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Original Article

Interrogating National Jurisprudence and Governance amidst Sharia Encroachment into Indigenous Lebensraum

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Abstract: *Contemporary African laws evolved from multi-lateral sources. They demand continuous critical appraisals and trend analysis. Nigeria's present day juridical realities pose for it a conundrum difficult but not impossible to unravel. Africa is faced with a tripartite-complex scenario of conflict of laws. The struggle whether to revert to its rich jurisprudential past, continue with the neo-classicist, colonial legal systems, adapt its past to contemporary, contextual realities, or entirely abdicate its rich cultural past and put on an entirely new toga of extraneous legal cultures. This study challenges the notion and assertion that sharia is a primordial African legal code, and insists that it is neither African in origin, nor applicable for universal, moral, religious, economic, aesthetic and practicable African existential needs. A proper analysis, categorisation, contextual clarification, adaptation and application of African laws vis-à-vis the context of imported legal frameworks and jurisprudence is highly imperative in the face of the sharia legal code's misapplication within the Nigerian body polity. The study interrogates the rationale for the insertion of sharia in the Nigerian legal corpus. It posits that sharia must be called what it is – a foreign religious cum cultural and parochial legal imposition on the psyche of a 'religiously-conquered' African populace. Consequently, the study implores Africans to urgently interrogate both their indigenous and imported legal codes and chart their owned, fundamental, legal cultures and jurisprudence in the light of primordial, historical, nationalist exigencies and cultural resurgence amid the contemporary challenges of jurisprudence and juridical contexts and conflicting praxis.*

Keywords: *Conflict of Laws, Jurisprudence, Lebensraum, Indigenous/Natural Law, Governance.*

I. INTRODUCTION

To be or not to be?! That is the potent, gnawing question in the minds of jurists, legal scholars and the mass generality of the Nigerian citizenry faced with the lingering conflict over the 'political sharia question'! Africa is faced with many a conflict – from the conflict of identity, to the conflict of civilisations, to the conflict of modernity. Among the numerous conflicts that Africa grapples with are the conflict of laws, conflict of cultures and conflict of religions. The coalesced, inexorably jointed conflicts of civilisations in the Nigerian lebensraum form the basis of this system. The obvious inimical trend of the sharia legal corpus' implementation by its adherents poses grave existential threats to Africa's rich legal and jurisprudential traditions and the un-abating trend of the march of sharia into our consciousness (lebensraum) calls for immediate redress. Sharia's supplanting objective as an impostor into the African jurisprudential lebensraum demands urgent trend analysis to stem the imposition, the misconception, allay the well-informed fears and misgivings, and extrapolate on the objections to its intents and purposes.

In the context of laws and jurisprudence, Africa, nay Nigeria still quibbles and is torn between several opinions – either to face the West, or the East, or to retain its primordial legal cultures and jurisprudences. That is the question that demands cogent, comprehensive and comprehensible answers! Several other ancillary questions in the context of the practice of laws and jurisprudence in Africa and Nigeria are also in need of credible, practicable answers. These must be workable answers that will lay once and for all, the sharia controversy vis-à-vis the indigenous historical antecedents of Africa, particularly its religious and political connotations to eternal rest. This would allow Nigeria to chart an autochthonous course of enacting or codifying acceptable, owned laws, legal practise and jurisprudence for its beleaguered citizens.

In the light of contemporary realities of acerbating Nigerian legal and dissonant juridical experience, the need to interrogate African and Nigerian laws becomes highly imperative. What are the origins, the nature, the scope and extent of

African laws, their spirit and intent and their pragmatic applicability within the Nigerian lebensraum? These existential questions are the fundamental issues at the crux of the juridical-legal ethos of the Nigerian legal corpus. To wit, African laws are basically of two origins, and these origins influence respective individual and socio-political perspectives that determine the consent to, and the acceptance of the legal corpus – First is the Indigenous/Primordial and second, the Exogenous/Colonial. These two broad categorisations can also be further divided into two – Common (Ordinary) and Religious laws and their associated jurisprudences. Again the two religious bodies of laws can be further divided into three – viz: –

- Primordial African traditional/religious corpuses of laws;
- The Christian religious corpus of laws and;
- The Arabo-Islamic corpus of laws, each in their respective turns of debuting.

These respective corpuses of laws exercise varying degrees of influence and control on the psyche of individuals within the Nigerian lebensraum and determine the pragmatic applicability of the social contract between the individual citizen and the government. But the European inspired corpus of laws, otherwise known as the Criminal and Penal codes are the dominant laws in Nigeria because of the British colonial experience, and the post-colonial hegemonic domination of the Nigerian jurisprudential and legal culture to date. The practice of jurisprudence in Africa, from its primordial origins and a comparison with contemporary, Euro-centric cum Arabo-centric juridical praxis is required in order to properly place them in the right juridisprudential perspective within the contemporary jurisprudential context.

A. Statement of the Problem

Over the years, much clamour has attended the imposition and adoption of sharia law in some northern Nigerian states, with attendant reverberating offshoots in southern Nigeria. These clamours over the legality or illegality, the plausibility, applicability or inapplicability and the practicability or otherwise, of the praxis of sharia law has generated much furor, greatly heating up the polity, hampering its progress, to the extent that in many instances, it has almost led to the implosion of the country. Despite strenuous objections by concerned and affected citizens of Nigeria, and against the run of the grain of naturalism (*jus naturale* or natural law), law of peoples (*jus gentium*), civil law or commonsense and good taste, the pragmatism of sharia law and jurisprudence has been taken as a given, so much so that Sharia law has been adopted as a part of the whole of the corpus of Nigerian jurisprudential and legal culture, with obviously obtuse offensive points.

Since its surreptitious sneaking into the Nigerian constitution by militaristic Islamists and religious fundamentalists masquerading as nationalists, the Islamic sharia legal code and its exclusive practice has become a red-herring, and a booby trap in the praxis of the Nigerian legal and juridical system. It has hamstrung the judiciary, denatured it as a partial body and reduced it to merely anapologetic religious organisation, a parochial system of the administration of justice. Thus, the commonly propagated imagery of the Law as blindfolded, impartial 'Lady Justice', who dispenses justice in the sacrosanct "Fiat Justitia, Ruat Caelum" ethos has been replaced by a narrow-spectral philosophy and reduced to the imagery of a viciously deadly, armed, bearded and menacing masked hunk who is parochial, intemperate and unforgiving in the dispensation of justice along exclusively Arabo-Islamic, socio-cultural and political perspectives of religion. Consequently, this abnegation of the principle of impartiality of laws and their jurisprudential application by an impartial judge after a thorough investigation and arguments for and against in any case by advocates in a court of competent jurisdiction, has necessitated the stringent interrogation of the practice of jurisprudence in Nigeria.

It is not far-fetched to observe that the imposition and application or implementation of the sharia legal ethos into the Nigerian jurisprudential culture is cause for much grievous apprehension by Christians, Muslims, Indigenous religious adherents and also a cause for much alarm by gnostic, agnostic, pantheists and atheists alike. Africa, from its primordial origins had its natural and customary bodies of natural Laws, legal customs and jurisprudential cultures. African societies were properly guided by the application of these laws and customs and were therefore, progressive in their own respective rights. Thus, a comparison of the African natural and customary laws with contemporary, Euro-centric cum Arabo-centric juridical praxis is required in order to properly place them in the right juridical perspective within the contemporary jurisprudential context.

However, critics have insisted that African customary laws and other indigenous systems of social control lacked legal content in the true sense of the word. African societies definitely had their respective conflict mediation, resolution, conciliation and reconciliation mechanisms and civil legal statutes which were no less effective than extraneous European alternatives, as evidenced in Gluckman's (1967) assessment of Barotse and other pre-colonial and post-colonial African legal corpuses. Such critics obviously speak with a colonial-mentality and an imperialistic imposition of their legal ideologies on other peoples and are therefore caught in the web of subjective, reactionary and revisionist thinking, by merely positing that

African legal cultures must ape theirs or they want to see their own legal cultures in Africa. Besides, pan-European legal cultures are direct and indirect offshoots of the colonial 'lex-Romana' concept of laws Gluckman (1967)
Interestingly, Azumah (2008) informs us of the Islamic tabular-rasa perspective on the solution to the misplaced perception of 'Africa's lack of jurisprudential culture" in the view of proponents of shari'a in the following excerpts. This perspective views Africa as free-booty, populated by nobodies to be disposed of, and be repossessed by anybody with force of arms and an ideology of violence.

> *At an Islamic conference in 1989 in Abuja, Nigeria, scores of African Muslim scholars in a parochial historical revisionism, lamented and decried Western cultural and ideological influences in Africa as "the object of Western imperial plunder". They resolved to encourage Arabic... as the lingua-franca of the continent and to struggle to re-instate the application of the Shari'a. In other words, after diagnosing the cause of Africa's woes as Christian imperialism, the participants prescribed Arab-Islamic cultural, linguistic and religious imperialism as the solution. (Azumah 2008)*

Herodotus, the Greek historian from the 5th Century B.C., cited in Abosede (2000) observes poignantly that:

> *If anyone, no matter whom, were given the opportunity of choosing, from among all the nations in the world the set of beliefs which he thought best, he would inevitably, after careful consideration of their relative merits, choose that of his own country. Everyone without exception believes his own native custom and the religion he was brought up in, to be the best, and that being so, it is unlikely anyone but a madman would mock at such things. There is abundant evidence that this is the universal feeling about the ancient custom of one's country"*

Moreover, "two generations ago, writers on the nature of law in human affairs could dismiss primitive societies as lawless, or, if the writer had some firsthand knowledge of a primitive people, he was apt to give but a few pages to law in his ethnographic report...R.F. Barton and Bronislaw Malinoswski...opened the door to the realization that tribal cultures ...have well-developed legal systems." (jstor)
In this wise, Elegido concludes that:

> *Traditional African societies certainly did have systems of social control which closely resembled modern legal systems, In fact, when those African legal systems are studied in detail, it is easy to agree with T. Elias that the differentiation between African Law and the laws of other peoples is only superficial.*

And as Allot, A. is quoted as saying:

> *The somewhat paradoxical conclusion emerges that African laws therefore resemble each other, but, in that wherein they resemble each other, they also resemble the law of non-African peoples. Not only is the brotherhood of Africans exemplified thereby, but- and this is never too trite to need restatement - the brotherhood of the whole human race. Man, wherever he is and whatever his race, tends to react in similar ways to similar circumstances (Elegido, 2010).*

B. Trend Analysis

Consequential furor shave been trending since its surreptitious sneaking into the Nigerian legal lebensraum and its political application with an effacing and supplanting intent vis-à-vis the primordial African juridical tenets. It is thus apparent that the sharia legal code with its slanted, prismatic, lopsided and grievous politico-religious colouration and connotations runs at variance with the natural, primordial socio-cultural juridical contexts of Africa, nay Nigeria. It also runs contrary to the widely accepted 'grundnorms' of the body and the spirit of the Nigerian constitution, which provides for a secular polity in all its ramifications. Most importantly, its unilateral application by certain exclusive religious interests obviously contradicts the established norm and widely accepted criminal and penal codes long bequeathed to the Nigerian legal system by the British colonialists pre-independence and post-independence. The legality or otherwise, and the morality of the colonially bequeathed criminal and penal code, like the Sharia legal code, is another matter entirely, which if tackled, will lead to avoidable grave consequences.

But despite the fear of these grave consequences on the social and political structure of the country, such an avoidance of debating and tackling the issues themselves and the resultant consequences cannot be left perpetually under the thick rug of pretentious statecraft forever. Moreover, the pretense that sharia is an inviolable and intrinsic, primordial African cultural tenet needs to, and must be challenged and properly evaluated in order not just to set prevailing records straight, but to properly position the sharia legal code in the right perspective of its origins, interpretations, as well as the necessity or otherwise, and the premise of its applications. It is also imperative to review Arabo-Islamic historical past in

order to reveal that, like Western 'Christian' imperialism, it also has a humongous time-warped baggage of genocidal crimes, depopulation, state-capture and usurpation of Africa's lands and resources, and other rapacious atrocities committed and still being committed against Africa and Africans in its so-called "glorious past".

Indeed, state-capture has always been the primal goal of Islamic sharia proponents. There are examples too numerous to list here -the demographic displacement of Christianity from hitherto vast Christian heartlands of Europe, Africa and Asia as a result of jihads (from the 7th century to 1683) forcefully brought Christian territories and their populations under Islamic rule, the historical imposition of Arabism and Islamism, to the exclusion and supplanting of indigenous and aboriginal kingdoms and lands in Europe, Africa and Asia – the Hagia Sophia Cathedral in Istanbul (formerly Christian Constantinople, the city of Constantine, the first Roman Christian Emperor) has been converted to a mosque, Christian kingdoms of Armenia, Byzantium, Bulgaria, Serbia, Bosnia, Herzegovina, Croatia, Albania, Parts of Spain, Poland and Hungary, the Umayyad mosque in Damascus used to be a Cathedral of St. John the Baptist, (and his tomb is still located there).

> *…the main cause of these takeovers and dwindling of Christian communities in these territories is that traditional Islam has been associated with socio-political and juridical measures that discriminate against Christians and Jews. These groups have faced, and keep facing various forms of humiliation, restrictions on their socio-religious, political and legal rights, discrimination, incrimination and in extreme cases, unprovoked, violent attacks…the pressures remain in various forms and degrees across the Islamic world, resulting in Christians emigrating in great numbers from the Middle East… further accelerating the total takeover of these previously Christian territories by Muslims. Nazareth, Bethlehem…are now virtually Muslim towns…because the Palestinian Christians… are minorities who are not treated as equals by Muslim Palestinians.(Azumah 2008)*

Further, Azumah (2008) observes the "unashamed public face of Islam (the minarets, call to prayer, veiling of women, etc.) makes the tendency to colonise space very high in Islam…moreover, Islamic governments and groups sponsor the building of mosques in many Western cities and African villages where there are few or no Muslims. Their motivation is to announce the Islamic presence and lay claim to the public space for Islamic posterity."With the foregoing state of Islamic forceful and insidious expansionism, there should be no pretense or deception, for that matter, that Islamic pseudo-existentialistic thought bodes better for Africa and Africans than European imperialism.

However, it must be noted here that Muslims adduce the rightness of their Islamic expansionist quest by referring to a past history of experiencing the darkness of European colonisation masked as a "Christian" conquest that must be rolled back in the present and future ages. They often cite the ill-advised and un-Christly Crusades as a potent point of reference, while glossing over their own preceding historical conquests of the Holy lands, North Africa, southern Europe, and Asia, their unrelenting onslaught across sub-Saharan Africa, plus their current global quest to Islamise every inhabitant of the earth willy-nilly by force of arms and terrorism, if possible. Stemming from the foregoing, as Chapman (2007) avers,

> *an overemphasis on the role of Satan in Islam can easily prevent Christians from facing up to the terrible record of the Christian "church" in relation with Muhammad and his followers…the very existence of Islam can be seen as a judgment on the Christian church, and the record of the church over fourteen centuries in its relations with Islam should leave us with a sense of shame…of course, we would want to disassociate ourselves with the Crusades, just as some Muslims have disassociated themselves from the actions of Islamists like Osama bin Laden.*

Much every which way in shamefacedness and criminal convictions could also be said for the relations between ATR and the African historical and cultural experiences with both Christianity first, then Islam in the preceding centuries and in the contemporary world of faiths, society, culture, economy, government and jurisprudence. Therefore, with this state of things in the historical and contemporary relations between Christianity and Islam on the one hand, and between Islam and ATR on the other, on psyche of the African or Nigerian, it becomes much more imperative to balance the views and perspectives across these three main global, but multifaceted religious and socio-cultural, political cum economic divides. This is so that the practice of jurisprudence and the criminal justice and legal systems and juridical culture in Nigeria and African countries can be appropriately contextualised for what they truly are, and streamlined in consonance with the socio-cultural needs of Africans. It must be made clear though, that:

> *Those discussions relation to the attributes of Allah, predestination, the createdness or the eternality of the Qur'an, cannot be dismissed as irrelevant to the Muslims of today. When a faith requires its adherents to subscribe to the supreme and final authority of a sacred book, its followers*

> *are bound by that text. Therefore, the dismissal of the theological in the interest of the sociological aspects of the faith will not satisfy the heart of the believer.*

Thus, a point of divergence is made quite clear between the aspirations of Muslims and Christians regarding their preferred juridical cultures, the legal codes and their respective applications within the Nigerian socio-political context. These irreconcilable differences pose serious challenges and far reaching consequences for the country called Nigeria. Because Islam does not separate religion from politics and the state or monarchy, "…the subject of politics is one of the most fundamental and difficult problems we have to contend with in coming to grips with Islam." Chapman (2007), and as Greenway (2002) observes about Muslims,"…throughout their history they have been rigid and aggressive religionists, the most aggressive and militaristic of all religious people."It must be added, too, that they are the most nihilistic of all religionists, ready to kill a dissenter or anyone with the slightest difference of opinion and destroy any state which does not buy their religious idea.

Space will not permit the listing here, a glossary of all atrocities committed in the name of Arabism and Islamic sharia, but a few here will suffice. Mere dissension with Islam, it's prophet or any of Islam's core and peripheral tenets or culture, or a pluralistic discussion or revelation of this, is enough reason to issue a 'fatwa' or death-sentence to the person who dares. It is also a pretense to wage war against towns, cities, states, countries and take them over for Islam, sparing only those who accept the yoke of Islam, as Islamic history within the Mohammedan, immediate post-Mohammedan era and even to this very day reveals. The "fatwa" issued by Khomeini against Salman Rushdie and upheld by the succeeding Ayatollahs of Iran and the Charlie Hebdo cartoon incident in Denmark and France, extending into Iran and other fundamentalist Islamic societies come to mind here. In Nigeria's sharia-aficionado states, enforcers of the sharia penal code are wont to arrest and seize truck-loads of beer and other alcoholic beverages, their drivers tortured and their cargoes gleefully destroyed by the 'sharia-morality-policiers' or enforcers – the 'hisbah'.

However, when it comes to the "sharing" of value-added tax revenues and excise duties derived from the sales of the selfsame beer and other alcoholic beverages, these same "sharia-mongers" are wont to clamour for a larger, but rationally undeserved share of these revenues. The question then is, why does sharia law forbid others from drinking beer and other alcoholic beverages, but sharia law glosses over, and sees no wrong in benefitting from the 'sinful' revenues accrued from such a deemed sinful and lawless passion as beer and alcoholic beverages merchandising and drinking? Like Gandhi once quipped in ruminating about the Mosaic law of tit-for-tat, "an eye for an eye, and soon, the whole world will go blind", we can also say of the sharia implementation, if for every infraction of sharia, a person is amputated or stoned or beheaded, soon everyone's 'gonna' be either invalid, blind, amputee, stone-dead and under six feet. However, even in the sharia law's enforcement, there is an observable gaping selective application and miscarriage of justice, because the high and mighty are never amputated or executed for their own crimes against the people, the law and the state, and of course the harshest sharia enforcement is reserved for the poor, the foreigner, Christians and adherents of other religions cultures.
Whilst state officials who embezzle and appropriate the peoples' monies for themselves and their families and cronies are never brought to justice in the sharia penal code, the poor and other religionists are promptly stoned or beheaded. So, as can be seen from these cited instances, sharia implementation is antithetical and anathema or abhorrent to African primordial legal and sociological cultures, because African legal cultures aver that 'the hand that had committed a crime, must be amputated by the king, and if the king himself is caught in a grievous malfeasance, the elders deliver a calabash to him in prompt capital judgment' – thus the society is sanitized where all, both high and low, are equal before the law and blind "Lady Justice's" sword cuts all offenders indiscriminately, fairly and without fear or favour, as John Rawls argued in his "Veil of Ignorance". Africans, nay, all cultures globally have had an alcoholic beverages production, distilling, merchandising and consuming culture since primordial times.

So, if this drinking culture permeates African societies, preexisting and predating Islamic sharia, what impudence is it for sharia law proponents to sanctimoniously forbid Africans and Nigerians from pursuing their inherent culture, while expecting to profit from this very same culture it forbids?!Or how nice is the vista of an army of amputees and blind beggars who had been blinded or amputated in sharia-tit-for-tat, or whose fathers and mothers had been forced to lose their livelihoods or stoned to death for every malfeasance, adorning our hallowed streets because of Arabo-Islamic-sharia legal code's unjust and unreasonable juridical enforcements of theocratic, religious law!

A report on a conference on "Suffering and Power in Christian-Muslim Relations in Nigeria in 2000 reveals that:

> *Relations between Christianity and Islam are primarily a matter of relations between two communities, rather than between individual believers. Both faiths create a people, and make claims about God's rule of the whole of life. Their religious leaders are not individual mystics, but*

leaders of communities. The issue of power is thus central to relations between them.(Chapman 2007).

A legal code gives force to any transaction in any area of endeavor in any human society. The rule of law and separation of powers as well as checks and balances are sine-qua-non, of civil democratic society, even of a monarchical and martial society. The corpus of laws gives bite to governance as its application serves as deterrence for deviant behaviour, and enforces conformity with generally accepted socio-cultural norms within any given society**.**

C. Conceptual Clarification – Corpus "LexNaturalis" et "LexCommunis"

The concept of law or laws is derivable from two words – 'lex' and 'jus' which both connote (lex-law in the nominal sense) and (jus – which is customary law crystallised out of decisions). With the passage of time and usage, "…legis became expressions of popular will through enactment by the assemblies and their function was prescriptive like modern legislation and ceased being declaratory of jus" (Dias 1985). From these derive law, legislation and jurisdiction and their diverse, sometimes befuddling interpretative connotations. The rule of law is a sine-qua-non, of civil democratic society, even of monarchical and martial societies. The corpus of laws gives bite to governance as its application serves as deterrence for deviant behaviour, and enforces conformity with socio-cultural norms in each respective human society. As the oft referenced, (here paraphrased) biblical quip goes, "where there is no law, law-breaking or lawlessness does not exist", but when I knew the law, then I became conscious that I was irrevocably a lawbreaker, lost under the law", to quote Apostle Paul of the Christian bible.

But such a lawless society is not desirable for humanity, as the rule of the jungle or the Hobbesian "state of mere nature", wherein life is nasty, brutish and short" will definitely set in, an undesirable state or condition where nature is at war with mankind, mankind with himself, and nature at war with itself all the time, leading to an inevitable implosion. On the other hand, Locke envisages a situation which he referred to as the "social contract" between man and his government – "…a pact which men freely consent to in order to enter into a political society which will remove the inconveniences and uncertainties of the state of nature. Locke opines that through the social contract willingly entered into by all members of a society, society or the state would "establish laws received by common consent as the standard of right and wrong, act as an acceptable and disinterested judge with authority to determine all differences according to established law, and must back and support the sentence of the judge when right, and give it due execution" Locke avers that laws, like the social contract composed of laws and the delegated power of good governance, must be entered into only by consent.

As such, the contract of law, its interpretations and implementation must be entered into not by the dictates of any religion, but by free-will, in the interest of the common good of all in the society; not serve only the interests of a parochial few. The social realities within the African lebensraum since the advent of colonialism, independence and post-independence have left much social disjuncture and individual distaste due to forced legal impositions. It is highly imperative for these impositions to be interrogated, reassessed and redressed for consonance with African primordial socio-cultural tenets and expectations in the interest of peaceful coexistence and progress.

D. Natural Law

Natural law, in Dias' (1985) estimation, is …nothing else but a participation of the eternal law in a rational creature, i.e. the dictates revealed by reason reflecting on natural tendencies and needs. The primary precept of the law is that good should be done and pursued and evil avoided; and on this are founded all the other precepts of the law of nature."In the assessment of the necessity of the application of natural law over imported legal ethos, Dias, (1985), citing John Finnis, a foremost advocate of the precedence of natural law, avers that "a theory of natural law claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among men and in individual conduct". This is not far-fetched because, as Savigny opines in his thesis "On the Vocation", "the natures of any particular system of law… was a reflection of the spirit of the people who evolved it", and his most devoted disciple, Puchtacharacterised this as "Volksgeist" ('common spirit or will of the people'), stating that "all law… is the manifestation of this common consciousness…Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its nationality" (Dias 1985).

Thus, we see that any law or body of laws, and the consequent jurisprudence, must derive from, and be held in common with the belief that it is for the common good. In "Volksgeist", Puchta contends that "it is the broad principles of the system that are to be found in the spirit of the people and which become manifest in customary rules. Thus, we see that law is a cultural ethos or 'grundnorm' of a people, which cannot be separated from their social consciousness within their lebensraum. Inherent in this system of principles espoused by Savigny, Puchta and other natural law advocates like Dias, is that it can be adduced that natural law is first and foremost, a primordial tenet of the people, before the introduction and impositions of any extraneous or exogenous legal influence. However, Elegido(2010) takes a different track, positing that

Puchta's choice of "volksgeit" or "spirit of the people" is rather "too vague to be employed usefully in analysing any given piece of legislation", insisting that a people do not usually have "just a spirit…many different ideas and outlooks coexist within any given society".

Elegido (2010) asserts, "Any large complex society, with its multiplicity of social backgrounds and individual experiences, contains varying mores and attitudes within itself. On any given piece of legislation there will not just be supporters and enemies, rather there will be many points of view, ranging from unconditional support, through indifference, to unmitigated opposition". According to Dias (1985),Savigny contends that "legislation should conform to existing traditional law, or it is doomed". Law is supposed to be a tool for resolving conflicts, as Justinian, a Roman law theorist boasted, but no doubt, multiplicity of laws deriving from extraneous sources is a major source of social confusion and maladjusted individuals. While misapplied or mal-construed law has the tendency in itself to corrupt, cause conflict and lead to a disagreeable and disjointed society.

In reality, the issue of state power capture is more pressing upon Islam than on Christianity. Islam seeks global political ascendancy and socio-cultural currency, and to achieve these two, it has to first capture state-power wherever it exists. Says Chapman (2007),

> *When we come to think of politics, the whole world has been made aware in recent years of so-called "Islamic fundamentalism" and "Islamic terrorism". Since Muhammad regarded himself as both prophet and statesman, his followers have always believed that "Islam must rule". The assumption has been that the territory occupied by Islam (dar al-Islam, the house of Islam) would eventually overcome and absorb the territories as yet outside the control of Islam (dar al-barb, the House of War)).*

Thus, Islam and Islamists leave a lot of room for suspicion of their ultimate motives, even with advertised good intents, just like one must "fear Greeks, even bearing gifts". Islam, by its very nature since inception and thrust, with no let, cannot cease from the quest to dominate others with raw political, spiritual, military, economic and other powers; when it captures or acquires state-power it is intended to kill, maim, loot and destroy and ultimately cleanse any territory of non-Muslims, and subjugate in perpetuity, those who submit to it. It is in a perpetual quest to capture state power wherever Islam is practiced. Little wonder why so many countries regard Islam suspiciously, and even de-legitmise its belief and practice in all its manifestations, like Angola recently did, as many online tabloids posted, before the retraction statements by the Angolan government. But the Angolan government "refused registration to Islamic religious groups and closed "illegal mosques", as her foreign minister, Georges Chikoti said "there had been misunderstandings, but there is no persecution of Islam (Laxmidas – Reuters 2013).

Undoubtedly, without equivocation, in connection with this quest of Islamic domination, the unilateral and parochial imposition of the sharia legal code is a sine-qua-non, the first step of Islamic ascendancy in Nigeria. This obviously gives the lie to the enshrined tenet of Nigeria as a secular state, wherein religion is not a requirement for citizenship, neither for the enjoyment of the privileges thereof, nor for attaining national leadership. The moral code, heroism or altruism, not the religious code were the major requirements for aspiring to, and attaining communal and national leadership in Africa of yore.

E. Assay of Pre-historic and Pre-Mohammedan Laws in Arabia

The history of the earth predates human history by innumerable millennia in what is known as pre-history. Likewise, "pre-Islamic religions in Arabia included Arabian indigenous, polytheistic beliefs, ancient Semitic religions (religions predating the Abrahamic religions which themselves likewise, originated among the ancient Semitic-speaking peoples), various forms of Christianity, Judaism, Manichaeism and Zoroastrianism".

An example is the Hammurabi Code.

> *The Code of Hammurabi is often cited as the oldest written laws on record, but they were predated by at least two other ancient codes of conduct from the Middle East. The earliest, created by the Sumerian ruler Ur-Nammu of the city of Ur, dates all the way back to the 21st century B.C., and evidence also shows that the Sumerian Code of Lipit-Ishtar of Isin was drawn up nearly two centuries before Hammurabi came to power. These earlier codes both bear a striking resemblance to Hammurabi's commands in their style and content, suggesting they may have influenced one another or perhaps even derived from a similar source. …but just how the laws functioned in society is still up for debate. The statutes could have been a list of amendments to an even earlier and more*

expansive set of general laws, but they might also have acted as a set of judicial precedents compiled from real world cases.

F. Africa Pre- 1883 Berlin Conference and the Partition

For millennia of prehistory and centuries of history, Africa had had viable, self-sustaining empires which were not in any way a threat to Europeans. But the predatory European empires and America unilaterally partitioned Africa as free-booty amongst themselves in the evil year 1884.The participating countries of the unsolicited, predatory and exploitative partitioning of African lands and her peoples included "Austria-Hungary,Belgium, Denmark, France, Germany, GreatBritain, Italy, the Netherlands, the Ottoman Empire, Portugal, Russia, Spain, Sweden-Norway, and the United States of America. Not all of these countries had colonies in Africa, but they participated in the talks nonetheless, as it concerned their empires elsewhere".

The final ruling of the Berlin Conference was the General Act, which decided rules about how Africa was to be divided and ruled amongst the European powers.

Of particular note among the resolutions and agreements at the conference was the use of the Congo River for free trade, allowing ships from all of the participating countries access to the Congo basin. The partition of Africa marked an end to open war over colonial holdings, although it didn't mean the European states were friendly to one another. British troops seized control of the Ottoman territory of Egypt, which they would later declare their protectorate. Germany tried to challenge French control in West Africa, especially in Morocco.

As a consequence of this conquest and partition of Africa by the Europeans, aimed at merely extracting natural resources and wealth from Africa and subjugating her peoples perpetually, African peoples suffered immense violence, legendary exploitation, and harsh legal restrictions to this day."The most infamous colonial holding in Africa was, probably, the Congo Free State in Central Africa (currently Democratic Republic of the Congo). Ironically, the Congo Free State was the private property King Leopold II of Belgium; it was not a colonial territory, but one very large tract of land given to Leopold on the grounds that he would not tax trade there. Leopold never visited the Free State, which was largely assembled by Welsh-American explorer Henry Morton Stanley on his behalf. During his rule, however, the Congo would lose nearly half of its population to war, disease, and starvation. The full scope of Leopold's death toll is hard to account for, but his administration's economic exploitation and relentless violence caused the deaths of roughly 10 million African people.

By the late 19th century, it became a popular philanthropic cause to end the brutality of the Congo Free State. Belgium officially annexed the territory from its king. However, this did not mean that much changed in the Congo. The same companies that extracted resources for Leopold now did so for Belgium, and the state itself still ran pretty much the same."

G. Contemporary Realities of Prehistoric and Pre-Islamic Nigerian Society

The claim of natural pre-existence of sharia law and the attempt to foist the Arabo-Islamic sharia legal code on the Nigerian lebensraum is at best, erroneous and intended to becloud the judgment on a sense of African historical antecedents, and undermine the tenet of 'juriscomunis et naturalis'. "Islam arrived in both East and West Africa by the eight century …through …traders…in some regions, the rulers turned to Islam, whilst the people remained as traditionalists; in other areas the rulers were unable to convert because of their cultic roles, but the people became Muslims" (Azumah & Sanneh, 2013). Also Azumah & Sanneh observe that both Christianity and Islam's advent in Africa were as a result of persecution in Arabia and the Levant, and that "Christianity was on African soil nearly seven centuries before Islam". In retrospect, going by the assertions of Azumah & Sanneh, it would be begging the question of validity and relevance to insist Sharia or any law emanating from Arabia or elsewhere, or any religion descended from Arabs is a proper African fare.

To seek to impose this upon Africans and in this case Nigerians willy-nilly is a recipe for perpetual divisions and conflicts. Maxey and Danfulani (2019) in what they referred to as the ATR worldview aver, "there is no single African Traditional Religion with which all African traditional religionists would agree…as …there are many ethnic groups, each with its own language, mythic history, cosmology and cultural matrix, philology and linguistic studies…some 2000". Thus, any attempt to impose an extraneous moral, religious and legal ethos by whatever name or means deemed foreign, would be tantamount to a colonisation of the African mind and space (lebensraum) by subliminal means, because religion and its accoutrements possess a complementary worldview, and are both things of the mind. In other words, Islam is fiercely carnal, communalistic, earthy in focus and territorially expansionist in scope, while Christianity is fundamentally spiritual, ethereal in focus, and is basically concerned with a conquest of the individual mind for the kingdom of heaven, a "kingdom not of this world", to quote Jesus Christ himself, when brought before the judgment seat of Pilate.

As Chapman (2007) citing Joseph Schacht's summation, notes, "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself". Further, citing Kenneth Cragg and Andrew Rippin's nexus of law and theology in Islamic thought, Chapman observes,

> *Islam understands law as religion, religion as law…Law, rather than theology, has the prior emphasis in Islam. Broadly, it is obedience to the will of God, rather than fellowship in the knowledge of God's nature. Theology…is not only subordinate in importance to law as a discipline but also incorporated within the whole legal framework. Since all law comes from God, law is in fact, theology as such, for both topics deal with the contemplation of human action in relationship to the divine; because of the practical aspects of Islamic life…*

Therefore, the Christian, being taught that salvation is not of works, which are products of law keeping, or other religions' adherents who understand only the concept of national and international law, and would find it odd and invasive that Muslims cannot distinguish between law and theology, religion and statehood or statecraft, as well as Islamists' perpetual quest to foist the practice of their exclusive religious and cultural beliefs upon them."Christians regard religion as a matter of personal faith and view the church's past (and present) involvement in and use of temporal power as a serious aberration."But this is not so for Muslims and Islamists, who regard Islam as a means for the "Islamisation and Arabisation, as well as a quest for the imposition of socio-political and juridical measures that discriminate against Christians and Animist peoples of Nigeria" (Azumah 2008). With such irreconcilable differences, Islam and Christianity seem set on a perpetual course of socio-political cum juridical conflicts of ascendancy. But this perception and aspiration is more potent in the Islamic thought, and Islamic proponents expend more strenuous efforts in this unbalanced and divisive quest.

> *When most of the Muslim world came under European colonial rule, in the eighteenth century, civil courts took over the powers of the Islamic sharia courts, which then came to be responsible mainly for family law. Law codes were based on different kinds of Western law (British or French). Many Muslims have argued that Islamic law should not be supplemented, let alone superseded, by legal systems coming from non-Islamic sources. This is one of the goals of Islamists who want Muslim states to base their constitution and law on the sharia. Other Muslims, however, have resisted this attempt to go back to the sharia and want to see law codes based on a combination of sharia and Western law. Kemal Ataturk took the step of abolishing sharia law altogether in Turkey in the 1920s.*

But hear Ali, a Muslim scholar, cited in Glaser (2016) "Shari'a? We don't need it. What do I mean by that? Well, we don't need it for salvation. That's the most important thing. We can compare it to the Mosaic Law, and see good things in it, but law is not what saves." Further, Ali is quoted as expressing his Islamic convictions about the Bible and Christianity in the following words – "I think of the Bible as the sun: the sources of light. The symbol of Islam is the crescent moon, and that is how I think of the Qur'an. The crescent reflects the light of the sun. It is only a small part of the light, but it is enough to make people want more light, and be glad to see the sun. When the sun comes out, the moon is still there, but you don't notice it".

Therefore, the intent, scope, objective and the quest to enshrine and the ultimate end-goal to perpetuate Islamic-sharia law, or its components into the Nigerian corpus of laws needs to be continuously interrogated and re-evaluated in its entirety. An uninformed adoption or hasty imposition of the Islamic-sharia legal culture by any country poses dire consequences for any one country because of its obdurate, exclusivist theological view of life, without due regard for other legal cultures and humanistic ethos. This is imperative to ensure conformity with the natural law and African jurisprudential culture in Nigeria, or be thrown out 'in-toto', baby and bath water altogether. This is in order to effectively and decisively position Nigeria in its rightful place as a secular state, not one whose government and citizens are prevaricating in a perpetual contest between mere political-religiosity and confusing, illogical and illegal piety. Indeed, the strident question needs be asked: Is Islam a religion, a culture, an ideology, a law, a political system, or a vehicle of decimating or dominating other peoples and cultures willy-nilly? If the latter be the case, as observed in numerous Islamic-sharia countries like Iran, Saudi-Arabia, Bahrain, Kuwait, Sudan, Qatar and a host of others.

Then sharia must be called what it truly is – a form of religious-colonialism, extraneous Arabic-imperialism and hegemonic, cultural imposition of the Arab ethos and colonisation of the psyche of adherents. Those who promote it, host it, encounter it, or are "fortunate" enough to fall under the sword of Islam, its sharia legal code and juridical culture must be enabled to realise in time, what Arabo-Islamic-sharia holds in store for them. Thus, the whole world, particularly Africa and Europe need to take serious heed, before they are swarmed and swamped by virulent Islam, posing as a legal, juridical code or ethos. Further, Kirk (2011) poignantly reveals that proposing a sharia-led legal system and jurisprudence would inevitably lead to a country beset with anachronistic authoritarianism and a government claiming a divine mandate:

> *A process of dialogue, deliberation and mediation would be inimical to a government that wishes to claim a divine mandate... to maintain its authority and credibility, it must be able to have access to unquestionable interpretation and conclusive judgments...the problem, as many Islamic scholars have pointed out, is that shari'a (the total sum of duties, obligations and guidelines for Muslims) becomes confused with fight (the total product of human efforts at understanding the divine will)...leads inevitably to a rigid, static and ultimately anachronistic appropriation of the general precepts of divine revelation. To equate shari'a with a specific body of law, elaborated at a particular moment of history and then to seek to enact it in radically different situations, is to persist in sustaining the confusion.*

In these circumstances, it becomes very difficult to reconcile opposing views and ethos of Christianity and Islam. It should be taken for granted that all citizens of any particular state, nation or country should be subject to the exact and very same rule of the same or similar laws, without prejudice, fear or favour. There should not and cannot be a different law for different classes of peoples based on religion, power, tribe, race or ethnicity, neither a duality of laws and their applications within the same country, while we hope to achieve social cohesion, political stability and socio-economic progress of the body polity. All citizens must be willingly bound by the application of same laws and juridical culture to prevent a confusing application of laws and unwarranted moral and ethical crises, as well as avoidable socio-cultural, religious, political and economic conflicts.

For all intents and purposes, it is obvious at least to the informed observer, that Islam predated sharia law. Sharia law is derived both from Islam and the Arabic socio-cultural code, which itself, predated Islam and its adapted legal corpus. Historical and geographical research has proven that the land-space of Arabia had a plethora of tribes, religious socio-cultures and sub-cultures predating-Islam. Most of these were destroyed on refusal to adopt Mohammedan Islam, or were forced to bow to Islamic conquest and hence subsumed into Arabic Islamism. An attempt to gloss over this fact will tantamount to both religious and scholarly, as well as historical fraud, and would only serve to push the Nigerian lebensraum back into the dark ages of ignorance, privation and thus, negate the rights of citizens to equal rights, fairness and justifiable justice within their own socio-cultural and economic lebensraum.

H. Pre-British Nigerian Society

The Nigerian lebensraum had an assortment of established empires, kingdoms, chiefdoms, dukedoms and some other forms of communal governance adopted and fully adapted to the socio-cultural exigencies of the peoples of the land. In other words, the African and Nigerian lebensraum was a good study case in the scalar progressions of respective rungs of human social developments with their accoutrements of social structures and institutions. The uninvited but welcomed, rapacious European displacement of African and Nigerian socio-cultural and religious structures disrupted and put paid to the development of African states. The interruption of Africans' numerous civilisations and the halted marches to respective peculiar developments of these innumerable African kingdoms, nations, tribes, languages, religious-arts and artifacts, indigenous sciences and technologies, obviously led to the disruption of Africa's march towards its own peculiar forms of civilisation. It also gave birth to the willful destruction by first, the Arabs and subsequently, the Europeans, of Africa's numerous socio-cultural, religious-arts and artifacts, structures, institutions and knowledge-base, built up and sustained over millennia. Such ignorance and prejudice on the part of the foreign "civilising" but uncivilised interlopers resulted in the current underdeveloped state of Africa in all its unsavoury and insalubrious manifestations.

I. Dualist, Bi-pedal or Tri-partite Legal Codes as Antithesis of Jurisprudence

The current system of implementation of disparate laws sought by Islamists' quest for a general application of Sharia law in Nigeria is a blatant breach of the constitution and a source of juridical confusion. In every instance of its application, it creates a pretext for state-capture and imposition of Islamic religion on the mind, space, rationality and nationality of non-Muslims. It is also a pretext for the selective, exclusive, parochial interpretation of law and the applications and implementation of justice along Islamic religious, regional and narrow prismatic premises, which is largely viewed as a misinterpretation, misapplication and mal-implementation of justice by other religions' practitioners. This divergence and convolution of premises of legal interpretations could lead to absolute lawlessness in a body polity. Proponents of Sharia law, in Nigerian 'Islamist-conquest-thought', apparently only seek one end-game; the ultimate enthronement of an Islamic state or republic in Nigeria, modeled after Iran, Afghanistan, or some other extremist, religiously-shackled state.

This can only be achieved, of course, by the subtle or forceful abnegation and destruction of primordial African cultures, customs, religions, languages, histories, governmental systems and jurisprudential traditions, and their forceful superimposition with the Arabo-Islamic ethos and system, as the Europeans implemented earlier. (Religion in Your Head**)** Understanding the threat posed by this possible outcome of the destruction of primordial heritages by hostile extraneous ideologies, China has struggled for decades to wean its citizens off this morbid Islamic fare, sequestering the Muslim Uighurs

of China to a life of re-education and re-orientation off the staple of Islam. Also, the country of Angola has reportedly banned the Koran, the practice of Islam within its country, and subsequently severing all diplomatic relations and connections with Saudi Arabia, in order to prevent such a conflict-inducing demand for a confusing pluralistic legal culture and juridical practice as Nigeria's unhealthy system. Angola subsequently labeled Islam a "terroristic religion" and the Koran a terrorist document.

II. CONCLUSION AND RECOMMENDATIONS

The constitution of Nigeria declares her a secular state, where religion is separate from the state. But the implementation of the constitution gives the lie to this declaration. Legal plurality in the simultaneous implementation of both the Criminal and Penal codes as well as the customary laws in Nigeria are a negation of one people, one country, under one Corpus of Laws, in a secular state. This is at best, a confusing situation that has birthed the 'motion without movement' destiny of the Nigerian state since independence in 1960. One is tempted to believe that perhaps, this is how the creators of Nigeria hoped to cripple Nigeria's ascendancy among the comity of nations; to make her a crippled giant, a perpetual suckling toddler, never maturing to a vibrant, progressive statehood of united, indivisible, patriotic citizenry and able to stand its ground in the comity of nations – and they are continuously succeeding at it. This must account for why Nigeria's disparate peoples are perpetually at loggerheads and cannot seem to find a common ground and a unified hero they can queue behind in order to move the country out of its current morass in which it is mired, and set upon the path of development for the ultimate good of all citizens.

The constitution of Nigeria peremptorily declares Nigeria a secular state, which infers that it is a state system where religion is separate from the state. But the implementation of the constitution by state-actors and government functionaries gives the lie to this declaration. In fact, with this state of things, one is tempted to believe that perhaps, this is how the creators of Nigeria hoped to cripple Nigeria's ascendancy among the comity of nations; to make her a crippled giant, a perpetual suckling toddler, never maturing to a vibrant, progressive statehood of united, indivisible, patriotic citizenry and able to stand its ground in the comity of nations. This must account for why Nigeria's disparate peoples are perpetually at loggerheads and cannot seem to find a common ground and a unified hero they can queue behind in order to move the country out of its current morass in which it is mired, and set upon the path of development for the good of all citizens. Nigeria operates a confusing diploid legal system, like the dinosaur diplodocus (so gigantic and befuddled its tail needs a dedicated separate brain to manage it).

Nigeria's is a juridical system devoid of home-grown legal democracy, running on a foreign juridical ethos. (Hegel's Thesis, Anti-thesis and Synthesis – as coined by Johann Fichte), which indeed, presents an unworkable situation. Such confused legal duality or plurality manifests itself in the British-tutored and imposed simultaneous implementation of both the Criminal and Penal codes in different geographical and religious bastions of the northern and southern Nigeria, without due considerations of the inherent natural law in the African lived pre-historical and contemporary living experience. Indeed, adding the traditional corpus of laws will even make Nigeria's a pluralistic juridical culture. This practice is a negation of one people, one country, under one corpus of Laws, in a secular state. Thus, the sense in the praxis of such a dualist, bi-pedal or in reality, a 'tri-partite' pluralistic (with added traditional and natural laws) jurisprudence and juridical culture in Nigeria is called to question.

This is at variance with the sacrosanct juridical cultures in advanced and progressive societies of the world. This is at best, a confusing situation that has birthed the 'motion without movement' destiny of the Nigerian state since independence in 1960. In fact, one is tempted to believe that perhaps, this is how the creators of Nigeria hoped to scuttle the possibility of Nigeria's ascendancy among the comity of nations, in Zartman's (1976) well-known "dependency syndrome" complex; to make her a crippled, hobbling giant, a perpetual suckling toddler, never maturing to attain a vibrant, progressive statehood of a united, indivisible, patriotic citizenry. This must account for why Nigeria's economy remains in the doldrums despite its humongous human and natural resources, and why its disparate peoples are perpetually at loggerheads and cannot seem to find a common ground for making lasting developmental strides as one people. It also explains why Nigerian citizenship is shambolic and the people cannot enjoy the expected benefits of its vast potentials, nor find a unified hero they can queue behind in order to move the country out of the peculiar morass in which it is mired, and set upon the path of development for the good of all citizens.

Nigeria's leaders are at best tribally besotted and religiously bigoted, not national leaders with a national outlook and ethos At best, they only believe in lining their individual pockets, foreign bank accounts and their cronies' with loot from state coffers and resources. Presidential candidates in Nigeria always pretend to campaign on a national quest for unified development of the country as one, but with ulterior motives, canvass votes on an ethno-tribal pedestal. The British introduced and entrenched this travesty of justice into the Nigerian judicial system for whatever reasons, but obviously not

for the sake of fairness, equity and equality of the perpetually disunited Nigerian citizens before the law. As Achebe noted in his all-time classic literature of African life pre-'Pax-Britannica', each "African traditional culture had a clear religion, a well-defined government, proud artistic traditions, as well as keen judicial understanding and practice". This was contrary to the British clueless but arrogantly presupposing and wanton definition of Africans in the 18th and 19th centuries as an indeterminate motley of barbaric and uncultured "half-people", or in Conrad's ridiculous words, "rudimentary souls" (Maxey and Danfulani 2019).

This also explains why Nigeria's leaders are at best tribally besotted and religiously bigoted, pursuing narrow sectional or regional interests while in office; not national leaders with a broad national outlook and ethos. Consequently, presidential and governorship candidates in Nigeria always pretend to campaign on a national quest for unified development of the country as one, but with ulterior motives, canvass votes on an ethno-tribal and religious pedestals, as evidenced in the 2023 Nigerian general elections. This malaise percolates to all the levels of governance in Nigeria today, and even in inter-cultural and interpersonal communications situations, further polarising the citizens from one another in the British foisted "I'm a better monkey than you ideology". Of course, the British introduced this travesty of justice into the Nigerian judicial culture and their accursed "Divide and Rule" governance system, for whatever reasons. But it is apparently not for the sake of equity, equality and equanimity of the perpetually disgruntled, and thus disunited Nigerian citizens before the law.

As Achebe noted in his all-time classic literature of African life pre "pax-Britannia", each "African traditional culture had a clear religion, a well-defined government, proud artistic traditions, as well as keen judicial understanding and practice". This was contrary to the European clueless but arrogant and wanton description of Africa as the "Dark Continent" at their advent in Africa, and the irrational, ignorant British definition of Africans in the 18th and 19th centuries as an indeterminate motley of barbaric and uncultured "half-people", or in Conrad's words, "rudimentary souls" (Maxey and Danfulani 2019).

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