their functions, in Justice Ollennu's phraseology, as "moulding the customs of the country to the general principles of English law".[92] This observation was particularly pertinent with respect to matrimonial cases. One of the "native" courts in Ibadan, the Bere court, dealt almost exclusively with such matters and the debt disputes and criminal cases arising therefrom.[93] By the late 1920s the court was granting divorces at what the colonial authorities saw as an alarming rate. It was observed that the "native" courts in Ibadan Division, in the mistaken view that they were obliged to administer a law approximating to the English sense of justice, were granting divorces on easy terms "not in accordance with original law and customs".[94] That may be true, but it also can be argued with some force that the courts merely were reflecting the prevailing changes in the notion of personal freedom wrought by the introduction of English law and the new judicial machinery and reinforced by the money economy.

In a non-literate society the spread of new ideas is not easy to document. The "high velocity of human intercourse" associated with city life provided opportunities for face-to-face learning, facilitated transportation and communication between the city and other towns and villages, and increased the general mobility of the population. These factors encouraged the spread of the new legal ideas thrown up in the course of the practice of the law and the administration of justice in the city of Ibadan. It also is worth mentioning that the legal personnel themselves - the lawyers from the 1930s on and some of the more sophisticated letter-writers in the 1940s - made professional excursions further into the interior, and established branches of their offices there.[95] Significantly, a substantial number of cases handled by public letter-writers in Ibadan on appeal to the Resident for review originated in provincial towns.[96] Knowledge of the requirements of the new dispensation in matters of law and justice, spread beyond the city walls of Ibadan.

Finally, to return to Thomas Hodgkin's argument that national consciousness in Africa developed in cities, it is obvious that such a phenomenon only could have developed gradually. The starting point was individual self-awareness, which produced the "verandah boys" of the cities, who swelled the ranks of the nationalist organisations. It was this same self-awareness that made colonial rule look progressively more odious and detestable. In colonial Africa, English or European law, with its stress on

the individual, contributed to the development of that self-awareness.

Notes

1. Lewis Mumford, "City", in David L. Sills (ed.), International Encyclopaedia of the Social Sciences (New York, 1968), p.448; See also his The City in History (New York, 1961).
2. Thomas Hodgkin, Nationalism in Colonial Africa (New York, 1962), p.63, chaps. 1, 2.
3. See, for instance, W.C.E. Daniels, The Common Law in West Africa (London, 1964); A.N. Allot, Essays in African Law (London, 1960); B.O. Nwabueze, The Machinery of Justice in Nigeria (London, 1963); O. Adewoye, The Judicial System in Southern Nigeria, 1854-1954 (London, 1977).
4. J.H. Driberg, "The African conception of law", Journal of the African Society, XXXIV, Supplement, July 1935.
5. Max Gluckman (ed.), Ideas and Procedures in African Customary Law (Oxford, 1969), p.38.
6. Jill Cottrell, "The role of the legal profession in Nigeria", The Nigerian Journal of Public Affairs, I,1, 1970, p.42.
7. C.H. Elgee, The Evolution of Ibadan (Lagos, 1914), p.7.
8. Ibid., p.10.
9. Ibid., p.11.
10. Nigerian National Archives, Ibadan (henceforth abbreviated as NAI), CSO 5/2, XVIII.
11. Alan Burns, History of Nigeria (London, 7th ed., 1969), p.294.
12. Lagos, Annual Reports for the Year 1903, p.21.
13. Lagos, Annual Reports for the Year 1900-1901, p.20.
14. Lagos, Annual Reports for the Year 1903, p.21.
15. Lagos, Annual Reports for the Colony of Southern Nigeria, 1906, p.259.
16. Lagos, Annual Reports for the Year 1900-1901, p.23.
17. C.H. Elgee, The Evolution of Ibadan, p.16.
18. NAI, CSO 5/2, XIX, XX, XXI, XXIV.
19. For more on the judicial agreements, see O. Adewoye, "The judicial agreements in Yorubaland", Journal of African History, XII, 4, 1971, pp. 607-627.
20. Yoruba Jurisdiction Ordinance, No.17, 1904, sec.7.
21. Sections 8, 10.
22. NAI, CSO 1/7, 25, Egerton to Lyttelton, 28 May 1905.
23. NAI, CSO 1/15, 9, Egerton to Elgin, 15 Mai 1906, enclosure.
24. For more details, see O. Adewoye, The Judicial System in Southern Nigeria (London, 1977), chaps. 5-7.
25. Lagos Weekly Record, 12 May 1906.

26. O. Adewoye, op.cit., chap. 4.
27. Ibid, pp. 107-133.
28. NAI, CSO 1/32, Vol.116, Despatch no.3, 4 January 1933, enclosure. Interview with Mr. John A. Olaoya, former clerk in Mr. Lambrou's chamber, Ayeye, Ibadan, 27 March 1981.
29. Jill Cottrell, op.cit., p.43.
30. NAI, CSO 1/32. Vol.120, J.A. Maybin to Secretary of State for the Colonies, 15 January 1937, enclosure.
31. For a useful insight into commercial activities in Lagos in the 1920s, see Allister Macmillan, The Red Book of West Africa (London, repr. 1968), pp. 63-118.
32. Federal Ministry of Commerce and Industry, Lagos, Industrial Directory (Lagos, 1964).
33. A. Mabogunje, Urbanization in Nigeria (London, 1968), p.201.
34. For more on these legal practitioners, see O. Adewoye, The Legal Profession in Nigeria, 1865-1962 (Ikeja, Lagos: Longman, 1977).
35. Lagos Standard, August 28, 1912.
36. The Yoruba News, April 2-9, 1929.
37. The Yoruba News, July 27, 1926.
38. The Yoruba News, August 20, 1929.
39. NAI, CSO 1/32, Vol 120, J.A. Maybin to Secretary of State for the Colonies, 15 January 1937, enclosure.
40. John Olaoya, interview, Ibadan, 27 March 1981.
41. Chief Obafemi Awolowo, interview, Ibadan, 2 March 1967.
42. NAI, Iba Div 1/1, 1338, VI.
43. Ibid.
44. Sara S. Berry, Cocoa, Custom and Socio-Economic Change in Rural Western Nigeria (Oxford, 1975), p. 44.
45. E.A. Walker, "The establishment of the cocoa cash crop industry in Ibadan, 1893-1945" (University of Ibadan, M.A. Thesis, 1980), p. 49.
46. Ibid., p. 64.
47. O. Awolowo, "Unique features of Ibadan", Nigeria Digest, I. 10, May 1946.
48. The Yoruba News, October 15-22, 1929, editorial.
49. Richard L. Abel, "The underdevelopment of legal professions: a review article on third world lawyers", American Bar Foundation Research Journal, 1982: 871.
50. H.L. Ward-Price, Land Tenure in the Yoruba Provinces (Lagos, 1933), p. 44.
51. Chief Obafemi Awolowo, interview, 2 March 1967.
52. NAI, CSO 26/06027, "Annual Report of Oyo Province, 1921".
53. John Olaoya, interview, 27 March 1981.
54. E.A. Walker, op.cit., p. 87.
55. John Olaoya, interview, 27 March 1981.
56. The Yoruba News, January 6-13, 1942.
57. O. Adewoye, op.cit., pp. 188-197.

58. NAI, Iba Div. 1/1, 1338, VI.
59. S.S. Berry, op.cit., pp. 102, 104.
60. A.A. Babalola and J.A. Oke-owo (public letter-writers at Ibadan), interviews, 25 August 1966.
61. The following are a few sample names from the files of such offices: "Odara Documentary Bureau", "Hope Documentary Office", "The Ashiri Documentary Office", "Temidire Documentary Office", "Yiodara Documentary Office", "Molusi Documentary Office". NAI, Iba Div. 1/1, 1338, VI, VII, VIII.
62. NAI, Iba Div. 1/1, 392, Vol. 4.
63. Ibid.
64. NAI, Iba Div. 1/1, 392, Vol. 4, Messrs Adekoya, Bamiloshin & Co. to Resident, Oyo Province, 26 February 1940.
65. NAI, Iba Div. 1/1, 1338, Vol. VI.
66. P.C. Lloyd, Yoruba Land Law (London, 1962), p. 330.
67. NAI, Iba Div. 1/1, 1338, Vol VII.
68. Interviews: Chief Awolowo, 16 March 1967; John Olaoya, 27 March 1981.
69. P.C. Lloyd, Yoruba Land Law (London, 1962), p. 330.
70. NAI, CSO 26/25166.
71. NAI, Iba Div. 1/1, 392, Vol. 4.
72. NAI, Iba Div. 1/1, 1338, V, VI.
73. Compare Chief Ogundoyin v. Shitta, NAI, Oyo Prof. 3/115/1218.
74. The Nigerian Bar Journal, VI, 1965, pp. 14-34.
75. A Directory of Industries and Allied Trades in the Western Region of Nigeria (Ibadan, 1960), pp. 21-56.
76. Richard L. Abel, op.cit., p. 877.
77. "Western Nigeria Bar Association: Minutes Book", Vol. 1, 1955-1969. I am grateful to Mr. Bamidele Aiku, a legal practitioner at Ibadan, for facilitating my access to this record.
78. "Western Nigeria Bar Association: Minutes Book", Vol. 1, Meeting of 29 January 1955.
79. Ibid., pp. 31-32.
80. Ibid., p. 32.
81. P.C. Lloyd and others (eds.), The City of Ibadan (Cambridge, 1967), p. 134.
82. C.K. Meek, Land Tenure and Land Administration in Nigeria and the Cameroons, (London, HMSO, 1957), p. 216.
83. P.C. Lloyd, Yoruba Land Law (London, 1962), pp. 87-91; 308-312.
84. J.A. Oke-owo, interview, 25 August 1966.
85. Compare the correspondence between legal practitioners and the Divisional Officer, Ibadan, 1946-1956. NAI, Iba Div. 1/1, 1338, VI-X.
86. NAI, Iba Div. 1/1, 1338, VII.
87. NAI, Iba Div. 1/1, 1338, VIII.
88. NAI, Oyo Prof. 3/115, 1218.

LEGAL PRACTICE IN IBADAN, 1904-1960
O. Adewoye

89. NAI, Oyo Prof. 3/115, 1296.
90. NAI, CSO 26/2, 12723, XIII.
91. Ibid.
A 92. N. ~~J.~~ Ollennu, "The Influence of English Law on West Africa",
Journal of African Law, V, I, 1961, p. 23.
93. NAI, CSO 26/2, 12723, VI.
94. Ibid.
95. Issues of The Yoruba News in the period 1933-1942 occasion-
ally indicated the professional movements of lawyers outside
Ibadan city. For applications by public letter-writers to
establish branches of their offices in parts of Ibadan
Division, see NAI, Iba Div. 1/1, 392, IV.
96. NAI, Iba Div. 1/1, 1338, VI-IX.