

UNIVERSITY OF ILORIN



**THE ONE HUNDRED AND FIFTY-THIRD
(153rd) INAUGURAL LECTURE**

“POLITICS AND LAW: ANATOMY OF THE SIAMESE TWINS”

By

Professor Mojeed Olujinmi A. Alabi

*BSc (Ife), MSc (Ife), PhD (Ibadan) in Political Science;
LLB (Ibadan), LLM (Ife), PhD (Leicester) in Law; BL, FJAPSS*

**Department of Political Science
University of Ilorin, Nigeria**

THURSDAY, 13 NOVEMBER 2014

**This (153rd) Inaugural Lecture was delivered under the
Chairmanship of:**

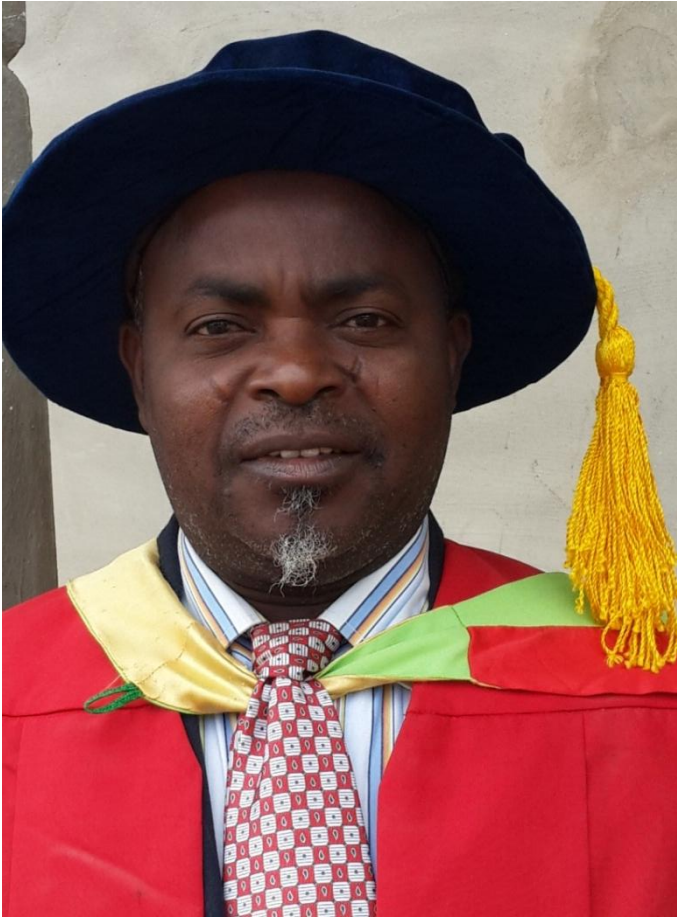
**The Vice-Chancellor
Professor Abdul Ganiyu Ambali
DVM (Zaria); M.V.Sc., Ph.D. (Liverpool); MCVSN (Abuja)**

November, 2014

ISBN: 978-978-53221-1-8

**Published by
The Library and Publications Committee
University of Ilorin, Ilorin, Nigeria.**

**Printed by
Unilorin Press,
Ilorin, Nigeria.**



Professor Mojeed Olujinmi A. Alabi
BSc (Ife), MSc (Ife), PhD (Ibadan) in Political Science;
LLB (Ibadan), LLM (Ife), PhD (Leicester) in Law; BL, FJAPSS
Professor of Political Science

BLANK

Courtesies

Chairman and Vice Chancellor
DVCs (Academic, Management Services, and Research,
Technology & Innovation)
Members of the University Council
Registrar and other Principal Officers of the University
Provost and Deans, especially Dean of Social Sciences
Professors, HODs and other Members of Senate
Other academic colleagues
Other Members of the Staff of the University
Distinguished political leaders and associates
Learned Men and Ladies of the Bar and the Bench
Gentlemen of the Press
Members of my family, nuclear and extended
My students, past and present
Other invited guests
Ladies and gentlemen

Introduction

By the special grace of Allah, the Lord of the worlds, I stand before this august audience of the intelligentsia and the crème-la-crème of the larger society to present the 153rd Inaugural Lecture of this University. This Inaugural Lecture is unique in two respects. It is significant that this Lecture, written from an interdisciplinary perspective, explores two separate but interrelated disciplines to which I have dedicated my academic engagements since I joined the University system in January 1990. Kindly, therefore, permit me the luxury of delving into the work of another Faculty, cognate to Political Science no doubt, without necessarily distracting from the import of my elevation to the professorial chair of Political Science. This is my idea of what an Inaugural Lecture should be. I believe that an occasion like this should present an opportunity to “inform colleagues, the campus community and the general public of their work to date, including current research and future plans”.¹ This presents Inaugural Lecturer the chance, a once in a lifetime

opportunity, perhaps, to give “an illuminating overview of their contribution to their field.”² In the circumstances, anyone with an interdisciplinary research focus, as I do, is faced with the arduous task of choosing a topic that showcases one’s contribution to the field of one’s professorial appointment while remaining faithful to the theme of years of research endeavours. As it has happened on occasions when I have had to defend my two theses in the different disciplines of Political Science (at the University of Ibadan) and Law (at the University of Leicester), one cannot but oscillate between two related fields without losing sight of the fact that notwithstanding my extensive education and research in the field of Law, I am first and foremost a Professor of Political Science and whatever contributions I have made should advance the cause of that discipline and no other. But I cannot close my eyes to the other discipline of Public Law into which I have invested years of time, energy and other resources, both in learning and research. An “overview of (my) research career so far”,³ which this inaugural lecture imports, cannot, therefore, depart from a norm for which I have been identified for upward of thirty years, the thrust of which has been the interaction of politics and law.

Equally worthy of note is the fact that this Inaugural Lecture is the first to be delivered by a Professor in the Department of Political Science of this ‘Better by Far’ University. This is not to deny the eminent contribution of Professor A. A. Akinsanya who, on the 6th day of December, 1984 (the year I completed my undergraduate course in Political Science at the University of Ife) delivered the 16th Inaugural Lecture of this University entitled “Transnational Corporations and Economic Nationalism in the World”. But that was by a Professor in the Department of Government and Public Administration. A major transformation in the name, curriculum and the mandate of the Department has since taken place. In 1992, the current Department of Political Science was created in the Faculty of Business and Social Sciences. The mandate of the Department has included the award of the degree of BSc

Political Science, while the BSc Public Administration degree also awarded by the defunct Department was scrapped with effect from the 1994/95 academic session. The Department has continued to award specialised degrees and diplomas in the different sub-fields of the discipline of Political Science at the postgraduate and sub-degree levels: Master in Public Administration (MPA), Master in International Studies (MIS), Postgraduate Diploma in International Affairs and Diplomacy (PGDIAD), and Diploma in Administrative Management (DAM). All these are in addition to its core mandate of awarding postgraduate academic degrees, notably MSc, MPhil and PhD in Political Science. I therefore bring you glad tidings from my two senior colleagues, the Head of Department, other members of the academic and administrative staff and students of the Department of Political Science, Faculty of Social Sciences. In its over two decades of existence as an academic discipline, the Department has produced more than 2000 graduates at the sub-degree, undergraduate and postgraduate levels (including PhD holders) who are making immense contributions to the development of Nigeria and other countries of the world, in various fields of human endeavour, both in public and private sectors.⁴

Inseparable Duo

The relationship between politics and law has been a subject of jurisprudential discussions and political discourses since time immemorial. For the early philosophers, including Plato and Aristotle in the West, Confucius and Kautilya in the Far East and Ibn Khaldun in North Africa,⁵ the distinction between the two realms of politics and law is blurred. The inextricable link between the two worlds has remained, notwithstanding disciplinary separation occasioned by the move towards specialism in modern times. The reality is that the relationship between law and politics is symbiotic. Politics often determines the law in any jurisdiction in the same manner that legal rules and constitutional principles shape the course and

patterns of political relations. Law is made by the political authority. As a product of political negotiations, the contents of legal rules are laced with politics. Also, government exists only within the regulatory framework of the law. As Antonin Scalia wrote in the maiden edition of the *Journal of Law & Politics* “there is no clear demarcation” between law and politics because “laws are made, and even interpreted and applied ...through a political process; and politics are conducted under the constitution and statutory constraints of the law”.⁶

Nonetheless, there have been jurisprudential disputations on whether, or the extent to which, the realms of law and politics should meet in judicial decisions. The issue is brought to the fore in discourses about the role of the courts of law in the political life of the society. For the advocates of separation, the role of the judge is *jus decree et non jus dare* (i.e., to declare but not to make the law). Such a view clearly denies the judiciary, an arm of government, any policy-making role in governance. This view dominated the intellectual space for a considerable period of time until scholars began to face the reality of the fact that the umbilical cord that ties politics and law may not be easily severed without some serious consequences for our governance systems. Both realms are sub-systems of the larger society, and each shapes and is shaped by developments within the society.

Disciplinary Separation

The history of the development of Political Science as a discipline points to the fact that Law generally, and Public Law especially, has been a part and parcel of the study of politics.⁷ In fact, Public Law (with focus on the subjects of constitutional developments, human rights, legal systems, administration of justice, etc), like Public Administration and Public Policy, has always been considered a sub-field of Political Science before it gradually acquired its own status as a discipline.⁸ In ideas, theories and terminologies, various fields of Political Science have found the law relevant,⁹ with linkages long established in the fields of Public Administration,¹⁰ Political Theory,¹¹

International Relations¹² and Comparative Politics.¹³ No surprise then that in this University, as in other leading academes, the Faculty of Law originated as a unit in the Faculty of Business and Social Sciences,¹⁴ where Political Science is domiciled.

Although the study of politics as a scientific endeavour was specifically a post-World War II development,¹⁵ the discipline itself has a fascinating evolution dated to ancient and medieval ideas, ideologies and thoughts that provided common thread for the development of such other disciplines as history, philosophy and law. The ideas of constitution and constitutionalism, the rule of law, separation of powers, checks and balances, parliamentary/constitutional supremacy, royal/presidential prerogatives, collective responsibility, ministerial accountability, administrative discretion, judicial review, human rights and fundamental freedoms, among several others, have their origin in discourses that necessarily place the study of Law squarely within the very broad field of Political Science. However, as the search for knowledge advanced and specialism set in, new curricula were developed. Gradually, Law and the public aspects of legal studies that remained part and parcel of Political Science grew into distinct disciplines. The creation of Faculties of Law, for training of professional lawyers, finally sealed the wedge of disciplinary separation between the parent discipline of Political Science on the one hand and the emerging disciplines of Public Law, Public International Law, and Jurisprudence, on the other hand.

The story of the separation of Law from Political Science is particularly unique in Nigeria. As an outgrowth of the University of London, the University of Ibadan taught Political Science as a core discipline that took care of the knowledge of law,¹⁶ until the introduction of Law as a distinct discipline by the next generations of Universities, starting with Lagos, Ife, Nsukka and Zaria. With the growth in the Faculties of Law, on the prescription of the Council of Legal Education, disciplinary separation between Law and other branches of the Social Sciences became a *fait accompli* by the onset of the 1980s. Of

course, Law students continued to offer introductory courses outside, while Political Science remained a cognate department to the Faculty of Law. But it took the introduction of Minimum Academic Standards (MAS) by the National Universities Commission (NUC) in 1989 for curriculum developers to begin to mind the gap of disciplinary isolation and encourage interdisciplinary exchanges among disciplines.¹⁷

The trend towards interdisciplinary exchanges in curriculum development found expression in this University in the curricula of the BSc Political Science and LLB Common Law programmes. Mostly audited as elective, but with some required or compulsory, Law students took such courses as *Introduction to Political Science*, *Nigerian Constitutional Developments*, *Nigerian Government and Politics* and *Organisation of Government* among other humanities-based courses. Conversely, Political Science students were required to take such law-related courses as *Nigerian Legal System*, *Administrative Law* and *International Law*, even when no specific expertise existed in the Department to teach such courses.¹⁸ As a stakeholder in the teaching and practice of law, I was more fascinated by the exposure of law students to courses taught by academics in the respective departments where the theoretical and practical knowledge existed. But I felt helpless, notwithstanding my membership, when the Faculty Board of Law resolved, prior to the 2011 accreditation exercise, to deny students of Law the benefit of interdisciplinary exposure, on the very nebulous excuse that such outside courses delayed the computation of students' results. That decision negated the vision of the LLB programme to produce "the total man" through exposure of students to "other disciplines especially the social sciences".¹⁹

I condemn the tendency towards disciplinary isolation in the respective curriculum of Law and Political Science in this University. It appears to me that the object of asking students to take courses across the two disciplines is defeated when such courses are not taught by Lecturers with known or certified

expertise on the subjects. Except for the luck or rare occurrence of one being a Legal Practitioner with a PhD in Law, in addition to qualifications in Political Science, such law-related courses as are mentioned above are not the areas of expertise of an average Nigerian Political Science lecturer. Similarly, it is outside the expertise of a Law lecturer to teach such courses as *Introduction to Nigerian Constitutional Development and Organisation of Government, Research Methodology and Field Work, Legislation* and *Introduction to Policing in Nigeria*, recently introduced to replace those courses previously audited in the Faculty of Social Sciences. Of course, the argument may sink deep that students of Law or Political Science do not need the jargons and terminologies of their respective cognate disciplines, but there is no doubt that such a microscopic conception of legal training in pursuit of specialism cannot serve the long term cause of the students, especially those who aimed at making a career in legal practice.

Mr Vice Chancellor, my submission here is not that of a theoretician or an armchair critic. My antecedents as a student of Law at Ibadan, Ife and Leicester and my teaching and research collaboration with the Faculty of Law here in the last nine years are additional reinforcement to the case I am making. Because of the conviction I had in the logic of my thoughts in this regard, I, in my capacity as the Head of the Department of Political Science, worked with the then Deputy Vice Chancellor (Academic), during the review of the current Academic Programmes (Undergraduate & Sub-Degree) in mid-2011 to redesign a computer-related course hitherto taught by a colleague in my department as *Introduction to Computer* (POS 221), henceforth taught by a Lecturer in the Department of Computer Science (as CSC 227). I believed, then and now, that my students would gain more from being taught by an expert in the field rather by a Political Science teacher. Happily, the tendency towards isolation is not the dominant pattern of interdisciplinary exchanges in this University. I know that many departments and faculties allow their students to take courses from other

disciplines that are taught by experts in those fields, including the Faculty of Engineering where, as a Law Teacher from the Department of Public Law, I taught *Engineering Law* as a compulsory course offered by all 500 level Engineering students for three sessions. I also know that other colleagues from the Faculty of Law had taught or are still teaching law-related courses to students of the Faculties of Social Sciences and Education.

The search for disciplinary autonomy is a distinctive feature of contemporary academic programmes across universities, and the discipline of Political Science has not been an exception.²⁰ But there is a current trend, borne out of the need to attract students or respond to demands of the markets, towards unnecessary multiplicity of disciplines and programmes. The tendency towards the use of high flaunting words to describe academic disciplines made initial appeal, perhaps, to the administration of this University when it created such Departments as *Government and Public Administration* and *Sociology and Social Administration* in the Faculty of Business and Social Sciences. When such designations could not withstand the test of accreditation, they were withdrawn in the early 1990s. Now, they are being gradually re-introduced albeit as specialised fields in newly created centres and faculties. I am specifically concerned about the establishments of undergraduate programmes in such fields as Social Work, Peace Studies, International Relations and, if current feelers are true, Public Administration. While one may understand the current sentiments and ongoing dynamics that informed the renaming of such Departments as Geography and Environmental Sciences and History and International Relations, it is my position that awarding first degrees in courses that were hitherto taught at the postgraduate levels deprives the graduates of such courses of the needed theoretical grounding in the core fields of knowledge. I am not against the creation of programmes and units, at least to satisfy the crave for professionalisation of knowledge. The point I am making is that knowledge should precede acquisition of

skills.²¹In essence, the core courses of the behavioural sciences – Political Science, Economics, Sociology, Geography, or even History, should serve as the foundational knowledge upon which specialties could be built at the postgraduate (including diploma) level. While I owe no objection to continuous review of academic programmes to meet the requirements of the markets, we should not do so at the expense of preserving the disciplinary essence of every subject. Attempts to do so elsewhere have failed. As a centenary review of the state of the discipline has shown, notwithstanding “reform proposals promulgated by a series of high-profile panels” of the American Political Science Association (APSA),²² and “a number of movements designed to reorient its fundamental character”,²³ Political Science has remained largely unchanged.²⁴

Path Unthreaded

Mr Vice Chancellor, I am a victim as well as a beneficiary of the wedge of disciplinary separation between the two related disciplines of Law and Political Science. The apolitical conception of the role of the judiciary in governance, which Nigeria inherited by virtue of its reception of English law, sets the institution apart from the other organs of government, fit for intellectual exposition by legally trained minds alone. Arising from the idea of supremacy of the British Parliament,²⁵ the English courts are not permitted the luxury of dabbling in matters that are patently political. Apart from the notion of power separation inherent in such a conception, direct collision between the courts and the political authority is avoided by recourse to the notion of judicial self-restraint. The study of the judiciary as a policy-making organ of government did not present itself as a fascinating area in the study of politics. Even in the United States where the American Political Science Association (APSA) had been founded since 1903 and significant works by Political Scientists on the judicial process had existed as far back as the early 1960s, the Section on the Court System was not formed until 1983,²⁶ by which time a

couple of academic papers on the role of the courts in policy processes had begun to appear in the American Political Science Review (APSR) and other leading journals of the discipline. In fact, in the UK and the US, the burgeoning field of judicial studies became visible only in the last decade of the Twentieth Century.²⁷

In Nigeria, the study of the judiciary as an important component of the governance system escaped scholarly attention until recently. Many books and other academic writings on Nigerian Government and Politics made little or no reference to the judiciary while legal writers drew no attention to the political correlates of judicial/legal developments. When I therefore ventured into the study of the ‘politics of the judiciary’, I found myself in a *cul de sac*. My PhD proposals and the thesis were not expected to have easy sail through the panels of academics from the Faculties of Law at Ibadan and Ife, as well as the host Department of Political Science. Nonetheless, the burning desire I had to maximise my knowledge of the two disciplines gave me the courage to address the charge of being too legalistic in a Political Science thesis while not distracting from the constant reminder that the Supreme Court of Nigeria, which was the focus of my analysis, was essentially a legal institution. Even at slightly more advanced stages of my teaching and research career, not a few of my colleagues have raised eyebrows as to where my intellectual outputs really belonged within the established branches of the discipline of Political Science.

It took years of consistent research, highlighting the role of the judiciary in different parts of the political processes, particularly the broad theme of constitutionalism across time and space, which runs through my academic writings, for my seemingly unorthodox research interests to be accepted as a part and parcel of Comparative Politics,. As I grew in my career, I felt more confident to deepen my knowledge of and research interest in the judicial/legal process. I remain convinced that if political scientists could develop cross-disciplinary hybrids in areas of political psychology, geography, sociology, economics,

anthropology etc.,²⁸ there is no reason why the legal perspective cannot become a virile field of research. The range of issues and themes in this field are as diverse as there are scholars, and have included studies of constitutions, administrative regulations, legal systems, human rights, politics of the judiciary, legislations and law making, relationship with the other organs, judicial process, judicial policy-making, international law and administration, and legal/political theory. Although a recent attempt has been made in the 'Law and Politics' title of the Routledge Series to arrange them into four broad areas of constitutional studies, law and society, judicial politics, and international/comparative studies,²⁹ none of these areas is mutually exclusive. Of course, I have had to expand my research focus to wider interrogations of the role of other institutions of governance, particularly the legislative arm that share the same scholarly obscurity with the judiciary, in my search for a broader intellectual space within the Political Science discipline as it is.

My Intellectual Space

The audacity of earning Bachelor, Master and PhD degrees in each of the disciplines of Political Science and Law necessarily compelled me to seek to synthesise my teaching, research and community experience in the two fields into a line of academic endeavour that makes distinctive contribution to knowledge in the field of Political Science. My odyssey in this respect, which have spanned two-and-a-half decades, is reported here as part of my service in providing academic leadership as well as contributing to the development of a governance system geared towards ensuring a better life for the human collectivism, within the context of the emerging African democracy, Nigeria.

Concerns for Development

My intellectual foray into the politics of the judiciary began with my PhD thesis on the Supreme Court of Nigeria. Hitherto, the issue of elections had engaged my attention,³⁰ before I later ventured into some aspects of development studies.

My concerns revolved around the parlous state of backwardness that makes politics in African countries seemingly at variance with all the known theories already learnt. The concerns led me into an exploration of the past, interrogating the impact of European colonialism on developmental efforts in Africa.³¹ I reviewed the efforts of African leaders to resist colonial incursions and/or hasten the decolonisation process.³² I was particularly fascinated by the prospects of the post-colonial African states playing a role, through the Organisation of African Unity (now the African Union), in the search for a global order.³³

The concerns with the African conditions gradually drew me to the political economy approach that endeared me to the works of Michael Todaro, Claude Ake, Garvin Williams, Bade Onimode and other scholars of the school of development studies.³⁴ I owe some debt of gratitude to Yomi Durotoye³⁵ for introducing me to this line of thought and guiding me through some research outputs on the logic of Agricultural Development Projects (ADPs) as a multi-sector strategy of rural transformation in Nigeria.³⁶ The short but impactful encounter with development studies impressed upon me the belief that Africa must revisit its past, self-reflect on it, and then chart new patterns of relationships with the West for its own future development. These themes continue to reflect in my academic work to date, as I canvass concerted and self-reliant efforts at the national, regional and continental levels as part of the needed reflections, re-evaluation and re-organisation of the politics and economy of African states along the path of development.

My thoughts on Africa's growth and development have been further sharpened through contacts with the works of Ali Mazrui, whose postulations on the beauty of pre-colonial constitutionalism³⁷ provoked further reflections in me that led to the first opportunity I had to have a foreign publication.³⁸ Using the Yoruba pre-colonial administration and legal system as a case study, that paper highlights some unique features of indigenous African systems that support the modern notion of limited government, constitutionalism and the rule of law. It

canvasses adaptation of pre-colonial practices relating to sources and loci of political power, balance of power among the different traditional blocs in the society, the non-adversarial (or reconciliatory) nature of the dispute resolution systems, and the reformative (and non-punitive) character of the criminal justice systems to modern governance systems.

Since then, and with further and deeper consultation with the literature, I have insisted, in my teaching and research that discourses on democracy, constitutionalism, the rule of law and good governance must take cognizance of those unique ideas and practices that are rooted in African traditional values, customs, practices and traditions for incorporation into post-colonial constitutional instruments. I canvassed in another paper that rather than seek transfer of technology (with the attendant legal regimes of constraints and other protectionist policies of the West) with a view to closing the “gaps in development” between the Global North and the Global South, African countries should seek more partnerships with their peers in the developing world, promote the development of indigenous technology and accept only those foreign technologies that are appropriate, or, at least adaptable, to local needs.³⁹ The concern even led me to interrogate the legal and political implications of withdrawal of African countries from international organisations if membership of such organisations would not confer any unique advantage on them, concluding, however, that rather than taking such a drastic step, the developing world should seek a reform of, rather than outright withdrawal from, the UN system.⁴⁰

Judiciary in Governance

Political Science permits interdisciplinary discourses and supports multiple methodological approaches in analyses of political phenomena, making it possible to marry my concerns for Africa and the African conditions with the desire to chart the hitherto unthreaded thematic path of bringing the judiciary in particular and the legal system in general to the forefront of political analyses. My odyssey in the field of judicial studies

began with a decade-long exploration of the institution at the pinnacle of judicial authority in Nigeria.⁴¹ It was the first major attempt since Kasunmu,⁴² and by any Political Scientist, to study the Supreme Court as an arm of the Nigerian government. The inspiration came from the works of such US scholars as Henry J Abraham, Glendon Schubert, Goldman and Jahnige, and Grossman and Wells.⁴³ The largely apolitical conception of the nature of the judicial function in the Anglo-Saxon jurisdiction initially precluded a reference to British literature; but the works of Atiyah, Bernard Crick, Griffith and Loughlin have also made significant advancement in the field.⁴⁴ My intellectual encounter with C. Neal Tate, who took a global view of the phenomenon⁴⁵ gave me the courage that I could “extract ‘water’ out of stone”⁴⁶ in seeking a political study of the judiciary and that the time was ripe for the Nigerian Political Science to give the study of the judiciary a primary place in its curriculum.

My academic contribution to Political Science is anchored on a rejection of the traditional Anglo-Saxon conception of the judiciary as a legal institution with no visible role in the political system. By constructing “a system model of the judiciary”, in line with the Eastonian tradition,⁴⁷ I highlighted the relevance of the Nigerian judiciary to political processes and developments and showed that the court system shaped, and was shaped by, developments within the wider social, economic and political environments. With data from primary and secondary sources, I analysed the organisational architecture of the judiciary, the internal working and processes of the Supreme Court, the Court’s attitudes towards major issues of significance to political developments of Nigeria, as well as the idiosyncratic characteristics of the Justices (age, sex, parental backgrounds, education, religious affiliations, and geopolitical backgrounds). These provided the basis for my subsequent research in this thematic area of comparative politics.

The limited space and time allotted for this Lecture would not permit a full review of the work that demonstrates, according to Professor M.A. Owoade, a Justice of the Court of Appeal,

“profound depth of scholarship in political theory and public law”.⁴⁸ It suffices to state here that some of the findings and recommendations in the study have found relevance in past and current developments in the polity while subsequent works have built on the tentative submissions of the time for further studies that provoked new findings, confirmed existing submissions, or called for major revisions in thoughts and ideas. Nonetheless, I seek to reference two aspects of the findings and conclusions that have come to pass. The first pertains to the role of politics in judicial appointments to the Supreme Court of Nigeria since the removal of Teslim Elias as the Chief Justice of Nigeria (CJN) in the mass purge of the civil service during the Muritala Muhammed regime.⁴⁹ After an extensive review of the geo-political character of judicial appointments to the Supreme Court by successive governments in Nigeria since independence, the study found that although “over 71% of the appointees to the Supreme Court had their origin in the South-West” as of 1975, the military regimes had since then skewed judicial appointments in favour of the North.⁵⁰ Between then and the advent of the Fourth Republic, the average age of the appointees from the West was 61 years, while their counterparts from the East and the North were appointed at a relatively younger age of 50 years, thereby serving longer on the bench of the Supreme Court, with greater chance of becoming the CJN. Expectedly, all the CJN since Mohammed Bello have come from the North.⁵¹

The second submission to which I chose to direct attention pertains to the refusal of the courts to intervene in the process that led to the impeachment of Governor Balarabe Musa by the Kaduna State House of Assembly during the Second Republic. Notwithstanding its critique of the impeachment process as incapable of guaranteeing “independence or objectivity and impartiality”,⁵² the Federal Court of Appeal held the courts’ jurisdiction ousted notwithstanding evidence of infractions of the procedure enshrined in Section 170 of the 1979 Constitution. I criticised the court for abdicating its constitutional duty; other scholars also did.⁵³ Yet, some 20 years later, the Court of Appeal

refused to be persuaded by the criticisms of its earlier decision and again, in the case of *Abaribe v Speaker*,⁵⁴ declined jurisdiction on impeachment matter, a decision that further emboldened the legislators and provoked unregulated use of the impeachment power across Nigeria,⁵⁵ until the Supreme Court intervened in *Inakoju v Adeleke* and subsequent cases to put some method into the madness of impeachment without following the due process of law.⁵⁶

There is nothing to suggest here that the Nigerian courts have been timid in the performance of their constitutional duties of constructing the provisions of the Constitution. They have, indeed, contributed to the growth of the Nigerian political system through the decisions, particularly those of the Supreme Court and the Court of Appeal, that have had tremendous impact on the course and patterns of our government and politics. In one of my papers, I reviewed the landmark decisions that touched, directly or indirectly, some fundamentals of the Nigerian state, such as the scope of the respective powers of the federal and state governments, the respective powers of the federal and state governments over administration of local governments, the limits of presidential power over allocations from the federation account, revenue allocation, and resource control, within the context of “federal character” or “quota system” in relation to unity and national integration.⁵⁷ Through these decisions, the courts have helped to clarify the respective powers among the various levels of government (vertical intergovernmental relations) and the different organs (horizontal intergovernmental relations). The decisions not only bring to the fore the policy making role of the courts, but also sometimes shape the policies of government in the areas concerned. As Fagbadebo and I found in a study,⁵⁸ such favourable decisions could be a platform needed by a state organ to entrench its own powers without necessarily getting into direct confrontation with any other organ or institution.

Unequal Partners

The province of legislations unites both the judiciary and the legislature,⁵⁹ and makes them indispensable partners. Law interpretation depends largely on legal rules; but the making of law is essentially a political process, making legislature-judiciary relationships sometimes cantankerous. Historically, the judiciary has had running battles with popular sovereignty, making it to appear “the weakest”⁶⁰ or “next to nothing”⁶¹ in the business of governance. The relationships have generally been characterised by mutual understanding and respect. Under the *sub judice* rule, legislators do not discuss matters that are pending before the courts of law. But they possess the general power to summon any official of the other arms of government, including judicial officers. This, they rarely do. Also, while judges have always remained unencumbered to criticise governmental policies and decisions, the power of judicial review has had to be used cautiously, in the spirit of self-restraint. Nonetheless, flashes of disagreements do occur between the two organs. Collectively and individually, however, a greater challenge exists in tackling the overbearing posture of executive power.⁶²

My assessment on the relative power of the three organs derives from my theoretical and practical knowledge of Nigerian government and politics. While my interest in the politics of the judiciary predated my adventure in legislative studies, I got attracted to the latter by two inter-related developments. The first was my election to the seat of Ejigbo State Constituency in the Osun State House of Assembly and subsequent elevation as the Speaker.⁶³ This exposed me to the inner working of government, particularly the legislature, at all levels. I also had opportunities to attend conferences, seminars, trainings and workshops across the world that enabled me to compare developments and practices in different political systems. The second development was the opportunity afforded by a two-year leave of absence at CAFRAD where,⁶⁴ as an expert in charge of parliamentary capacity building, I criss-crossed the continents of Africa and Europe in the search for models and challenges of good

governance, ethics and professionalism in the public sector. As an academic and lawyer engaged in the business of law making and governance, these opportunities challenged me to join in the crusade to redirect attention to the study of the legislature in an era of global resurgence of democracy, within the African context of an authoritarian past.⁶⁵

My close observation of the legislature shows that, like the judiciary, the institution has gone through the vicissitudes of growth and decline in time and space. In a global scan,⁶⁶ I identified key features and trends in different political systems that have become reference points, rough guides or benchmarks in my assessment of the position and performance of the Nigerian legislatures. Through this and other studies, I now know that legislatures are products of distinct forces in time and space, “shaping their powers, constraining their relative positions within the institutional architecture of the state, and determining their contributions to modern governance and administration”.⁶⁷ They have not continuously enjoyed the kind of pre-eminent position ascribed to them, even in the developed polities.⁶⁸ In Africa, the past experiences of colonialism and militarism bequeathed on the polities an authoritarian legacy that continues to weaken the legislatures.⁶⁹ This is no less obvious in Nigeria, where the long years of military dictatorship have tended to obliterate the key role of the legislature. In a paper I wrote as a participant-scholar,⁷⁰ I highlighted the different phases of the evolution of the Nigerian legislatures, identifying changes in their structure, composition and power. Situated within the context of the struggle for power among the three organs of government, the analysis highlighted a combination of problems and challenges that have retarded the growth of the legislature. The state assemblies are even more disadvantaged, as another study reveals.⁷¹ At whatever level, the challenges remain the same and derive from two main sources - the peculiar nature of the legislative institution itself and the contextual character of the political environment. I have, in these various studies, canvassed constitutional re-engineering geared towards

strengthening of the legislative institutions, a more proactive posture on the part of legislators themselves, capacity-building supports, and constructive civil society engagement of the legislature as part of the efforts targeted at consolidating Nigeria's nascent democracy.⁷²

The legislature is just one of the three principal institutions of governance; it shares power with the other institutions, hence the need for further reflections on their relationships. Adopting the theory of separation of powers in one of my papers, I examined the web of intricate interactions among the organs of the Nigerian government.⁷³ I found a number of safeguards against arbitrary rule, inherent in the provisions on checks and balances in the Constitution. But then, abrasive tendencies exist in the 'First Estate of the Realm', provoking me to further thoughts on how to ensure that the legislature operates within the limits of constitutionalism notwithstanding its extensive powers. Attempting a response to the age-long question, asked by J S Mill,⁷⁴ on how to tame the legislature's power, I submitted in a paper that, unlike the presidency and the judicature, the legislature is an institution of equal players, having different mandates and responsible to different constituencies, thereby ensuring internal counterbalance of forces.⁷⁵ The legislature is, in essence, the constringer of its own powers. But this alone is not a guarantor of restraint. The legislature must remain in constant awe of the other organs, as they are of the legislature, in a constitutional framework designed to facilitate respect and mutual understanding among the three organs. One of my studies found such collaboration in the President's use of the power of emergency, which the legislature condoned, notwithstanding glaring illegalities of unilateral suspension of democratic institutions and prescription of emergency regulations.⁷⁶ Such pragmatic display of camaraderie is not a frequent occurrence, even at the lowest level of local government. In a study that sought to explore the challenges of operating the presidential system at the local government level,⁷⁷ I found that rather than resolve the perennial crises of governance, the innovation threw

up new problems and challenges that continue to threaten the capacity of local governments for performance and results. The attendant patterns of power contestations among the governance institutions created multiple sources of strains and frictions that continue to hamper developmental efforts.

While one cannot fail to appreciate the contributions of the legislature to the democratic process in the areas of its core functions of law-making, representation and oversight,⁷⁸ scholars have continued to score the institution low on performance.⁷⁹ The operational dynamism of the institution is weakened by many ecological factors, intra-governmental squabbles,⁸⁰ administrative constraints,⁸¹ lack of financial autonomy,⁸² and the attendant challenges of leadership.⁸³

One area in which the legislatures have been found deficient in performance is in tackling the scourge of corruption and maladministration.⁸⁴ But the legislature alone cannot answer for such an endemic problem. My continent-wide survey of the legal regimes of anti-corruption shows that while many African countries have legal provisions in national constitutions, criminal laws, penal codes, civil service regulations and ethical codes of public service, backed by international treaties, conventions, protocols and declarations, as part of the larger reform agenda targeted at innovation and modernisation of the African public sector for performance, results and optimal service delivery, the leadership lacks sufficient political will to tackle the menace of corruption.⁸⁵ Thus, reform efforts are threatened by implementation challenges that have continued to retard, rather than enhance, the progress towards improved public service ethics and anti-corruption. The judiciary and the entire legal system have been found equally culpable.⁸⁶ In fact, rather than serve as an effective instrument of anti-corruption, the legal process has been manipulated to frustrate the crusade. One area of concern in this regard is the slow pace of our adjudicative process and the cumbersome rules of practice and procedure. In one of my studies,⁸⁷ I reflect on the problem of delayed access to justice as a major impediment to the democratic process in

Nigeria. Analysing the patterns of case management, I traced bureaucratic delay within and outside the Supreme Court to two broad sources – those that are specific to the court system and those that are results of factors located in the social, economic, cultural and political environments.

On the problem of slow access to justice, it is important to stress that the judicature is *suis generis* in its operational dynamics and cannot be compared to the majoritarian institutions. As I show in a paper that explores the internal operational dynamics of the court system,⁸⁸ the judiciary has its own traditions, rules and norms, which limit its operational dynamism and flexibility compared to the legislature and the executive. The findings challenged me to ruminate on judicial decision making, as I proceeded in another paper to revisit the age-long discourses on the relevance of the doctrine of judicial precedent as a decisional mechanism for understanding the working of the court system.⁸⁹ While noting shifting judicial attitudes occasioned by developments within the larger political environment, I found the practical operation of *stare decisis* fraught with many implementation challenges that put a question mark on its continued relevance in the administration of justice in Nigeria. The theme of the paper exposes the fallacy of denying any policy-making role for judges, which is inherent in the idea of binding precedent.

Wider Concerns

As a governance analyst, I cannot be seen to place the problems of Nigeria squarely at the doorsteps of the legislature and the judiciary alone. I have ventured further to look at the larger environment to seek better understanding of the key factors that shape the working dynamics of the Nigerian governance institutions. In this regard, I have ruminated on the issues of human rights and the rule of law, local self-governance, leadership succession, and the electoral process. On these issues, I have found and interrogated the wide gulf of differences between the requirements of the law and exigencies of practical

politics. An early concern revolves around the impact of military rule,⁹⁰ the greatest casualty of which is the rule of law.⁹¹ In a paper I wrote at the height of pro-democracy agitations for an end to military rule in Nigeria,⁹² I highlighted the various ways in which the successive military governments have sought to emasculate the rule of law - suspension and modification of the fundamental rights provisions in the Constitution, promulgation of laws with retroactive effect, nullification of unfavourable decisions of the courts, creation of military tribunals, and alteration and ouster of courts' jurisdiction. After a review of the judicial attitudes on this matter, I found ouster clauses as the greatest challenge to the ability of the courts to defend the civil rights provisions in the Constitution. I urged a change of judicial attitudes, challenging the courts to a more proactive role in defending citizens' right. Unfortunately, and fifteen years after the military hurriedly left the political scene, the undying legacies left behind continue to hunt our politics. An area of unique interest to me in this regard is the crisis of succession to leadership positions, particularly the 'sit-tight' instinct bequeathed by the military rulers to the succeeding political class, accounting for the various schemes of tenure elongation or self-succession agenda that have continued to threaten orderly succession to political power.⁹³ In the circumstances, electoral contests for political power have departed from acceptable norms of democratic politics.

Ironically, Nigeria is not lacking in appropriately institutional and legal frameworks for smooth power transfer under civil rule. The findings of my studies of the Nigerian electoral processes reveal more than meet the ordinary eyes. Proceeding from the position that any reform of the Nigerian electoral politics must begin with a comprehensive overhaul of the regulatory framework for the conduct of elections, I wrote a paper in which I analysed the Electoral Act 2006 and its impact on the conduct of the 2007 general election,⁹⁴ one of the worst in recent times. Seeking to locate what went wrong, I found that mere changes in electoral laws without a concomitant

strengthening of the position of such critical stakeholders as the electoral umpire, the political class and the civil society cannot produce the desired effect. In another paper,⁹⁵ I juxtaposed the remedial provisions of the Electoral Act with specific maladies of the Nigerian electoral system. I found that Nigeria's problem is not the dearth of appropriate regulatory frameworks for conduct of free, fair and credible elections but rather implementation challenges aggravated by insufficient commitment to democratic norms among the operators of the system.

The two papers provoked me to further interrogate the relevance and limits of law in Nigeria's programme of electoral reform. Although important, mere tinkering with the provisions of the law could not be the magic wand for improved electoral politics. The prospects of reform, inherent in the setting up of an Electoral Reform Committee by the late President Shehu Musa Yar'Adua in 2007, became the logical focus of my attention. Noting the Committee's observation of "progressive degeneration of outcome" in the almost a century history of elections in Nigeria,⁹⁶ Omololu and I appraised the far-reaching recommendations of the Committee that went beyond the ordinary to include proposals for "changes in existing electoral procedures, re-allocation of electoral functions or creation of new institutions", in addition to structural changes designed to reduce poverty and corruption, promote civic, moral and political education, strengthen the electoral management body, and safeguard the independence and integrity of the judiciary.⁹⁷ Unfortunately, governmental actions have so far fallen short of the comprehensive panacea proposed by the Committee, lending credence to the belief that the government itself, or the leading political gladiators of the dominant ruling class, might be profiting from habitual subversion of the electoral process.

The Vice Chancellor, the undying theme of my odyssey in the academia is the exploration of the different dimensions of the inextricable links between the legal and political processes within the context of Nigeria as an emerging African democracy.

The book is far from closed on this theme that is generating varying degrees of interests and perceptions, in the light of past experiences and current happenings. Several questions have remained unanswered while emerging issues are addressed on an ongoing basis within the limits of resource availability and constraints. While the fairly stable democracy of the Fourth Republic has provoked considerable interests in the study of the legislature, with increased funding and other opportunities, perhaps, the same cannot be said of the burgeoning field of judicial studies. Yet, it is more than pertinent now than before that we need sustained scholarly efforts to explore the courts as a sub-system of the larger political environment. I have striven in the last couple of years to raise the bar of inter-disciplinary study of politics and law but more still needs to be done. I therefore beg to canvass increased funding, adoption of inter-disciplinary exchanges, and, perhaps, creation of specialised centres, postgraduate programmes and academic journals as the irreducible minimum for deeper knowledge of, and reflections on, the place of the judiciary and the legal process in the functioning of the Nigerian political system.

Judicialisation of Politics

Any analysis of political developments in Nigeria since the advent of the current Fourth Republic will definitely reveal a more visible role than hitherto for the judiciary in the dynamics of politics. This is no less a creation of the judiciary itself as of the gladiators of the political class who have developed the penchant to subject virtually every leading issues of political controversy to the test of judicial determination. As individual and institutional actors become more conscious of the courts' pronouncements in their political behaviour, the tendency towards judicialisation of politics,⁹⁸ under the rule of law, presents for the Nigerian courts opportunity for operational dynamism and expansion.

An enabling environment exists for the judiciary to be so involved.⁹⁹ The 1999 Constitution of the Federal Republic of

Nigeria, like the preceding 1979, 1989 and 1995 (draft), gives the Nigerian courts a wide operational framework not only for judicial officers to perform their adjudicative functions, but also for them to play a proactive role in regulating the patterns of our political exchanges. Apart from expressly vesting the judicial powers in the courts,¹⁰⁰ and declaring its own supremacy to all governmental actions and inactions,¹⁰¹ The Constitution extends the province of adjudication to “all inherent powers and sanctions of a court of law”,¹⁰² with finality of human decisions resting with the Supreme Court of Nigeria.¹⁰³ The wide operational base afforded judicial review under the constitutional law of Nigeria is further strengthened by prohibition of privative and retroactive legislations,¹⁰⁴ save as permitted by the Constitution itself,¹⁰⁵ as well as security of tenure of judicial officers.¹⁰⁶ Apart from the power to void legislative enactments and executive actions for want of constitutionality, the Constitution further draws the courts to the theatre of political controversies by the provisions for judicial enforcement of constitutional limitations and restraints,¹⁰⁷ constitutionally prescribed procedure for exercise of governmental powers,¹⁰⁸ validation of the electoral process and determination of tenure of elected officials,¹⁰⁹ as well as resolution of inter-and intra-governmental conflicts.¹¹⁰

The matters that the Constitution expects the courts to resolve as listed above are generally political, and judicial officers cannot be expected to resolve such issues without being smeared with the murky waters of politics, no matter how cautious they appear to be. Refusal to intervene in such issues, whether in deference to the notion of separation of powers or the judicial avoidance technique of dodging direct collision with the political authority, may even be attacked as an abdication of their constitutional duty. In the circumstances, judicialisation of politics has tended to ‘lift the veil’ and expose the political character of judicial decisions.

Judges are no less politically active than their fellow countrymen. As ordinary citizens, they participate in politics,

political participation defined in the widest sense to mean “activity by private citizens designed to influence government decision-making”.¹¹¹ They play the supportive role of sustaining the political system through the performance of their civic duties and obligations such as those of paying taxes, discussing politics, and seeking to influence voting decisions of their peers, family members and close associates (even if outside the prying eyes of the public). They also participate in such obvious political activities as voting. Even though most of these activities might be done behind closed doors, it would be too naïve of us as political analysts to assume that judges are as detached from their immediate environment as the nature of the judicial function suggests. They may even do more, and legitimately too. In reality, judges are not precluded from contributing to campaign funds or donating to a political party, as seemingly weird as this supposition may be. They may theoretically participate in such “unconventional”¹¹² political activities as strikes, protests and demonstrations. I will not stress the analysis too far, however, to accommodate direct participation of judicial officers in such visibly partisan activities as attending political rallies, putting on campaign materials, mounting the rostrum to campaign for candidates or political parties, standing as candidates for elections or holding political offices.¹¹³

While judicial officers are considered as participants in these spectator and transitional activities, to use the original terminology in Milbrath’s hierarchy of political involvement,¹¹⁴ it is in their indirect participation in the gladiatorial activities that the courts have made the most significant incursion into the arena of politics. These areas, hitherto the exclusive preserve of the majoritarian institutions, are no longer “no-go areas” for the Nigerian judiciary. The courts have pronounced on virtually every aspect of the political process, including party organisation, party primaries, nomination process, and installation and removal of elected officials. From an initial timidity reminiscent of its cautious but bold attempts at guarding the course of political developments during the latter part of the

military era,¹¹⁵ the judiciary, particularly through the Supreme Court and the Court of Appeal, is gradually becoming more assertive than before in governmental and political affairs. In the circumstances, one cannot safely describe the Nigerian judiciary as apolitical without some serious qualifications. A few examples of the bold descent of the judiciary into the arena of practical politics albeit indirectly through their decisions and other pronouncements, will suffice here.

Internal Affairs of Political Parties

Political parties originated as and remain instruments of democratic governance,¹¹⁶ and matters pertaining to their internal organisation and processes are within their exclusive power to determine.¹¹⁷ Such patently political processes as election into party offices, party organisation as well as nomination and sponsorship of candidates are considered as internal affairs of political parties in which the courts do not dabble.¹¹⁸ Thus, in *Musa v PRP*, the High Court of Lagos State refused to quash a resolution of a political party barring the Governors elected on the platform of the party from attending associational meetings of some Governors, insisting that as a “voluntary association ... the party is in its own right supreme over its own affairs” once the provisions of the party’s constitution are not violated and that “the court will not substitute its own will for that of a political party”.¹¹⁹

That was during the Second Republic. This is no longer the position of the courts as exemplified by the case of *Amaechi v INEC*,¹²⁰ a pre-election matter that dragged until the election was concluded and one of the disputants sworn into office. In this case, the People’s Democratic Party (PDP) substituted the name of Celestine Omehia for that of Rotimi Amaechi who overwhelmingly won the party’s gubernatorial primaries in Rivers State. In resolving the appeal and cross-appeals that got to it on the matter, a full panel of seven Justices of the Supreme Court unanimously validated the jurisdiction of the courts on such matters, notwithstanding the high political interest it

generated and the fact that the electoral process (the *res*) had been concluded. Similarly, in *Ugwuv Ararume*,¹²¹ the Court voided the substitution of the candidate by the PDP for not following the due process of law.

The Supreme Court held in the two cases that the claim of the action being an internal affair does not entitle a political party to violate the provisions of the extant law on substitution of candidates by political parties.¹²² The Supreme Court distinguished the *Amaechi* case from its previous decisions on the matter,¹²³ insisting (per Oguntade, JSC) that “there were no provisions of the Electoral Act similar to section 34(1) of the Electoral Act 2006 in force at the time these cases they relied upon were decided”.¹²⁴ It declared the substitution in the two cases invalid, and went further in the *Amaechi* case to declare that “it was in fact Amaechi and not Omehia who contested the election”¹²⁵ with the consequential order of declaring him the elected Governor of Rivers State.

Although the decisions of the Supreme Court in seeking to regulate the internal affairs of a political party was anchored on legal principles, for which it has equally been praised and vilified by analysts,¹²⁶ what interests me is the fact that the Court sounded convinced it could play such a leading political role of removing and installing a Governor. Hinging the departure from its previous decisions on “contemporary occurrences in the political scene”,¹²⁷ the Supreme Court chided political gladiators for attempting to frustrate the judicial process by legal and political means, in order to destroy the efficacy the Court’s judgment or “undermine judicial authority.”¹²⁸ It claimed to derive that power from the Constitution and “not at the sufferance or generosity of any other arm”.¹²⁹ Hitherto, the Court had defied controversies and reviewed the decisions of the political institutions in the removal of Governors Ladoja (Oyo), Dariye (Plateau) and Obi (Anambra).¹³⁰ The decisions in these cases did help to stem the gale of midnight impeachments that threatened the stability of the democratic process in the past. The courts are now intervening again to help curb the spate of

democratic deficits suffered as a result of the legislative rascality witnessed in the recent times in Adamawa and Nasarawa States and speculated in a few other States.¹³¹ In fact, the behaviour of the legislators in recent times may rob the institution itself of the mutual understanding and respect hitherto accorded the internal affairs of legislative houses by the courts.¹³²

Intra-Executive Relations

The courts have equally been forthright in regulating intra-executive relations, notwithstanding their avowed respect for the principle of separation of powers.¹³³ The case of *A-G Federation v Abubakar*,¹³⁴ which dwelt on the power of the President to dispense with the service of an elected member of the executive, readily comes to mind. In the case determined by the full court, the Supreme Court held that the President had no power to declare the office of the Vice President vacant or withdraw, tamper or interfere with or violate the immunity and other rights, privileges and entitlements of the office. The Court granted the reliefs sought by the Respondent in part but seized the opportunity of the three appeals and one cross-appeal filed to pronounce on the nature of the relationship that should exist between the President and the Vice President, and thereby laid some guidelines for intra-executive relations with regard to the limits of the respective powers of the political organs. The Court emphasised the unity of the executive as the cornerstone of the presidential system and held the executive power vested in the President only, with no specific role for the Vice President except what is assigned by the President who may withdraw such assignment at will. While not expecting the Vice President to be a slave or a robot with no opinion of his own, the Court held nonetheless that the executive was expected to work harmoniously and the Vice President could not be expected to dissociate himself from the collective responsibility of the executive of which he was a part. But “unlike the Ministers, the Vice President cannot be removed by the President”,¹³⁵ and the Court itself could not do so.

Installation and Dissolution of Governments

The cases reviewed above directly or indirectly touched on the vexed issue of the right to political participation. However, more germane to the power exercisable by the courts in the making or unmaking of governments are matters pertaining to tenure of political office-holders, qualification and disqualification of candidates for election or validity of the electoral process itself.¹³⁶ These include the power to install or dissolve governments, or install or remove elected officials. The election petition cases that brought Obi (Anambra), Mimiko (Ondo), Oshiomhole (Edo), Fayemi (Ekiti) and Aregbesola (Osun) to power best exemplify the extent and limits of the power of the judiciary to control the ingress and egress to the corridors of power. Only a few of the cases will be reviewed here. In *Ngige v Obi*,¹³⁷ the Court of Appeal (Enugu Division) unanimously voided the return by INEC of Dr. Ngige as the winner of the gubernatorial election held in Anambra State on the 19th April, 2003, declaring Peter Obi as the duly elected Governor. Also, in the consolidated cases of *INEC v Oshiomhole*,¹³⁸ the Benin Division of the same court voided the purported election of Senator Prof Oserheimen Osunbor on the 14th April, 2007 in favour of Comrade Oshiomhole. Similar decisions were taken in the cases involving Governors Fayemi¹³⁹ and Mimiko.¹⁴⁰ But, it was the case of *Aregbesola v Oyinlola*¹⁴¹ that generated the greatest controversies, lasting an upward of 42 months of political intrigues and legal rigmarole involving trials and retrials, allegations of corruption, dissolution and re-composition of panels, manipulation of exhibits, and unethical communication between counsel and judges, among others.¹⁴² In fact, the hearing and determination of gubernatorial petitions, a multi-billion Naira business, is fast becoming one of the most lucrative briefs that anyone could get involved in, fuelling the suggestions that appeals in such cases should not terminate at the Court of Appeal but rather at the Supreme Court. Such an action may further compound the heavy workload of the apex court.¹⁴³

Short of election petitions, the courts have also intervened to determine the tenure of office of political office holders. In *Obi v INEC*, the Supreme Court declared that the sitting Governor of Anambra State had not exhausted his tenure on 14th April 2007 when another election was conducted by INEC into the same office and therefore ordered Dr. Andy Uba to vacate the office “with immediate effect”.¹⁴⁴ It was also by the fiat of the Supreme Court that the attempts by Governors Idris (Kogi), Wamakko (Sokoto), Nyako (Adamawa), Imoke (Cross River) and Sylva (Bayelsa) to elongate their respective tenure were thwarted.¹⁴⁵ The decisions have also generated considerable legal and political controversies.¹⁴⁶

The above exposition demonstrates the willingness of the Supreme Court and the Court of Appeal, within the contexts of the expansion in the power of the judiciary afforded by the emerging democratic dispensation, to venture into issues within the realms that were hitherto the exclusive preserve of the political organs. Virtually all the constitutional provisions that touch the power of the judiciary have been pronounced upon, and in favour of expanding role for the courts in the politics and governments of Nigeria. The courts have, however, been cautious enough not to permit an abuse of the judicial process in furtherance of political agenda, such as when in *Oni v Fayemi*,¹⁴⁷ both the Court of Appeal and the Supreme Court refused to review the final decision of the Court of Appeal on the election petition on the 2007 gubernatorial election in Ekiti.

The judiciary seems committed to deepening the democratic process through promotion of the rule of law and protecting the civil and political rights of the citizens. But not so much commitment has been demonstrated for protecting social and economic rights. In this respect, the courts have consistently refused to hold as inviolable the provisions of the Constitution on the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution.¹⁴⁸ In the same manner, the courts have failed to hold usurpers of political powers to account by their interpretative dispositions towards the

provision of s. 6(6)(d), enshrined in the Constitution to protect the acts of the military rulers, howbeit unsustainable under the current regime,¹⁴⁹ on the reasoning that “the courts cannot ... arrogate to themselves power which the Constitution, the source of their own power, has excluded from them”.¹⁵⁰ Similar reasons have been given to preserve the immunity clause in Section 308 of the Constitution despite obvious abuses of the spirit of the Constitution in this regard.¹⁵¹

The question is, why have the courts not been as forthright on these other issues as they have been in the protection of civil and political rights? The easiest escape route is to refer to the ouster clauses in the Constitution.¹⁵² However, such disparity of judicial approaches raises concerns about ideological dispositions of the courts as a guide to judicial decision-making. Although not yet a focus of political analysis in Nigeria,¹⁵³ evidence from other jurisdictions suggest that backgrounds of judicial officers do reflect in their decisions.¹⁵⁴ Further studies may bring to the fore discussions on the role of judges as policy makers, by seeking to explain why the Nigerian courts have used their power to advance democracy and the rule of law while adopting judicial avoidance techniques (jurisdiction, *locus standi*, rules of practice and procedure and of evidence) to entrench *laissez faire* policies. For now, recourse to the transnational framework provided by the emergence of the ECOWAS Court remains the soothing balm for the advocates of socio-economic and political rights.¹⁵⁵

Judicial Independence and the Rule of Law

The expanding power of judicial review afforded the Nigerian courts under the current democratic dispensation has tremendous implications for both the judiciary and the political system. A virile judiciary is a veritable instrument for bringing sanity into the practice of democracy. The decisions of the Supreme Court and the Court of Appeal referenced above point to a determination on the part of the judiciary “to take the unruly Nigerian political bull by the horns, and take over the abandoned

driving seat of democracy”.¹⁵⁶ But the operational dynamism of the law courts and their ability to serve as veritable checks on the excesses of the political class are a function of its relationship to its patently political peers – the legislature and the executive. It is for this reason that the issue of independence of the judiciary has been a major concern to successive generations of Political Scientists and legal scholars, including two of my senior colleagues here at Ilorin.¹⁵⁷

Although the idea of judicial independence enjoys near-universal acceptability, the question of what level of involvement is required of the legislature and the executive in the functioning of the judicial system has defied a single approach. In the US, for instance, judicial independence is assured by a system that gives “individual judges enormous independence while placing them within an institution that is highly susceptible to political control”.¹⁵⁸ In Nigeria, the notion of the apolitical judiciary, a part of our British colonial heritage, compel us to view judges as persons who should not participate in politics. This has necessitated the adoption of several policy measures, since Independence in 1960, to insulate the members of the bench from the vagaries of practical politics.¹⁵⁹ But then, the reality on ground did not follow that pattern, due to a number of factors, aggravated by the military incursion into politics. In fact, the greatest challenge to the operational dynamism and performance of the Nigerian judiciary has been the long years of military rule (1966-1979 and 1984-1999).

The law-making institution of the military regimes (variously designated as the Supreme Military Council, Armed Forces Ruling Council, National Security and Defence Council, and Provisional Ruling Council)¹⁶⁰ used its main legal instrument of governance (Decrees and Edicts) to effectively hamstring judicial power by a number of court-curbing measures.¹⁶¹ For a Nigerian judiciary that has operated under an atmosphere of unfettered power for upward of a century, such a restriction on the power of the courts could not but set the stage for conflicts between the judicial and the political authorities. The challenge

to military dictatorship embedded in the decision of the apex court in *Lakanmi v A-G, West* and the forceful response of the military in annulling that and subsequent decisions,¹⁶² thereby redefining the *grundnorm* in Nigeria,¹⁶³ marked one of the lowest ebbs in the relationship between the two governance institutions in the history of Nigeria until the temporary relief provided by the 1979 Constitution. While it lasted, the military regime left some legacy that continues to impact on our legal and constitutional systems for years.

While the 1979 Constitution as amended sufficed as an enabling framework, other developments within the domestic and the international arena from about the mid-1980s provided additional impetus for expansion in the power of the judiciary. The ascension of Mikhail Gorbachev to the position of the Secretary-General of the Communist Party of the Soviet Union (CPSU), the introduction of perestroika and glasnosts, the collapse of the Union of Soviet Socialist Republics (USSR), the fall of the Berlin wall, the collapse of the communists regimes in Eastern Europe and the dismantling of communism internationally, were important developments that reverberated across the world and impacted significantly on national and international politics.

Globalisation and the move towards openness and transparency in governance, advancement of the rule of law and fundamental freedoms and the global (third) waves of democracy, gave impetus for an expanded power for the judiciary. In Africa, the advent of the 1990s witnessed greater demands for politics of inclusion, governmental accountability, freedom of the press, respect for human rights, and demands for democracy. More than that, some international treaties assisted the Nigerian courts in extending the frontiers of judicial review. The domestication of the Banjul Charter,¹⁶⁴ the creation of the ECOWAS Court, and the advent of the African Union and adoption of various conventions and protocols on good governance, democracy and the rule of law provided the needed framework for expanded judicial power as Nigeria returned to

civil rule in 1999 under a new presidential Constitution. My scholarly attempts to examine the wider implications of these developments in terms of the role that transnational institutions could play in the furtherance of democracy and the rule of law, in Nigeria in particular and Africa in general, are not reported in this Lecture for lack of time and space.¹⁶⁵

The visibly assertive role of the judiciary in high profile political cases has the implication of exposing judges to scrutiny and criticisms, including threats of physical attacks as recent developments in Ekiti State disturbingly suggest.¹⁶⁶ But more significant is the implication of the ensuing scenarios for the judiciary as an institution. Since judicialisation portends that all political actions and inactions would remain tentative until authoritatively sanctioned by the courts, scramble for control of the machinery of justice would become more intense than had been before now. The struggle for control of the judiciary may in itself threaten the independence of the institution since for the political class recourse to the courts for resolution of conflicts becomes politics by other means. The series of crises that have engulfed the Court of Appeal in the recent times, which found its greatest casualties in the suspension of Justice Isa Ayo Salami as the President of the Court and exposure of the National Judicial Council (NJC) to political intrigues, attest to this fact. The judiciary may get caught in the exchanges of fire in intense political struggles, with attendant smearing of the judiciary with the murky water of politics. This calls into question the necessity for allowing the judiciary to dabble at the 'political question' in the first instance. It also raises the issue of the extent to which the judiciary can, in reality, be insulated from the vagaries of politics.

Threats to the independence and integrity of the judiciary have spanned the different phases of "our march to constitutional democracy,"¹⁶⁷ triggering the delusion, persistent since the early 1990s, that independence of the judiciary requires that judicial appointments be wholly controlled by nominees of the Bar and the Bench, with minimal input from the political authorities.

Thus, by the recommendations of 1994-95 Constitutional Conference,¹⁶⁸ anchored on the need to depoliticise the judicial appointment process, insulate judges from political influence and enhance the integrity of the judiciary, a National Judicial Council (NJC) was created.¹⁶⁹ Such fears are not peculiar to Nigeria.¹⁷⁰ The desire to take judicial appointments from the clinging hands of an overbearing executive led the UK to enact the Constitutional Reform Act 2005,¹⁷¹ with provision for a Judicial Appointments Commission (JAC), which is virtually becoming the *de facto* appointing authority in senior judicial appointments. But there is nothing to suggest that judges would be apolitical simply because they are self-appointed. The National Judicial Council (NJC) itself, as recent developments indicate, has got immersed in the so-called murky waters of politics, making the hope for an apolitical judiciary furlong. It now seems that the futile attempt to shield the judiciary from control by the political class has steered us into creating a body, wholly composed of the high and mighty of the Bar and the Bench, which is gradually tending to be more Catholic than the Pope in the web of political intrigues and controversies.

The creation of the NJC was an attempt to turn separation of powers on its head. The doctrine, whether in its classical or modern conception,¹⁷² does not entail compartmentalisation that could make any organ of government a lord unto itself. Separation of powers imports checks and balances. Thus, an institution composed wholly of members of the bar and bench, whose membership is controlled overwhelmingly by a single individual (the Chief Justice of Nigeria), who also wields considerable influence in the Legal Practitioners Privileges Committee and the Body of Benchers,¹⁷³ cannot be an instrument for the promotion of checks and balances in government. The earlier the institution is reformed for greater political control, the better. Otherwise, the NJC may soon find itself embroiled in some self-inflicted crisis, with serious consequences not only for the judiciary but for the rule of law and the entire political system.

A call for a reform of the NJC should not be interpreted to mean a call for manipulation of the machinery of justice to serve political ends. With 21 years at the bar, I cannot be seen to denigrate the bench. But the truth is that there is a clear difference between independence of the Judges as individuals and independence of the judiciary as an institution. The administration of the judiciary cannot and should not remain unaccountable to the political organs, particularly the legislature, which should continue to perform its oversight role in the appointment, finance and removal of judicial officers. But Judges, once appointed, should remain independent in the performance of their judicial functions by security of tenure, proper funding and non-interference, political or otherwise, in the discharge of their judicial functions. Independence of the judiciary does not distract from the demand for accountability from all the institutions of governance

To the courts, and not to any other organ or institution of governance, belongs the duty of creating confidence in the judiciary. Of course, court decisions, particularly those with high political contents, are bound to generate heated comments and insinuations, in the same way that confidence in the US Supreme Court was visibly shaken consequent upon the 5-4 decision in the “presidential election petition” case of *George Bush v Al Gore*.¹⁷⁴ But when faced with such portentous situations, the courts must be able to play the kind of constrained politics of constitutionality and the rule of law, far from the partisan, often with impunity, politics played by the political organs of government. It could thereby earn the trust of the Bar, the Press and the general citizenry for the defence of its cause. But those expected to defend the judiciary must demand accountability from the institution itself. This is because, for the judiciary and other stakeholders in the business of governance, it is justice (and not judicial independence, legislative supremacy, or executive immunity inherent in our shared value of democracy) that is the end-goal. The desirable end-goal is an efficient and effective system of adjudication. If the end of justice demands

that the judiciary is not a lord unto itself, as the present operation of the NJC seems to suggest, so be it. The judiciary must remain subservient to the goal of justice; otherwise the independence of the judiciary will remain meaningless. It is therefore in the existence of democratic accountability and not a lack of it that we can be assured of the needed “trust, confidence and mutual respect”¹⁷⁵ among the three arms of the government.

Conclusion

The relationship between Political Science and Public Law is intertwined, complex and inseparable. The two disciplines are conjoined fields of study which, like any attempt at disambiguation of “Siamese twins”,¹⁷⁶ cannot but remain herculean. The courts, particularly when exercising constitutional jurisdictions, are politically significant institutions of governance, democratic or otherwise, and, hence, incapable of being insulated from the vagaries of day-to-day practical politics. The inextricable link between politics and law is never static but rather fluid, responding at different times and climes to the dominant issues and ideas of the days. Rather than seeking to detach the judiciary from politics or remove politics from the judiciary, which our experiences show has been impossible to achieve in reality, we should rather accept the fact and seek mutual accommodation. That is the only way the anarchy and disorderliness of politics could be “punctuated by justice, fairness and orderliness”.¹⁷⁷ Harmonious intra-governmental relations require an acceptance of the fact that the judiciary is one of the tripod on which the political process rests. What remains is how to construct patterns of relationships among the three organs that no one of them could render the other prostrate. The path of political stability and economic prosperity lies not in crack isolationism but rather constructive engagement among the organs of governance, with the full awareness that for each one of them the law is as relevant as the politics in their mutual and unavoidable interactions.

Acknowledgments

Many individuals have made such memorable marks of history in my life that I could not afford to mention them all in a treatise of limited space and duration like this. I seek your permission, the Vice Chancellor, to mention a few of those relevant to the event of today, while I pray to Allah to make me live long enough in good health to write memoirs that could catalogue my debts of gratitude:

- * Alhaja-Agba Rainat Adebola Alabi, the mater familias of the late Alhaji Lamidi Oladipupo (ibn Zubayr) Alabi family, who gave birth to me and has remained my strongest pillar of support, and all those with whom I am bound in eternal relationships of blood as the gifts of God to me as I am to them;
- * Alhaja Silifat Olarika Alabi and our children – Safiyyah (Mrs Hammed), Ashraf, Fayzah, Aminah and Abdullah, for calmly bearing the brunt of my itinerant nature as I traverse the worlds of academics, legal practice and practical politics;
- * Dr Anthony A. Oyewole, my teacher, mentor and friend, who instilled in me the virtue of academic integrity, notwithstanding the wide differences (often accompanied by intense arguments) between a Catholic teacher and a fundamentalist Muslim student. He advised me on his retirement from Obafemi Awolowo University in 1995 never to beg for promotion. That admonition continues to guide my lifepursuits;
- * The trio of Professors Oye Ogunbadejo during whose headship I was appointed into the University system, Leo Dare who facilitated my return to the University after my first stint with practical politics, and Yomi Durotoye, my MSc Supervisor and ‘Egbon’ who has continued to enrich my library with free gifts of books whenever I visit him in the United States;
- * The duo of Professors Adekunle Amuwo (University of Ibadan) and Erika Szyszczak (University of Leicester) who

supervised my PhD Political Science (2000) and PhD Law (2013) theses respectively and who taught me the academic virtue of being a Supervisor without turning your Supervisee into an errand boy or girl as some of our colleagues who went through the rigours of PhD have sometimes lamented;

- * Professors Wahab Egbewole and Is-haq Oloyede *OFR*, my MSSN brothers who facilitated my joining the staff of the University of Ilorin, for their continued faith in the brotherhood;
- * My senior professorial colleagues in the Department, A. E. Davies and H. A. Saliu, who, by their joint and several recommendations in 2010, even while on Leave of Absence in faraway Tangiers, eased my path to professorial elevation;
- * My immediate predecessors and successors as HOD Political Science here at the University of Ilorin, at different times Dr (Mrs) A. J. Omede, Dr E. O. Ojo and Dr F. A. Aremu, for the cooperation and camaraderie that ensured smooth transition at all times;
- * Academic colleagues elsewhere who believed in my ability and gave the needed encouragement: Emeritus Professor D. A. Ijalaiye who supervised and fell in love with my LLM projecting 2006 and Professor Ademola Popoola, both of the Obafemi Awolowo University; the late Professor John Ademola Yakubu of the Faculty of Law, University of Ibadan, who insisted on the publication of my first PhD thesis for wider audience; Professors Adigun Agbaje, Bayo Okunade and Labode Popoola, all of the University of Ibadan; Professor Jide Owoeye (Lead City University); Professor Solomon Akinboye (University of Lagos); Professor Shehu Salihu Muhammad (Usmanu Dan Fodiyo University); and Professor Bamidele Ojo (Fairleigh Dickinson University);

- * My political leaders and associates who continue to tolerate my seemingly complacent dispositions towards power and fame;
- * Junior colleagues and the several students that I have taught and supervised, for enduring the “pains” of my strict mentorship;

Finally, I thank my Creator, the Almighty Allah, the only “Mr Fix It”, Who arrogates to Himself only the power to make things happen if, as and when He pleases (Al-Qur’an 3:26). I thank Him for the way He has used His indelible ink to draw the patterns of my life – a man of modest aspirations, of modest means, and of modest achievements. May He continue His *rahma* on me and mine, and on you and yours. Amin

References

1 [http://www2.ul.ie/web/WWW/Administration/
Ceremonies/Inaugural Lectures](http://www2.ul.ie/web/WWW/Administration/Ceremonies/Inaugural_Lectures), accessed 22/09/2014

2 [http://www.ed.ac.uk/schools-
departments/informatics/news-events/inlecture/overview](http://www.ed.ac.uk/schools-departments/informatics/news-events/inlecture/overview),
accessed 22/09/2014

3 [http://www3.imperial.ac.uk/events/collegespecial
andinaugurallectures](http://www3.imperial.ac.uk/events/collegespecialandinaugurallectures), accessed 22/09/2014

4 Except that of 2014, which I got from the Department, the number of BSc Political Science graduates (1995-2013) was retrieved from the records of the Academic Planning Unit of the University. See University of Ilorin, *Statistical Digest*, 1976/77-2000/2001 and 2001/2002-2009/2010 eds; University of Ilorin, *Convocation Ceremonies Order of Proceedings*, for the various years up to 2013

5 See, generally, Steven M Cahn (ed), *Classics of Political and Moral Philosophy*, Oxford: Oxford University Press, 2002; Kevin Burns, *Eastern Philosophy: The Greatest Thinkers and Sages from Ancient to Modern Times*, Arcturus Publishing, 2006; Ibn Khaldūn, N. J. Dawood, Bruce Lawrence and Franz Rosenthal, *The Muqaddimah: An Introduction to History*, Princeton University Press, 2004

6 <http://www.lawandpolitics.org/about>, accessed 6 September 2014

7 See Martin Loughlin, *The Idea of Public Law*, Oxford: Oxford University Press, 2003; *Foundations of Public Law*, Oxford: Oxford University Press, 2010

8 [http://www.britannica.com/EBchecked/topic/
467721/political-science](http://www.britannica.com/EBchecked/topic/467721/political-science), accessed 18 may, 2014

9 Goodin, Robert E and Hans-Dieter Klingemann (eds), *A New Handbook of Political Science*, Oxford University Press, 1998

10 Harlow, Carol and Richard Rawlings, *Law and Administration*, 3rded, Cambridge: Cambridge University Press, 2009

-
- ¹¹ Neil MacCormick, *Legal Right and Social Democracy: Essays in Legal and Political Philosophy*, Oxford University Press, 1982
- ¹² Shirley V. Scott, "International Law as Ideology: Theorising the Relationship between International Law and International Politics", *European Journal of International Law*, Vol 5 No 3, 1994, p 313-325
- ¹³ See, e.g., Michael J Perry, *Human Rights in the Constitutional Law of the United States*, Cambridge: Cambridge University Press, 2013
- ¹⁴ Faculty of Law, University of Ilorin, *Academic Brief Submitted to the Council of Legal Education on Accreditation Visit*, November 2010, p 1
- ¹⁵ "History - Prologue: Political Science, a Post-war Product (1947-1949)", available at <http://www.ipsa.org/history/prologue>, accessed 6 September, 2014
- ¹⁶ The Faculty of Law at University of Ibadan was created in 1984, having been upgraded from the Department of Law created in 1981 within the Faculty of the Social Sciences. See <http://law.ui.edu.ng/history>, accessed 23/09/2014
- ¹⁷ See Julius A. Okojie, "Licensing, Accreditation and Quality Assurance in Nigerian Universities: Achievements and Challenges", *Paper presented at a session of the 2008 CHEA Summer Workshop*, available at http://www.chea.org/pdf/2008_SW_Julius_Okojie_paper.pdf, accessed 01/10/2014
- ¹⁸ University of Ilorin, *Academic Programmes (Undergraduate & Sub-Degree) 2003-2006*, Ilorin: Senate Committee on Review of Academic Programme, p 421, 424, 428-432; University of Ilorin, *Academic Programmes (Undergraduate & Sub-Degree) 2009-2013*, Ilorin: Senate Committee on Review of Academic Programme, p 377-379, 384, 635-636, 641-644, 645
- ¹⁹ Faculty of Law, University of Ilorin, *Academic Brief Submitted to the Council of Legal Education on Accreditation Visit*, November 2010, p 5

-
- 20 “History - Contributing to the Intellectual Advancement of
Political Science”, available at
<http://www.ipsa.org/history/contributing-to-political-science>,
accessed 6 September, 2014
- 21 Gunnel, John G, “The Founding of the American Political
Science Association: Discipline, Profession, Political Theory,
and Politics”, *American Political Science Review*, Vol 100 No 4,
November 2006, p 479 (479-486)
- 22 Lee Sigelman, “Introduction to the Centennial Issue”,
American Political Science Review, Vol 100 No 4, November
2006, p viii (iii-xiv)
- 23 Dryzek, John S, “Revolutions Without Enemies: Key
Transformations in Political Science”, *American Political
Science Review*, Vol 100 No 4, November 2006, p 487 (487-
492)
- 24 Ishiyama, John, MarijkeBreuning, Linda Lopez, “A Century of
Continuity and (Little) Change in the Undergraduate Political
Science Curriculum”, *American Political Science Review*, Vol
100 No 4, November 2006, p 659-665
- 25 For modern revisions to the original notion of parliamentary
supremacy in its pristine or orthodox form, see Stuart Lakin,
“Debunking the Idea of Parliamentary Sovereignty: The
Controlling Factor of Legality in the British Constitution”,
Oxford Journal of Legal Studies, Vol 28 Issue 4, 2008, p 709-
734
- 26 Law & Courts, as an organised section, has since grown to
become “one of the APSA’s largest sections”. See
<http://lawcourts.org/>, accessed 01/10/2014
- 27 See Gavin Drewry, “Political Institutions: Legal Perspectives”,
in Good in and Klingemann, op cit. See also ²⁷*International
Political Science Review*, Vol. 15 No 2), April 1994
- 28 See Mattei Dogan, The Hybridization of Social Science
Knowledge, [https://www.ideals.illinois.edu/bitstream/handle/
2142/8090/librarytrendsv45i2l_opt.pdf?sequence=1](https://www.ideals.illinois.edu/bitstream/handle/2142/8090/librarytrendsv45i2l_opt.pdf?sequence=1),
accessed 14/10/2014

-
- 29 Whittington, Keith E, *Law and Politics*, Routledge, 2013
- 30 Alabi, Mojeed Olujinmi, "Continuity and Change in Voting Behaviour in Oyo State: A Case Study of 1979 and 1983 Gubernatorial Elections in Ejigbo", *B.Sc. Long Essay*, University of Ife, June, 1984
- 31 Alabi, M O, "The Colonial Origins of the Underdevelopment of African Nations", in Bayo Lawal and Kola Olugbade (eds), *Issues in Contemporary African Social and Political Thought: Readings for Colleges and University Vol I*, Ibadan: Vantage Publishers, 1989, p 183-189
- 32 Alabi, M O, "Early Resistance to Colonialism in Africa", in Lawal and Olugbade, op cit, p 160-171
- 33 Alabi, M O, "The Relevance of O.A.U. to the Maintenance of World Order", in Lawal and Olugbade, op cit p 206-215
- 34 See Michael P Todaro and Stephen C Smith, *Economic Development*, 12thed, Prentice Hall, 2012; Claude Ake, *A Political Economy of Africa*, London: Longman, 1981; Bade Onimode, *Imperialism and Underdevelopment in Nigeria*, London: Macmillan, 1983; Gavin Williams, *State and Society in Nigeria*, Idanre: Afrografika, 1980
- 35 Now a Professor and the Director of African Studies at Wake Forest University, Winston-Salem, NC, USA.
- 36 Alabi, M O A, "Agricultural Development Projects and Rural Transformation in Nigeria", in J O Abiodun (ed), *Issues in Urban and Regional Planning in Nigeria*, Ikeja: John West Publications Ltd, 1993, p 164- 185. See also Mojeed Olujinmi Alabi, "Aspects of Socio-Economic Impact of Oyo North Agricultural Development Project (ONADEP)", *MSc Long Essay*, Obafemi Awolowo University, Ile-Ife, March 1988
- 37 Mazrui, Ali A, "Constitutional Changes and Cultural Engineering: Africa's Search for New Directions", in J Oloka-Onyango (ed), *Constitutionalism in Africa: Creating Opportunities, Facing Challenges*, Kampala: Fountain Publishers, 2001
- 38 Alabi, Mojeed Olujinmi A, "Law Making in Pre-Colonial

-
- Yorubaland”, in Toyin Falola and Ann Genova (eds), *The Yoruba in Transition: History, Values, and Modernity*, Durham: Carolina Academy Press, 2006, p 111-124
- 39 Alabi, Mojeed Olujinmi A, “Transfer of Technology and the New International Economic Order: An Appraisal”, *Ilorin Journal of Business and Social Sciences*, Vol 11 No 1, 2006,p45-68
- 40 Alabi, Mojeed Olujinmi A, “UN Reforms: Withdrawal of Membership as an Option?”, *African Journal of International Affairs and Development*, Vol 13 Nos 1-2, 2008, p 66-93
- 41 Alabi, Mojeed Olujinmi A, *The Supreme Court in the Nigerian Political System 1963-1997*, Ibadan: Demyaxs, 2002.
- 42 Kasunmu, A B (ed), *The Supreme Court of Nigeria 1956-1970*, Ibadan: Heinemann, 1977
- 43 See Henry J Abraham, *The Judicial Process*, 6thed, NY: OUP, 1993; Henry J Abraham, *Justices and Presidents: A Political History of Appointments to the Supreme Court*, 2nded, NY: OUP, 1985; Glendon Schubert, *The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology*, NY: OUP, 1974; Sheldon Goldman and Thomas P Jahnige, *The Federal Courts as a Political System*, 2nded, NY: Harper & Row, 1976; Joel B Grossman and Richard S Wells (eds), *Constitutional Law and Judicial Policy Making*, NY: John Wiley, 1972
- 44 Griffiths, J A G, *The Politics of the Judiciary*, 4thed, London: Fontana, 1991; Bernard Crick, *In Defence of Politics*, 5thed, London: Continuum, 2000; Martin Loughlin, *Sword and Scales: An Examination of the Relationship Between Law and Politics*, Oxford: Hart Publishing, 2000. See also Adam Tomkins, “In Defence of the Political Constitution”, *Oxford Journal of Legal Studies*, Vol. 22 No. 1, 2002, p 157-175
- 45 Tate, C Neal and Torbjorn Vallinder (eds), *The Global Expansion of Judicial Power*, NY: New York University, 1995
- 46 Popoola, Ademola O, “Book Review: The Supreme Court in the Nigerian Political System 1963-1997”, *The Advocate* (Obafemi Awolowo University), Vol 22, 2004, p 124-125

-
- 47 Easton, David, *A System Analysis of Political Life*, NY: Wiley, 1965; David Easton, *A Framework for Political Analysis*, Englewood-Cliffs: Prentice Hall, 1965
- 48 Owoade, M A, "The Supreme Court in the Nigerian Political System: Demonstration of Scholarship in Public Law" (Book Review), *The Guardian*, Tuesday, November 5, 2002, p 79
- 49 Andy, Afinotan L, "Praetorianism and the Public Service: Analysis of the Impact and Consequences of Military Rule on Public Administration in Nigeria", *Canadian Social Science*, Vol 10 No 2, 2014, p 171-180
- 50 Alabi, *The Supreme Court ...*, p 226-227
- 51 Mohammed Bello (1987-1995), Muhammad Lawal Uwais (1995-2006), Salihu Moddibo Alfa Belgore (2006-2007), IdrisLegbo Kutigi (2007-2009), Aloysius Iyorgyer Katsina-Alu (2009-2011), Dahiru Musdapher (2011-2012), and Aloma Mariam Mukhtar (2012-)
- 52 *Balarabe Musa v Auta Hamza* (1982) 3 NCLR 229 at 245 (per Adenekan Ademola, JCA)
- 53 Nwabueze, *Nigeria's Presidential Constitution, 1979-1983*, London: Longman, 1985, p 334, 339; Adeoye A Akinsanya, "Impeachment of Governor Abdulkadir Balarabe Musa of Kaduna State", in A.A. Akinsanya and G J Idang (eds), *Nigerian Government and Politics, 1979-1983*. Calabar: Wugen Publishers, 2002, p 203-223
- 54 *Chief EnyiAbaribe v The Speaker, Abia State House of Assembly and another* (2002)
- 55 Fagbadebo, O, "Impeachment Procedure and Judicial Intervention in the Legislative Process in Nigeria", in M O A Alabi and W O Egbewole (eds), *Perspectives on the Legislature in the Government of Nigeria*, Tangier: African Training and Research Centre in Administration for Development (CAFRAD), 2010, p 145-168
- 56 See Mojeed Olujinmi A. Alabi and Ibrahim Imam, "Law and the Politics of Impeachment In Nigeria: Interrogating the Basis of Judicial Control of a Political Process" (forthcoming)

-
- 57 Alabi, Mojeed Olujinmi A, "Federal – State Relations in Nigeria: Judicial Interpretation", in Emmanuel O. Ojo (ed), *Challenges of Sustainable Democracy in Nigeria*, Ibadan: John Archers (Publishers) Ltd, 2006, p 235-245
- 58 Alabi, Mojeed Olujinmi A and O Fagbadebo, "State Houses of Assembly and Control of Local Government Administration in Nigeria", in Alabi and Egbewole, ante p 207-245
- 59 Laws, Stephen, "Legislation and Politics", in David Feldman (ed), *Law in Politics, Politics in Law*, Hart Publishing, 2013, p 87 (87-103)
- 60 Alexander Hamilton, "The Federalist No. 78: The Judicial Department", *Independent Journal*, Saturday, June 14, 1788
- 61 Montesquieu, Baron de, "Of the Constitution of England", in *The Spirit of the Laws*, 1748
- 62 See, eg, "Anyim Berates Presidency Over Neglect of Legislature, Judiciary", *Daily Times*, Friday, November 1, 2002, p 1
- 63 Egbewole, Wahab O, *Millennium Legislature of the Living Spring*, Ilorin, Intellectual Research Institute, 2003, p 49-62
- 64 CAFRAD, the African Training and Research Centre in Administration for Development (Centre Africain de Formation et de Recherche Administratives pour le Développement), based in Morocco since 1964, is a pan-African inter-governmental organisation founded by African countries under the auspices of UNESCO
- 65 Alabi, Mojeed Olujinmi A and Wahab O Egbewole, *Perspectives on the Legislature in the Government of Nigeria*, Tangier: African Training and Research Centre in Administration for Development, 2010
- 66 Alabi, Mojeed Olujinmi A, "The Legislature in National Politics: A Global Scan of Growth, Organisation, and Power", in Alabi and Egbewole, op cit p 13-45
- 67 Ibid, p 29
- 68 Allen, Graham, MP, "The British Presidency: Parliament's Position of Weakness", *The Parliamentarian*, 2002/2, p 176

-
- (176-178); Louis Fisher, *Constitutional Conflicts Between Congress and the President*, University Press of Kansas, 2014
- 69 Alabi, Mojeed Olujinmi A, "The Legislatures in Africa: A Trajectory of Weakness", *African Journal of Political Science and International Relations*, Vol 3 No 5, May 2009, p 233-241
- 70 Alabi, Mojeed Olujinmi A, "The Legislature in Nigeria: Origin, Powers and Challenges", in Hassan Saliu, Isah H. Jimoh, Noah Yusuf, and Emmanuel O. Ojo (eds), *Perspectives on Nation-Building and Development in Nigeria: Political and Legal Issues*, Lagos: Concept Publications Ltd, 2008, p 53-78
- 71 Alabi, Mojeed Olujinmi A, "State Houses of Assembly under the 1999 Constitution of Nigeria", in Mojeed Olujinmi A Alabi (ed), *Unbroken Legacy of Service: Speaker Bello's Twelve Years under Three Administrations in Osun State*, Ilorin: Intellectual Research Institute, 2011, p 167-189
- 72 Alabi, Mojeed Olujinmi A, "Civil Society Engagement of the Legislature in Nigeria: The Case of Osun State", In *Unbroken Legacy of Service*, p 276-309
- 73 Alabi, Mojeed Olujinmi A, "The Legislature and Intra-Governmental Relations in Nigeria", in Alabi & Egbewole, op cit, p 99-136
- 74 Mill, John Stuart, *Representative Government*, 1861, available at http://www.constitution.org/jsm/rep_gov.htm, accessed 30/09/2014
- 75 Alabi, Mojeed Olujinmi A, "'Quis Custodiet Custodes?' Interrogating the Scope and Limits of Legislative Power in a Nascent Democracy", in Alabi and Egbewole, op cit, p 279-313
- 76 Alabi, Mojeed Olujinmi A, "Emergency Powers in Nigeria: Legal and Constitutional Issues", *International Review of Politics and Development*, Vol. 3 No. 1, January 2005, p 20-41
- 77 Alabi, Mojeed Olujinmi A, "Strains and Stresses of Local Governance in Nigeria: An Assessment of the Presidential Model", *African Administrative Sciences*, No. 72, 2009, p 61-78
- 78 Bello-Imam, I B, "The Legislature: Its Role, Performance, Problems and Prospect in Nigeria", in I B Bello-Imam and M

Obadan (eds), *Democratic Governance and Development Management in Nigeria's 4th Republic, 1999-2003*, Ibadan: Centre for Local Government and Rural Development Studies, 2004

79 Lafenwa, S A, "Corruption and Developmental Challenges in Nigeria: The Role of the Legislature", in Alabi and Egbewole, op cit, p 239-270 ; R A Akindele, "The National Assembly and Nigeria" s Foreign Policy: An Explanatory Note on Legislative Role Marginalization in Nigeria", in B Akinterinwa (ed), *Nigeria's New Foreign Policy Thrust: Essays in Honour of Ambassador Oluyemi Adeniji*, CON, Ibadan: Vantage Publishers, 2004;

80 Okon, Bassey Antigha, Raphael Pius Abia, Omono Cletus Ekok and Bassey Umo Antigha, "An Examination of Causes and Consequences of Conflict Between Legislature and Executive in Cross River State, Nigeria", *Academic Journal of Interdisciplinary Studies*, Vol 2 No 1, March 2013, p 179-187

81 Fagbadebo, O, "Bureaucratic Challenge to Legislative Process in Osun State, 1999-2011", in *Unbroken Legacy of Service*, p 190-219

82 Egbewole, Wahab O and Olugbenga A Olatunji, "Financial Autonomy and Legislative Control of Public Funds in Nigeria: An Assessment of Osun State Experience", in *Unbroken Legacy of Service*, p 220-249

83 Akindele, S T and O Adeyemi, "Challenges and Impediments to the Legislature in Nigeria, 1999 – 2011", in *Unbroken Legacy of Service*, op cit, p 386-412; Olawale Rafiu Olaopa, "Legislative Experience, Political Commitment and Maturity as New Paradigms in Driving Democracy and Good Governance: The Case of Osun State", *Unbroken Legacy of Service*, pp 360-385

84 Alabi, Mojeed Olujinmi A and Joseph Yinka Fashagba, "The Legislature and Anti-Corruption Crusade under the Fourth Republic of Nigeria: Constitutional Imperatives and Practical

-
- Realities”, *International Journal of Politics and Good Governance*, Vol1 No 1.2, Quarter II 2010, p 1-39; Nlerum S Okogbule, "An Appraisal of the Legal and Institutional Framework for Combating Corruption in Nigeria", *Journal of Financial Crime*, Vol 13 Issue 1, 2006, p 92-106; I.S. Ogundiya, "Corruption: The Bane of Democratic Stability in Nigeria", *Current Research Journal of Social Sciences*, 2(4), 2010, p 233-241
- 85 Alabi, Mojeed Olujinmi A, "Extra-Territorial Approach to Anti-Corruption, Integrity and Public Service Ethics in Africa: A Review of Frameworks and Implementation Challenges", *Journal of Alternative Perspectives in the Social Sciences*, Vol 2 Issue 2, December 2010, p 495-522
- 86 See Simon Coldham "Legal Responses to State Corruption in Commonwealth Africa", *Journal of African Law*, Vol 39 Issue 02, Autumn 1995, p 115-126; John Mukum Mbaku, "Bureaucratic Corruption in Africa: The Futility of Cleanups", *Cato Journal*, Vol 16 No 1, Spring/Summer 1996, p 99.
- 87 Alabi, Mojeed Olujinmi A, "'Justice Denied': Problems and Prospects of Decongesting the Supreme Court of Nigeria", *Nigerian Bar Journal*, Vol. 3 No. 2, April 2005, p 51- 68
- 88 Alabi, Mojeed Olujinmi A, "Judicial Culture and Democracy in Nigeria", *Constitution*, Vol. 2 No. 4, June 2002, p 28 – 49
- 89 Alabi, Mojeed Olujinmi A, "Decision-Making in the Courts: An Appraisal of the Doctrine of Judicial Precedent", in Adedotun Onibokun and Ademola O. Popoola (eds), *Current Perspectives in Law, Justice and Development*, Demm-Ditt Projects, 2007, p 58-93

-
- ⁹⁰ See, generally, B O Nwabueze, *Military Rule and Constitutionalism in Nigeria*, Ibadan: Spectrum Law Publishing, 1992; A Ojo, *Constitutional Law and Military Rule in Nigeria*, Ibadan: Evans Brothers, 1987; Adeoti Gbemisola, "The Military in Nigeria's Postcolonial Literature: An Overview", *Revista EstudiosIngleses*, No 16, November 2003, p 6-45; S Adejumobi and A Momoh (eds), *The Political Economy of Nigeria under Military Rule (1984-1993)*, Harare: Space Books, 1995; A O Sanda, O Ojo and V Ayeni, *The Impact of Military Rule on Nigeria's Administration*, Ile-Ife: Faculty of Administration, University of Ife, 1987; O Oyediran, *Nigerian Government and Politics under Military Rule, 1966-79*, Macmillan, 1979; Okon Eminue, *Military in Politics*, Uyo: Soulmate Press & Publishers, 2006
- ⁹¹ See M O A Alabi, "Legal Framework for Freedom of the Press in Nigeria", *Journal of Law and Social Sciences*, Vol 1 No 1, April 2001, p 167-182
- ⁹² Alabi, Mojeed Olujinmi A, "Military Rule, Human Rights and the Judiciary in Nigeria", *Journal of Human Rights Law and Practice*, Vol. 3 No. 1,2,3, December 1993, p 201-215
- ⁹³ Alabi, Mojeed Olujinmi A, "Leadership Succession and Challenges of Governance in Nigeria", *African Administrative Studies*, No. 74, 2010, p 93-110
- ⁹⁴ Alabi, Mojeed Olujinmi A, "The Electoral Act 2006 and the Conduct of the 2007 Elections in Nigeria", in H A Saliu, I O Taiwo, R A Seniyi, B Salawu and A Usman (eds), *Nigeria Beyond 2007: Issues, Perspectives and Challenges*, Ilorin: Faculty of Business and Social Sciences, p 36-61
- ⁹⁵ Alabi, Mojeed Olujinmi A, "Electoral Reforms and Democratic Consolidation in Nigeria: The Electoral Act 2006", *CEU Political Science Journal*, Vol.4, Issue 2, April, pp. 278-304
- ⁹⁶ Report of the Electoral Reform Committee, chapter II (Executive Summary),par2.1(a),p 19
- ⁹⁷ Alabi, Mojeed Olujinmi A and Omololu Toluwanimi Omololu, "Uwais Report, Electoral Act 2010, and the Future of

-
- Democratic Elections in Nigeria”, in A I Layonu and A A O Adekunbi (eds), *Reflections on the Nigerian Electoral System*, Vol I, Ibadan: First Law Concept, 2012, p 207-236
- 98 For the different senses in which the term ‘judicialisation’ has been used in the literature, see Jasdeep Randhawa, “Understanding Judicialisation of Mega-Politics: The Basic Structure, Doctrine and Minimum Core”, *Jus Politicum*, available at <http://www.juspoliticum.com/Understanding-Judicialization-Of,411.html?artpage=2-8>, accessed 01/10/2014
- 99 Elsewhere, “liberal democracy, separation of powers, a politics of rights, interest group and opposition use of the courts, and frequently ineffective majoritarian institutions with limited public respect” has accounted for “substantial judicialisation”. See C Neal Tate, “The Judicialisation of Politics in the Philippines and Southeast Asia”, *International Political Science Review*, Vol 15 (2), April 1994, p 187-197
- 100 1999 Constitution, s. 6(1) & (2)
- 101 1999 Constitution, s. 1(1)
- 102 1999 Constitution, s. 6(6)(a)
- 103 1999 Constitution, s. 235
- 104 1999 Constitution, s. 4(8) & (9)
- 105 Alabi, Mojeed Olujinmi A, “Constitutional Exclusion of Judicial Review in Nigeria: The 1979 Constitution”, *LL.B Long Essay*, University of Ibadan, December 1989
- 106 1999 Constitution, ss. 291 & 292
- 107 1999 Constitution, ss. 1(3)
- 108 1999 Constitution, ss. 58, 59, 100, 143, 188 & 292
- 109 1999 Constitution, ss. 233, 239, 251(4), 272(3) & 285
- 110 1999 Constitution, ss. 232, 251(1), (272(1)
- 111 Uhlaner, C, “Participation: Political”, in N Smelser and P Baltes (eds), *International Encyclopedia of the Social and Behavioural Sciences*, Amsterdam: Pergamon, 2004, p 11078

-
- 112 Ruedin, D, "Testing Milbrath's 1965 Framework of Political Participation: Institutions and Social Capital", *Contemporary Issues and Ideas in Social Sciences*, December 2007
- 113 Even by the standards of the US where 'judicial elections' are permitted in some States, they are mostly not of a partisan character. See "Fact Sheet on Judicial Selection Methods in the States", http://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdam.pdf, accessed 26/09/2014. See also "Judicial Elections: Judging the Judges", *The Economist*, New York, November 24th, 2012
- 114 Milbrath, L, *Political Participation: How and Why Do People Get Involved in Politics?* Chicago: Rand McNally, 1965
- 115 Alabi, The Supreme Court ..., p 229-297. See also I E Sagay, "Appellate Courts as Catalysts for Democratic Consolidation and Good Governance", *The Nation* (newspapers), November 26, 2007, p 26
- 116 Alabi, MOA, "Political Parties in the Fight Against Corruption in Nigeria" (forthcoming)
- 117 Bille, Lars, "Democratising a Democratic Procedure: Myth or Reality? Candidate Selection in Western European Parties, 1960-1990", *Party Politics*, Vol 7 No 3, May 2001, p 363-380. See also Yael Shomer, "What affects candidate selection processes? A cross-national examination", *Party Politics*, Vol 20 No 4, July 2014, p 533-546
- 118 *Patrick Onuoha v R B K Okafor & ors* (1983) 2 SCNLR 244; ; *Dalhatu v Turaki & ors* (2003)15 NWLR (Pt 843) 310
- 119 *Balarabe Musa v Peoples Redemption Party (PRP)* (1981) 2 NCLR 763 at 769. Cited with approval in the recent case of *Mbanefo v Molokwu & Ors*, SC.238/2008, delivered 14th February, 2014, per Peter-Odili, JSC
- 120 *Rt. Hon. Rotimi Chibuike Amaechi v Independent National Electoral Commission & ors* (2008) 5 NWLR (Pt 1080) 227
- 121 *Engr Charles Ugwu & anor v Senator Ifeanyi Ararume & anor* (2007) 12 NWLR (Pt 1048) 367

122 Electoral Act 2006, s 34(1) & (2)
123 *Dalhatu v. Turaki* (2003) 15 NWLR (Pt 843) 310; *P C Onuoha v*
R B K Okafor (1983) SCNLR 244
124 Supra at 296 (per Oguntade, JSC)
125 Supra at 318 (per Oguntade, JSC)
126 J A Dada, “Amaechi vs PDP: A Critical Appraisal”, Nov 04,
2007, available at
[http://consciencedaily.com/index.php?option=com_content
&task=view&id=138&Itemid=42](http://consciencedaily.com/index.php?option=com_content&task=view&id=138&Itemid=42), accessed 26/09/2014
127 *Ugwu v Ararume*, supra at 461 (per Oguntade, JSC)
128 *Amaechi v INEC* at 322 (per Oguntade, JSC)
129 *Amaechi v INEC* at 324 (per Oguntade, JSC)
130 *Hon. Muyiwa Inakoju, Ibadan South East & 17 others v Hon.*
Abraham Adeolu Adeleke (Speaker) & 3 others (2007) 1 SC (Pt
I) 1; *Michael Dapialong & 5 others v. Chief (Dr.) Chibi Joshua*
Dariye & another(2007) 8 MJSC 140; *Hon Mike Balonwu & ors*
v Mr Peter Obi & anor (2007) 5 NWLR (Pt 1028) 488
131 See *The Punch*, Thursday, October 9, 2014, p 1. See also “Two
Nigerian Governors Face Impeachment Ahead of 2015
Elections”, available at
[http://www.voanews.com/content/two-nigerian-governors-
face-impeachment-ahead-of-twenty-
fifteen elections/1959917.html](http://www.voanews.com/content/two-nigerian-governors-face-impeachment-ahead-of-twenty-fifteen-elections/1959917.html), accessed 27/09/2014
132 See generally *M O Oloyo v B A Alegbe* (1985) 6 NCLR 61, *Chike*
Obi v Jalo Waziri (1961) All NLR 371, *Fajinmi v The Speaker of*
Western Region House of Assembly (1962) NSCC 144, and
Jideonwo & ors v Governor of Bendel State (1981) 1 NCLR 4
133 In *A-G, Eastern Region v A B Briggs* (1964) NSCC 242, the
Supreme Court of Nigeria stated that an action of a Governor
taken in pursuance of a constitutional order was immune
from judicial inquiry
134 *Attorney-General of the Federation & Ors v*
Alhaji Atiku Abubakar & ors (2007) 10 (NWLR Pt 1041) 1
135 Supra at 82 (per Akintan, JSC)
136 1999 Constitution, ss. 239, 251(4), 272(3) & 285

-
- 137 *Dr Chris Nwabueze Ngige v Mr Peter Obi &ors*(2006) 14 NWLR
(Pt 999) 1
- 138 *INEC &ors v Comrade Adams Aliyu Oshiomhole & ors* (2009) 4
NWLR (Pt 1132) 607
- 139 *Dr John Olukayode Fayemi & anor v Olusegun Adebayo Oni
&ors* (2010) 17 NWLR (Pt 1222) 326
- 140 *Dr Olusegun Agagu & ors v Rahman Olusegun Mimiko & ors*
(2009) 7 NWLR (Pt 1140) 342
- 141 *Rauf Adesoji A. Aregbesola & ors v Olagunsoye Oyinlola & ors*
(2011) 9 NWLR (Pt 1253) 458
- 142 See Ajibola Basiru and Kunle Adegoke, *The Return of
Oranmiyan: The Legal Battles to Reclaim Aregbesola's
Mandate*, Lagos: M A Banire and Associates, 2011
- 143 Alabi, *Justice Denied....* The CJN Mariam Aloma Mukhtar also
advised against such a course of action. See
[http://metrotimesng.com/2014/04/cjn-wants-guber-election-
petitions-to-end-at-appeal-court/](http://metrotimesng.com/2014/04/cjn-wants-guber-election-petitions-to-end-at-appeal-court/), accessed 27/09/2014
- 144 *Mr. Peter Obi v INEC &Ors* (2007) 11 NWLR (Pt 1046) p 565 at
646 (per Aderemi, JSC)
- 145 *Brigadier-General Mohammed Buba Marwa & anor v Admiral
Murtala Nyako & ors* (2012) 6 NWLR (Pt 1296) 199
- 146 See Ehi Oshio, "The Court of Appeal and the Case of the Five
Governors: The Unanswered Question", available at
[http://www.nigerianlawguru.com/articles/constitutional%20
aw/THE%20COURT%20OF%20APPEAL%20AND%20THE%20CA
SE%20OF%20THE%20FIVE%20GOVERNORS.pdf](http://www.nigerianlawguru.com/articles/constitutional%20aw/THE%20COURT%20OF%20APPEAL%20AND%20THE%20CASE%20OF%20THE%20FIVE%20GOVERNORS.pdf), accessed
02/10/2014
- 147 *Olusegun Adebayo Oni v Dr John Olukayode Fayemi & ors*
(2013) LPELR 20671 (SC); SC.221/2012, delivered 31st May
2013
- 148 *Attorney General of Ondo State v Attorney General of the
Federation &ors* (2002) LPELR 623 (SC); *Archbishop Olunmi
Okogie v Attorney-General of Lagos State* (1981) 2 NCLR 337
- 149 See *Attorney General, Lagos State v Justice L J Dosumu* (1989)
All NLR 504; (1989) 2 NSCC 545

-
- 150 *Prince Godfrey Kolawole Mustapha v Governor Lagos State &ors* (1987) 1 NSCC 632 at 645
- 151 *Chief Diepreye Solomon Peter Alamiyeseigha v The Federal Republic of Nigeria &ors* (2006) 16 NWLR (Pt 1004) 1.
- 152 See Mojeed Olujinmi A Alabi, "Fundamental Objectives and Directive Principles under the Nigerian Constitutional Law", *The Jurist* (University of Ilorin), Vol 11, 2006, p 077-082
- 153 For the profile of the Justices of the Supreme Court of Nigeria up to the advent of the Fourth Republic, see Alabi, *The Supreme Court...*, 2002, p 212-228, 349-350
- 154 See Tracey E George, "From Judge to Justice: Social Background Theory and the Supreme Court", *North Carolina Law Review*, Vol 86, 2008, p 1333-1368
- 155 See Mojeed Olujinmi A Alabi, "Analysis of the Role of the ECOWAS Court in Regional Integration in West Africa", Thesis submitted for the degree of Doctor of Philosophy at the University of Leicester, 2013
- 156 Sagay, I E, SAN, "Election Tribunals and the Survival of Nigerian Democracy", A Lecture Delivered at the Launching Ceremony of the Osun Defender on Tuesday, 26th February, 2008 at The Muson Centre, Lagos
- 157 See A Akinsanya, "The Nigerian Constitution and the Independence of the Judiciary", *Indian Journal of Public Administration*, Vol XXVII No 2, April-June 1981, p 355-375; Arthur E Davies, "The Independence of the Judiciary in Nigeria: Problems and Prospects", *African Study Monographs*, 10 (3), February, 1990, p 125-136; Paul O Carrese, *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism*, University of Chicago Press, 2003; Tore Schei, "The Independence of Courts and Judges and Their Relationship with the Other Branches of Government", in Nils A Engstad, Astrid Lærdal Frøseth and Bård Tønder (eds), *The Independence of Judges*, The Hague: Eleven International Publishing, 2014, p 3-18

-
- 158 Ferejohn, John A and Larry D Kramer, "Independent judges, Dependent Judiciary: Institutionalising Judicial Restraint", *New York University Law Review*, Vol 77 No. 4, October 2002, p 962-1039
- 159 See Alabi, *Judicial Administration*, op cit
- 160 Alabi, *The Supreme Court ...*, p 109
- 161 ibid, p 110
- 162 Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970
- 163 *Dokun Ajayi Labiyi & ors v Alhaji Mustapha Moberuagba Anretiola* ((1992) 10 SCNJ 1, (per Karibi-Whyte, JSC)
- 164 African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2010
- 165 See Mojeed Olujinmi A. Alabi, "ECOWAS Court of Justice: An Appraisal of its Law, Machinery and Practice", *LLM Long Essay*, Obafemi Awolowo University, March 2006; Mojeed Olujinmi A. Alabi, "Practice and Procedure of the ECOWAS Court of Justice", *The University of Ilorin Law Journal*, Vol 2, 2006, p 261-294; Mojeed Olujinmi A Alabi, "Analysis of the Role of the ECOWAS Court in Regional Integration in West Africa", Thesis Submitted for the Degree of Doctor of Philosophy at the University of Leicester, 2013
- 166 For reports of attacks on the Judges of the High Court of Ekiti State by political thugs loyal to a Governor-elect whose qualifications for election were being challenged in the Courts, see *The Punch*, Friday, September 26, 2014. See also <https://www.premiumtimesng.com/news/168641-breaking-pandemonium-in-ekiti-court-as-pro-fayose-thugs-beat-up-judge.html>, accessed 26/09/2014;

-
- ¹⁶⁷ This catchy phrase is that of Nwabueze. See Benjamin Obi Nwabueze, “Our March to Constitutional Democracy”, 1989 *Guardian Lecture*, delivered on July 24, 1989, Guardian Newspapers Ltd., 1989
- ¹⁶⁸ Nigeria, Constitutional Conference, *Report of the Constitutional Conference*: Containing the resolutions and recommendations, Vol 2, 1995
- ¹⁶⁹ For the composition of the NJC, see the 1999 Constitution, Third Schedule, Part I (I), and Section 153
- ¹⁷⁰ See Kate Malleson, “Taking the politics out of judicial appointments?”, <http://ukconstitutionallaw.org/2012/02/21/kate-malleson-taking-the-politics-out-of-judicial-appointments/>, accessed 10 July 2014
- ¹⁷¹ <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/83/83.pdf>, accessed 01/10/2014
- ¹⁷² See Eoin Carolan, *The New Separation of Powers*, Oxford: Oxford University Press, 2009
- ¹⁷³ See Sections 3(1)(a) and 5(3)(a) of the Legal Practitioner Act, Cap L11, Laws of the Federation of Nigeria, 2010
- ¹⁷⁴ Jack M. Balkin, “*Bush v. Gore* and the Boundary Between Law and Politics”, (2001), *Yale Law School Faculty Scholarship Series*, Paper 251, available at http://digitalcommons.law.yale.edu/fss_papers/251/, accessed 012/10/2014
- ¹⁷⁵ Robert Hazell and Kate Malleson, “Increasing democratic accountability in the appointment of senior judges”, <http://ukconstitutionallaw.org/2011/07/15/robert-hazell-and-kate-malleson-increasing-democratic-accountability-in-the-appointment-of-senior-judges/>, accessed 10th July 2014
- ¹⁷⁶ The word “Siamese Twins”, used as a synonym for conjoined twins, so named after the famous conjoined twins, Chang and Eng Bunker, born in 1811 in Siam (now known as the Kingdom of Thailand) and lived till 1847
- ¹⁷⁷ *Ugwu v Ararume*, supra at 154