

CONSTITUTIONAL
DEVELOPMENT
OPTIONS FOR SUSTAINABLE
DEVELOPMENT IN NIGERIA

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CONSTITUTIONAL DEVELOPMENT OPTIONS FOR SUSTAINABLE DEVELOPMENT IN NIGERIA

INTRODUCTION

It is necessary for a better understanding of the subject to state briefly the constitutional history of Nigeria. Prof Ben Nwabueze has suggested that Nigeria was not a state until amalgamation in 1914. He contends that “the central legacy bequeathed to Africa by colonialism is the organism known as a state in its strict signification.”¹ The state of development of Southern Nigeria and Northern Nigeria, prior to amalgamation is clearly stated in Lugard’s **Documentary Record** compiled by Kirk-Greene. With respect to the South, Lugard wrote: “the South was, for the most part, held in thrall by fetish worship and the hideous ordeals of witchcraft, human sacrifice and twin murder. The great Ibo race to the East of the Niger, numbering some three (3) million and their cognate tribes, had not developed beyond the stage of primitive savagery. In the West, the Kingdom of Benin-like its counterpart in Dahomey, had, up to 1897, groaned under a despotism which reveled in holocausts of human victims for its Fetish rites. Further West, the Yorubas, Egbas, and Jebus had evolved a fairly advanced system of Government under recognized rulers. The coast fringes was peopled by negro traders and middlemen, who had acquired a smattering of education in Mission schools, and who jealously guarded the approaches to the interior from the European merchant. In the principal towns (Lagos, Calabar, etc), there were some few educated native gentlemen who practiced as doctors, barristers, etc.”

With respect to the North, he wrote: “from a very early date, the influence of Islam had made itself felt in the North and the religious revival of the early years of the nineteenth century had formed the motive for the Fulani conquests, which swept the country from Sokoto in the North-West to Yola, 1,000 miles to the East, and from the Sahara to the confines of the Equatorial Belt. The social and religious organization of

¹ Colonialism in Africa: Ancient and Modern Vol.1. Ben Nwabueze, pg. 24

the Koran supplemented, and combined with, the pre-existing, and probably advanced, form of tribal administration handed down from the powerful Songhai Empire, which had extended from Chad to Timbuktu. The courts were served by judges erudite in Moslem law and fearless in its impartial application. The system of taxation was highly developed, and the form of Administration highly centralized.”²

WHITEMAN’S GRAVE

It must be recalled that West Africa was known as the ‘whiteman’s grave’ due to the extremely high rate of mortality for Europeans. Scores of sailors died of malaria and other illnesses. The author of the book **Ghosts of Empire** wrote “of forty-eight Europeans who had steamed up the Niger river in three ships in the years 1832-4, thirty-eight had died of fever. Later, Nigerians would joke that the mosquito should be recognized as a national hero, as it had prevented the mass arrival of white settlers, which no doubt, smoothed Nigeria's political path.”³ The Arab, Kanuri-Hausa and Fulani on the other hand coming from the North through the desert with less mosquitoes, were able to settle in the Northern part of Nigeria. Indeed Nigeria as a whole, could not be colonized by the British in the way that Rhodesia, South Africa and Kenya were, all the same it needed tough men who could withstand the climate to administer Nigeria and keep the natives at bay.

Today, the Federal Republic of Nigeria, a State properly so-called with institutions, principles and processes notably legislating laws regularly enforced by courts with compulsive jurisdiction was certainly unknown before colonization and consequently without roots in its pre-colonial political system and way of life.

² Lugard and the Amalgamation of Nigeria Pgs. 56 - 57

³ Ghosts of Empire Kwasi Kwarteng pg. 286

THE 1999 CONSTITUTION

The 1999 Constitution developed from 46 years of colonial rule, 34 years of Military rule and 13 years of democratic rule. The Constitution is the “body of fundamental principles by which Nigeria is governed.”

Sections 1 and 2 of the 1999 Constitution provides

1. (1) This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.
(2) The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.
(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.
2. (1) Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal **Republic** of Nigeria (not Federal **Monarchy** of Nigeria)
(2) Nigeria shall be a Federation consisting of States and a Federal Capital Territory.

It cannot be said that the 1999 Constitution developed from processes whereby rival interests of the Races and Ethnic Nationalities were resolved fairly or by arbitrating fairly between the rival interests of the Negroes and Negroids that make up Nigeria. The Negroes in Nigeria are members of a dark-skinned race, original natives of Africa. This includes all the 386 Ethnic Nationalities of Nigeria. The Negroids, on the other hand, with characteristics of black people, include the Hausa, Fulani and Kanuri - three Ethnic Nationalities who are of Arab descent and migrated to Nigeria in the 12th and 18th centuries. The Hausa and Kanuri in the 12th Century while the Fulani arrived much later in the 18th Century about the same time as the British arrived in Nigeria.

LUGARD PREFERENCE FOR THE NORTH (FULANI)

The British partnered with the Negroid Fulani who were very loyal to the British Crown to colonize Nigeria. Lugard wrote thus: “the loyalty throughout the War of the Moslem ruler (who could appreciate something of the magnitude of the struggle), has been remarkable and there is reason to believe that it is no mere profession but arises

from a genuine conviction. There has been no vestige of unrest in these States, and when the Tuareg rising occurred in 1916 in French territory, they were eager to join in the assistance we gave. Prayers have been daily offered in the mosques, the Treasuries have offered about £50,000 each year [total, £150,000 plus £3,100 to Red Cross at the end of 1917] towards the War costs. Last year, when a contribution towards Red Cross funds was suggested, £11,000 was offered, but the Sultan of Sokoto declined to subscribe from his Treasury funds, saying that he and his Chiefs would contribute from their private means. They co-operated heartily in raising troops and carriers for service overseas.”⁴ In a letter to the Colonial Office, Lugard wrote: “I believe myself that the future of the virile races of this Protectorate lies largely in the regeneration of the Fulani. Their ceremonial, their colored skins; their mode of life and habits of thought, appeal more to the native population than the prosaic business-like habits of the Anglo-Saxon can ever do. --- My desire to utilize the Fulani as rulers has been described in a former report and has met with the approval of the Secretary of State. They are unfit at present to exercise power except under supervision; nor do I hope for any great success in the present generation, but I hope and believe that with careful guidance, their sons and grandsons will form invaluable rulers under British supervision, and that their superior intelligence can be developed as a useful asset in our administration”⁵ It is safe to say that the grandsons of the Fulani of amalgamation are the present rulers of Nigeria as reflected in the composition of the Federal Executive Council, the leadership of the Defence and Intelligence Services. In the traditional institutions of the North, Lugard’s prediction has come to fruition, even though Nigeria does not need colonial masters in the 21st Century world.

COLONIAL CONSTITUTIONS

Colonial Constitutions included the Clifford Constitution (1922), Richards Constitution (1946), Macpherson Constitution (1952), Lyttleton Constitution (1954),

⁴ Lugard and the Amalgamation of Nigeria A.H.M. Kirk-Greene

⁵ Lugard Colonial Report: Northern Nigeria 1902, para. 26, pg. 36 [Nigeria: Political Power Imbalance, Olaniwun Ajayi pg. 66]

and the Independence Constitution (1960). The journey from amalgamation (1914) to independence (1960) had one thread that ran through the process - the reward for the North (Fulani) for their loyalty and faith in the British at the expense of the “unreliable” South. Olaniwun Ajayi in his book titled **Nigeria: Political Power Imbalance** stated that “at the Ibadan Constitutional Conference in January 1950, North made four crucial demands:

- (i) parity of representation with the Eastern Region and Western Region in the House of Representatives;
- (ii) that there should be no change in the boundary between the North and the West;
- (iii) that finance should be allocated on per capita basis; and
- (iv) the municipality of Lagos should not form a part of any Region, although the colony districts should be incorporated in the Western Provinces.”

The North secured all the demands, in concert with Colonial Office and Her Majesty’s Government, by skillful maneuvering, plot and stratagem.”⁶ To the credit of the British, they introduced in the 1960 Constitution Human Right provisions notwithstanding the fact that Islamic States in the UN refused to endorse this fundamental document when it was approved by the United Nations in 1948. This came about at the recommendation of the Willink’s Commission that identified **Fulani/Hausa as an ideology** thus: “many witnesses have referred to their fears of Fulani-Hausa domination, and though the meaning of this phrase was not always expressed in terms, or even consciously analyzed by those who used it, **it clearly implies a system of rule and of society of which an important ingredient is the operation of Muslim Law**. Some witnesses have specifically referred to this system of law as an object of fear.”⁷

⁶ Nigeria: Political Power Imbalance Olaniwun Ajayi, pgs. 59 - 60

⁷ Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them

MILITARY RULE

Military rule also favored the North notwithstanding the fact that the first coup was conducted mainly by Christian officers “young men, largely educated at the Royal Military Academy at Sandhurst. The organization they showed, prompted one resident Englishman to remark ‘Sandhurst training certainly leaves its mark.’”⁸ The Sandhurst officers were later replaced in the political history of Nigeria by Pakistani and Nigeria trained officers, mainly from the North who knowingly or unknowingly, promoted the new ideology of Sharia as propounded by the Muslim Brotherhood of Egypt, which **hid the fact that Jihad and Islamic supremacy are the centrality of Sharia.** The Nigerian Constitution was systematically and stealthily modified to accommodate Sharia in the hope of supplanting the Constitution as the source of legislation. Today one submits, the conflict of two ideologies – Liberal Democracy and Sharia as practised in Nigeria is mainly responsible for instability in the country. Islamic supremacy and neo-colonialism has destroyed the liberalism necessary for the practice of Liberal Democracy.

NEO-COLONIALISM

Section 3 of the 1999 Constitution provides:

3. (1) There shall be 36 states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.
- (2) Each state of Nigeria, named in the first column of Part I of the First Schedule to this Constitution, shall consist of the area shown opposite thereto in the second column of that Schedule.
- (3) The headquarters of the Governor of each State shall be known as the Capital City of that State as shown in the third column of the said Part I of the First Schedule opposite the State named in the first column thereof.
- (4) The Federal Capital Territory, Abuja, shall be as defined in Part II of the First Scheduled to this Constitution.

⁸ Ghost of Empire Kwasi Kwarteng pg. 307

(5) The provisions of this Constitution in Part I of Chapter VIII hereof shall in relation to the Federal Capital Territory, Abuja, have effect in the manner set out thereunder.

(6) There shall be 768 Local Government Areas in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six Area Councils as shown in Part II of that Schedule.

Section 3 of the 1999 Constitution suggests a strategy of replacing Ethnic Nationalities as owners of Nigeria with a Military contraption that favors the new neo-colonialism whereby the colonizing Ethnic Nationality could represent the states they are found, even though they are minorities thus reducing indigenous natives to mere colonial subjects. There is no difference between the provisions in Section 3 of the 1999 Constitution and what the white colonizing powers did in the partitioning of Africa and the amalgamation of 1914. The Ethnic Nationalities were never consulted. It is time, I submit, that Federal Character should be replaced by Ethnic Character.

The 1999 Constitution under Section 152(2) which provides that “the President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density, provided that the principle of derivation shall be constantly reflected in an approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.” I submit that this recommendation unwittingly turned the South (especially Niger Delta) into a colony of the North. The North has more states, population, larger landmass and terrain as well as population density which are assets to which the additional value of forming the bases for sharing of Nigeria’s oil wealth from the Niger Delta has been added. The North has no responsibility for these favorable treatments such as providing land at the disposal of the South for agriculture or Southerners accepted as indigenes of the North.

COLONIAL SYSTEMS

There are three types of colonial systems that have been in use in Africa, viz (i) the colonized territory administered as a separate, but dependent, state; (ii) **the colonized territory integrated with (but not into) the metropolitan country as two separate but integral parts of one, indivisible state**; and (iii) the colonized territory incorporated into the metropolitan state as an integral part thereof. The first may be implied by the nature of a colony as a foreign possession or dominion of the metropolitan state and of a protectorate as a foreign country in relation to it. The difference between the second and third systems is rather a subtle one. The idea ensured that the colonized territory and the metropolitan country are brought together as integral parts of one, indivisible state while retaining -their separate identities, though not necessarily their previous statuses; neither is absorbed by, nor incorporated into, the other as an integral part thereof, as in the third system where the colonized territory is incorporated into the metropolitan state as an integral part thereof.⁹ [Emphasis supplied] Although the South is part of Nigeria for the benefit of the North, the South is not part of the North for indigeneship. The South has, unfortunately, adopted this method of colonialism in the treatment of other Southerners. The grazing demand of the Fulani is another demand of the colonial masters from its colonies.

Under the second type of system, the colonized territory is constituted as a separate but dependent state, with its own machinery of government subordinate to the imperial government --- a local legislature, executive and judicature. The system is typified by the British method of colonial administration in which the subordination of the colonial state to the imperial state took the form of the imperial government legislating directly for the colonial state on matters, especially constitutional matters, with respect to which direct imperial legislation was considered necessary or expedient while the Judicial Committee of the Privy Council sitting in London acted as the final court of appeal. For purposes of better illumination of the mechanisms of the

⁹ Colonialism in Africa: Ancient and Modern Vol.1. Ben Nwabueze, pg. 246

system; our description of it will be illustrated by special reference to a particular colonized territory, Nigeria.¹⁰ The Jihad now taking place in some Northern States can be regarded as the cohesive forces of the colonizing Fulani to take possession of the land belonging to the native indigenous Ethnic Nationalities, in States such as Plateau, Niger, Kaduna, Benue and even Enugu.

NATIONAL PRESIDENT FULANI YOUTH

The National President of Fulani Youth in Nigeria under the aegis of Jonde Jam Fulani Youth Association of Nigeria (JAFUYAN), Alhaji Saidu Maikano, was reported in **The Sun** of January 15, 2017 to have uttered words that inferred the colonial masters status of Fulani in Nigeria. Part of his statement reads: "Maikano also refuted claims by Southern Kaduna natives that they were original owners of the zone, saying that at the time Fulani people settled in the area, the natives were still dwelling in caves, coming out occasionally to take feed from the cattle rearers. He said history had revealed that Fulani herdsmen founded all the present Southern Kaduna towns before the emergence of the natives. He added that the reason given by history confirmed why most towns in the area bear names of Fulani origin such as Zango, Kagoro, Jama'a, Jere, Kachia, Kagarko, Marwa, amongst others. The natives who were originally hidden in caves of mountains and hills emerged to join the Fulani nomads who were living and grazing their cattle in the savanna land within the zone and settled around the Fulani in order to utilize manure from the Fulani cattle coral to cultivate their arable crops for subsistence. "The question that we are asking the natives of Southern Kaduna is, where are their towns and villages since the places they are now claiming belong to the Fulani," Maikano stated."¹¹ This statement reflects the views of Fulani not only in Southern Kaduna but also in Jos, which the presenter submits, was responsible for the creation of Jos North Local Government. The statement of the Governor of Kaduna State Mallam Nasir El-Rufai also, suggests a colonial Governor in the protection of a 'white' race, this time Fulani interest.

¹⁰ Colonialism in Africa: Ancient and Modern Vol.1. Ben Nwabueze, pg. 247

¹¹ The Sun Newspaper January 15, 2017

GOVERNOR NASIR EL-RUFAI

The Governor was reported in **The Guardian** of December 18, 2016 to have said: “for Southern Kaduna, we didn’t understand what was going on and we decided to set up a committee under Gen. Martin Luther Agwai (rtd) to find out what was going on there. What was established, was that the root of the problem has a history starting from the 2011 post-election violence. Fulani herdsmen from across Africa bring their cattle down towards Middle Belt and Southern Nigeria. The moment the rains start, around March, April, they start moving them up to go back to their various communities and countries. Unfortunately, it was when they were moving up with their cattle across Southern Kaduna that the elections of 2011 took place and the crisis trapped some of them. Some of them were from Niger, Cameroon, Chad, Mali and Senegal. Fulanis are in 14 African countries and they traverse this country with the cattle. So many of these people were killed, cattle lost and they organized themselves and came back to revenge. So a lot of what was happening in Southern Kaduna was actually from outside Nigeria. We got a hint that the late Governor Patrick Yakowa got this information and sent someone to go round some of these Fulani communities, but, of course, after he died, the whole thing stopped. That is what we inherited. But the Agwai committee established that. We took certain steps. We got a group of people that were going round trying to trace some of these people in Cameroon, Niger Republic and so on to **tell them that there is a new governor, who is Fulani like them and has no problem paying compensations for lives lost and he is begging them to stop killing**. In most of the communities, once that appeal was made to them, they said they have forgiven. There is one or two that asked for monetary compensation. **They said they have forgiven the death of human beings, but want compensation for cattle. We said no problem, and we paid some**. As recently as two weeks ago, the team went to Niger Republic to attend one Fulani gathering that they hold every year with a message from me.”¹² [**Emphasis supplied**]

¹² The Guardian, Kaduna: A Trajectory of Crises, December 18, 2016

RE SOUTHERN RHODESIA

This is similar to the case of *Re Southern Rhodesia* “in the celebrated judgment in ‘*Re Southern Rhodesia*’ which raised, among other things, the issue of the status of the communities now comprised in what is known as Zimbabwe (formerly Southern Rhodesia). The Judicial Committee of the Privy Council rejected as “**fanciful**” the suggestion that the indigenous African communities inhabiting the area, the Matabeles and the Mashonas, were still in the nomadic stage of development at the time the British arrived and colonized them; on the contrary, the Board observed, there existed a tribal organization which, “though still remaining fluid,” served the purpose of government of the communities, and that its existence excluded any “question of white settlement among aborigines destitute of any recognizable form of sovereignty.” “Equally little,” it continued, “is the question of the rights attaching to civilized nations, who claim title by original discovery or in virtue of their occupation of coastal regions, backed by an unexplored interior. Besides, the sovereignty of these communities has been expressly recognized by the British Government in letters to their traditional ruler and the Portuguese Government. Accordingly, the Board held that the conquest of the communities by Britain in a war in 1894 operated to transfer to the British Government, the sovereignty which previously inhered in them.”¹³ Alhaji Saidu Maikano, like the British settlers in Zimbabwe that argued that the indigenous communities inhabiting Southern Kaduna and Jos existed only as a tribal organization which though still remaining fluid did not serve the purpose of government in the communities. The Privy Council had in 1919 rejected this argument. The Fulanis in Kaduna and Plateau States cannot claim to be owners of the areas they inhabit in those States while claiming that the indigenes were in caves when they arrived.

¹³ Colonialism in Africa: Ancient and Modern Vol.1. Ben Nwabueze, pgs. 64 – 65 ([1919] A.C. 211)

THE NIGERIAN SITUATION

What is happening in Nigeria today between the Negro and Negroid Nigerians is exactly what happened, to a lesser extent, between aborigines and settlers when the latter annexes a territory, following a conquest or following a treaty of cession or by Jihad as means by which the sovereignty of a country is acquired. In this case, the considered territory – Kaduna South and Jos North were inhabited by backward people (even in the 21st Century), possessed some recognizable form of sovereignty but not sufficiently organized in civilization to constitute a state strictly so-called. This is arrogance of the highest order. However the truth remains that mere occupation backed by effective control is all that is needed for acquisition especially in a country controlled by the Fulani. Subtle threats are being issued directly to those the Fulani regard as making provocative statements for condemning the Fulani herdsmen's atrocities in Northern and Eastern Nigeria. We need to appreciate the similarities of the Nigerian situation with territories characterized by European settlements in America, Australia, Rhodesia, South Africa. The settlers took with them traditions and the politics of their mother country. In West Africa, the Negroids of Arab descent brought with them Islam and Sharia. In Rhodesia and South Africa, the settlers used all the forms of repression and suppression to deny the native population any right - civil or political rights. But this was in the 18th and 19th Centuries. For any race in the 21st Century to try to take land belonging to others by colonization shows the backwardness of the race concerned.

It is very clear that British colonialism would not have been stupendously successful without the help of the elite at the time. Today, Fulani colonialism is succeeding not only with the help of elite, religious leaders, post truth politics, Islamism, force of arms, but also with the help of the Intelligence Service all financed from the oil funds sourced from the Niger Delta. In other words, some Nigerians - Niger Delta pay for their colonial status just as Nigeria did during British colonialism. This issue needs to be challenged in the court of law.

VIOLATION OF THE 1999 CONSTITUTION

The 1999 Constitution has been violated in several ways in order to transform Common Law principles in a democratic constitution to accommodate Sharia principles. We have witnessed firsthand, how President Obasanjo tried to change the Constitution to enable him as President have a third term and had members of the National Assembly co-operated, the 1999 Constitution would have been altered illegally without the consent of the people of Nigeria. The Constitution under Sections 9 provides:

- 1) The National Assembly may, subject to the provision of this section, alter any of the provisions of this Constitution.
- (2) An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.
- (3) An Act of the National Assembly for the purpose of altering the provisions of this section, section 8 or Chapter IV of this Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by resolution of the House of Assembly of not less than two-third of all States.
- (4) For the purposes of section 8 of this Constitution and of subsections (2) and (3) of this section, the number of members of each House of the National Assembly shall, notwithstanding any vacancy, be deemed to be the number of members specified in sections 48 and 49 of this Constitution.

This Section notwithstanding, the National Assembly has constituted a committee known as Constitution Amendment Committee headed by the Deputy Senate President Ike Ekweremadu. Some lawyers are of the view that the committee is being

transformed into a committee to provide stealthily for Nigeria, a new Constitution. In others words, the National Assembly is being transformed into a Constituent Assembly. The NCEF would prefer that a new Constitution be drafted for Nigeria based on experiences gained since 103 years of amalgamation.

Professor Nwabueze examined some aspects of 1999 Constitution:

A. Fundamental Elements of Constitutional Democracy as Formally Established in Nigeria in November 2016.

B. Emasculation of our Constitutional Democracy through the Subversion of the Safeguards Enshrined in the Constitution for the Protection of the Individual Against the Oppressive Use of the Organized Coercive Force at the Disposal of the State in October 2016

From the two papers, it became very clear to National Christian Elders' Forum (NCEF) that (1) a Constitutional Democracy like the one we envisaged for Nigeria cannot co-exist with State terrorism or a State Police, (2) that safeguards enshrined in our Constitution for the protection of the individual against the oppressive use of the State's organized force of physical coercion and violence is being subverted by (a) the National Security Agencies Act, and (b) the Economic and Financial Crimes Commission (EFCC) Act 2004 especially by the illegal activities of the Commission in real life. With respect to the actions and methods of the operatives of the National Security Agencies Act enshrined in the 1999 Constitution under Section 315(5)(c) which provides that:

(5) Nothing in this Constitution shall invalidate the following enactments, that is to say –

- (a) The National Youth Service Corps Decree 1993;
- (b) The Public Complaints Commission Act;
- (c) The National Security Agencies Act;
- (d) The Land Use Act,

and the provisions of these enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9(2) of this Constitution.

(6) Without prejudice to subsection (5) of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect

as Federal enactments and as if they related to matters included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.

It should be stated that the above-quoted provisions of section 315(5) & (6) were not in the draft of the Constitution prepared by the Constitution Drafting Committee (CDC) in 1976 or in the version of it approved by the Constituent Assembly (1977). They were put there subsequently by General Obasanjo's Supreme Military Council. Subsection (6) was not even in the Constitution as originally enacted by the Federal Military Government (FMG); it came into the Constitution by way of a later amendment by Decree of the FMG.

The provisions of the two subsections, as they relate to the SSS established by the National Security Agencies Decree (now Act), are clearly an exercise that disfigures the face of our constitutional democracy." Professor Nwabueze concluded by stating that "the entrenchment in the Constitution of the SSS constituent statute and the glaring conflict between its provisions and those of the Constitution are therefore part of Obasanjo's grievous legacy of subversion of the Rule of Law in Nigeria. The National Assembly owes to Nigerians an explanation as to why its constitutional review exercise that has been going on for some time now left section 315(5) & (6) of the Constitution unexpunged and thus allowed it to continue to disfigure the Charter of our corporate existence. **The Instrument (i.e. the Constitution) in its entirety should be abrogated if for no other reason than to excise the excrescence.**"

In the paper of November 2016 titled **Fundamental Elements of Constitutional Democracy as Formally Established in Nigeria**, he suggested that Nigeria, like the USA has a Constitution "anchored on an individual as ruler" and continued, "it is thus nothing but a perversion of a cardinal element of democracy for the Supreme Court of Nigeria to hold in the infamous **Amaechi** case that "it is a [political] party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party in winning but at the end of the day, it is the party that wins or loses an election."

No doubt, says Nwabueze, this particular element of the system is fraught with the danger arising from the incontrovertible truth that state power in the hands of an individual corrupts and absolute power corrupts absolutely, which creates by far the more compelling necessity of devising mechanisms for limiting the power in order to protect the people against it, hence the concept of limited government. The term “constitutional government” is apt to be confused with a government under a constitution, but it means simply limited government or government limited by law or what has come to be referred to as constitutionalism.”

THE NIGERIAN POLICE FORCE

The Nigerian Police Force with the Inspector General is the only civilian force outside the Armed Forces that is allowed to exist under the Constitution.

Section 214 provides (1) There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

(2) Subject to the provisions of this Constitution -

(a) the Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an act of the National Assembly;

(b) the members of the Nigeria Police shall have such powers and duties as maybe conferred upon them by law;

(c) the National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields.

215. (1) There shall be -

(a) an Inspector-General of Police who, subject to section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force;

(b) a Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.

(2) The Nigeria Police Force shall be under the command of the Inspector-General of Police and contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.”

The Constitution further provides in Section 227

“No association shall retain, organize, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or

in such manner as to arouse reasonable apprehension that they are organized and trained or equipped for that purpose.”

Professor Nwabueze opined “in physical terms, the state’s organized force consists, in the main, of

- (i) A Nigeria Police Force (NPF), comprising 371,800 officers and men, with arms and ammunition at their disposal;
- (ii) An Armed Forces of the Federation, made up of an Army, Navy and Air Force comprising a total of 102,000 – 6,000 officers and 96,000 men.

For purposes of civil government, the Nigeria Police Force is the primary coercive force at the disposal of the Nigerian state, supported by the Armed Forces in the “suppression of insurrection and restoration of order when called upon to do so by the President.” The nature of the organized coercive force at the disposal of the state is defined, albeit only obliquely, by the reference in section 227 of the Constitution to “physical force or coercion.”

SUBVERSION OF THE POLICE ACT

In practice, the President makes himself the Commander-in-Chief of the Nigeria Police Force (NPF), thereby usurping the position assigned to the Inspector-General of Police (IGP) by the Constitution. In this usurpation, the President is backed by section 9(4) & (5) of the Police Act which provides:

- “(4) The President shall be charged with operational control of the Force;
- (5) The Inspector-General shall be charged with the command of the Force **subject to the directive of the President**”. This is unconstitutional.

The above provisions are patently and manifestly inconsistent with the provision of section 215(2) & (3) of the Constitution. The two subsections of the Constitution do not make the IGP’s command “subject to the directive of the President,” as regards the operational control of the Police Force. The Constitution does not provide, in any of its sections, that the President shall be the Commander-in-Chief of the NPF. The

President's power to give directives to the IGP is conferred by section 215(3) and is explicitly limited to the giving of "lawful directions with respect to the maintenance and securing of public safety and public order." Being inconsistent with the Constitution, the provisions of section 9(4) & (5) of the Police Act are unconstitutional, null and void.

In addition to this confusion, it is also necessary to point out that the Minister of Internal Affairs has a group of arm bearing organizations - including the Civil Defence, Nigeria Peace Corps and Vigilante Group of Nigeria. The Fulani Minister is one of the many Fulani in charge of security in Nigeria to the exclusion of Christians that constitute over 50% of the population with headquarter in Abuja while the States and Local Government are prevented from having an organized State or Local Government Police Forces.

The concern of NCEF is that these duplications suggest "two narratives" one for the North the other for the South made up of only members of the Nigerian Police Force, under the control of an IGP a Northerner. Both narratives suggest preparation for the invasion of the South by the North. The recent killings in Southern Kaduna confirm the narrative: "There are people that are sending a message, defend yourselves. We will get them. Defend yourself is hate speech. You can't defend yourself if there is a government. We are going to arrest and prosecute all those that pass that message". This widely publicized and yet to be disclaimed statement credited to the Kaduna State Governor, Mallam Nasir el-Rufai, apparently reacting to the multiple calls by leaders and spokesmen of the indigenous, largely Christian, communities of the Southern region of the state to defend themselves against the persistent attacks of suspected Fulani herdsmen. The attacks had led to the sacking and razing of entire villages, gruesome murder of hundreds of innocent citizens and large-scale destruction of property. --- The unfortunate truth is that the governor, a Fulani himself, has not exhibited the requisite detachment and dispassionate disposition to be a credible and acceptable arbiter in the crisis. He has petulantly held to the implausible thesis that the perpetrators of the atrocities in Southern Kaduna are not

Nigerians but Fulani herdsmen from across West Africa, including Niger, Cameroon, Chad, Mali and Senegal. This was also the conclusion reached by the General Martin Luther Agwai Peace and Resolution Committee earlier set up to trace the root causes of, and propose solutions to the protracted violence. Those who peddle this view contend that the foreign Fulani herdsmen have been avenging the loss of lives and property, including cattle they suffered in the post-2011 election violence when they were migrating back to their countries. --- No less insensitive has been the intemperate vituperation of the Minister of the Interior, Lt-General Abdulrahman Dambazzau (retd), against the Christian Association of Nigeria (CAN) for legitimately and vehemently denouncing the atrocities committed against their members. Dambazzau claims that the conflagration in the region has no religious connotation. He must be living on the moon. It is bad enough, as CAN noted, that as the Minister of the Interior, Gen. Dambazzau has not even once taken a trip to Southern Kaduna to personally appraise the situation. For the Inspector-General of Police, Ibrahim Idris, semantics appears to be more important than life. He quibbles with CAN over the latter's assertion that 808 people died in the crisis. For Idris, what is happening in Southern Kaduna cannot be appropriately described as genocide. It does not occur to him that his prime responsibility is to do everything to ensure that not even one life is lost."¹⁴ Southern Kaduna killings seem to be the first stage of the war against Christians in Nigeria. The invasion of the South, when and how is only within the knowledge of the Fulani Caliphate.

The subversions detailed in this Memorandum bear out the insightful observations of Robert Jackson and Carl Roseberg in their incisive study titled: **Personal Rule in Black Africa** (1982), part of which reads: "most African states have abstract constitutions and institutions ... but very few have them in fact; the formal rules of the political game do not effectively govern the conduct of rulers and other political leaders in most places, most of the time. In so far as rules are followed by African rulers, it is only after they have been changed by the ruler or oligarchy in question to

¹⁴ The Nation Editorial January 6, 2017

suit his or their personal - political convenience. But rules of expediency are not, patently, rules of institutional government.”

PRESIDENTIAL ADVISORY COMMITTEE ON NATIONAL DIALOGUE

The above Committee was set up by former President Dr Goodluck Jonathan during his Independence Day broadcast on October 1, 2013, with the following terms of reference:

1. To consult with all relevant stakeholders with a view to drawing up a feasible agenda for the proposed national dialogue/conference;
2. To make recommendations to Government on structure and modalities for the proposed national dialogue/conference;
3. To make recommendations to Government on how representation of various interest groups at the national dialogue/conference will be determined;
4. To advise Government on a time-frame for the national dialogue/conference;
5. To advise Government on a Legal framework for the national dialogue/conference;
6. To advise on legal procedures and options for integrating decisions and outcomes of the national dialogue/conference into the Constitution and Laws of the nation; and
7. To advise Government on any other matter than may be related or incidental to the proposed national dialogue.

In the Final Report, the Committee stated that there was a: “**Slight Change in the Committee’s Composition**. Professor Ben Nwabueze (SAN, NNOM) whose name was on the original list of members up to the time the Committee was inaugurated, was not available to serve because of health challenges. He was subsequently replaced by Professor Anya O. Anya (FAS, OFR, and NNOM). Another change came in respect of Col. Tony Nyiam (Rtd) who was dropped and was replaced by Solomon Asemota

(SAN). Both Professor Nwabueze and the presenter are members of **The Patriots** with the Professor as Chairman.

On December 2, 2013, when the Committee presented its Report, the presenter also sent a Minority Report. Although the presenter's Minority Report was received by both the Committee and the Villa, the Committee denied ever receiving any such Report. It must be pointed out that 2013 was a period of **post-truth politics** in Nigeria. Post-truth politics was advancing in many parts of the world including Nigeria. Post-truth politics is made possible by two threats: a loss of trust in institutions that support its infrastructure and deep changes in the way knowledge of the world reaches the public. Mr. Roberts first used the term "post-truth politics" in the context of American climate-change policy. The rise of cable and satellite television channels in the 1980s and 1990s made it possible to serve **news tailored to specific types of consumer**. Facebook and other social media can filter news whether it conforms with users' expectations or not. Weakened by shrinking audiences and advertising revenues, and trying to keep up online, mainstream media have become part of the problem. "Too often, news organizations play a major role in propagating hoaxes, false claims, questionable rumors and dubious viral content, thereby polluting the digital information stream," it would seem that "the age of neutral journalism has passed. It is impossible because what you select from the huge sea of information is already subjective."¹⁵ This was what happened in 2013, when both the Committee and the Presidency denied on Radio, Television and Newspapers that there was no Minority Report.

The above facts notwithstanding, the Ethnic Nationalities Movement of Nigeria (ENM) organized at its expense a Conference of Ethnic Nationalities that also analyzed the presenter' stands on the Minority Report.

The reasons for the Minority Report include:

¹⁵ The Economist, September 10, 2016

- a. To present to The President an alternative view point;
- b. To ensure that those who represent or speak for Ethnic Nationalities are true representatives and not agents of any godfather;
- c. To stop the violence of the invisible power bloc that asserts authority recklessly without corresponding accountability. We must make the invisible, visible.
- d. To satisfy my conscience and promote the struggle over the years by both **The Patriots** and the **Ethnic Nationalities Movement (ENM)**. Any member of these organizations, I want to believe, would have reacted the same way had they been in my position

As a member of **The Patriots** and National Co-ordinator of the Ethnic Nationalities Movement (ENM), I considered it unfair to members of the two organizations scattered throughout the country for me to abandon all we had worked for in the last twenty (20) years to please any establishment with a philosophy different from our own. I noted that the British who were our colonial masters are not proud of colonialism and one therefore wonders why the Fulani in Nigeria want to be proud successors to colonialists.”¹⁶

The information that got to me was that the Chairman of the Committee Chief Okurounmu said that although he received the Minority Report, members of the Committee decided to suppress it for no discernible reasons. This is regrettable because the object of the Committee as contained in its terms of reference was what was best for Nigeria, and one wished that the government had the opportunity to consider the Minority Report. This fact notwithstanding, at a meeting on Thursday, January 9, 2014, at which former President Goodluck Jonathan presided and, in which most members of the Presidential Committee on National Conference were present, the presenter explained the reason why he did not raise any objection when the Chairman of the Committee while presenting the Majority Report said “**Mr.**

¹⁶ Minority Report, Ethnic Nationalities Conference 2014 pgs. 154 - 155

President, I say quite emphatically, that we have no minority report” – he did not want to disrupt proceedings after having been assured by the then Chief of Staff to the President that his Report was given to the President.

At this meeting, it became clear that my Minority Report got to the Presidency and this was confirmed by Mr. President himself when he said that he read my Minority Report before the formal presentation. It is therefore very clear that the Committee exceeded its jurisdiction by suppressing the Minority Report which was handed to it for onward transmission to the Presidency.”¹⁷ The point being made here is the fact that these Committees set up by government were required to follow a script provided by the government and there is no room for variation, no matter how well intentioned.

COMMUNIQUÉ OF ETHNIC NATIONALITIES MOVEMENT (ENM)

The Ethnic Nationalities Movement (ENM) in collaboration with **The Patriots** held the first ever Ethnic Nationalities Conference on Tuesday 11 and Wednesday 12 February 2014 in Abuja with the objective of creating more awareness and understanding of the meaning of the institution of the Ethnic Nationalities in Nigeria, its essential attributes, significance and relevance. The Conference attended by more than 50 Ethnic Nationalities from geo-political zones of the country was a historic gathering indeed.

After frank discussions at interactive sessions of the papers presented to it, the Conference resolved as follows:

1. COMMENDS the President, Federal Republic of Nigeria, Dr Goodluck Ebele Jonathan GCFR for initiating a National Conference that will afford Nigerians the opportunity to address and proffer solutions to the numerous ills plaguing our

¹⁷ Minority Report, Ethnic Nationalities Conference 2014 pg. 156

country. It, however, advises him not to succumb to ill-intentioned advice from politicians, technocrats, and other Nigerians intent on derailing the process for their selfish gains. The Conference also advised the President to stay focused and ensure that the proposed National Dialogue is Ethnic Nationalities driven as they are the original and primary stakeholders of the Nigerian project. The Conference assured him that he, as President of the country will leave his name in letters of gold if he oversees a National Conference that honestly addresses the numerous ills of our country.

2. AFFIRMS that whilst the number of Ethnic Nationalities, characterized by a common traditional territory, a common indigenous language and other distinctions, cultural traits that set each apart from other groups, is a matter of disputation, the Ethnic Nationalities nonetheless,

- (a) is a sociological reality;
- (b) a sociological and cultural foundation of the Nigerian State;
- (c) the Nigerian State has no territory other than, or different from, the Territories of the various Ethnic Nationalities comprised within it - Yorubaland, Igboland, Hausaland, Kanuriland, Tivland, Beninland, Ijawland, Ikaland etc from which it follows that Nigeria is, in reality, a union of Ethnic Nationalities;
- (d) the Ethnic Nationalities are the original and primary stakeholders of the Nigerian Project having existed long before colonialism and having been the primary targets of, and sufferers from, the marginalization, oppressions and injustices abounding in the country.

Accordingly, and because they are the heart and soul of the Nigerian State, the Ethnic Nationalities demand, as their inalienable right, that they should be given legal recognition in the Constitution and their status as separate “Nations” or “Nationalities” should also be recognized. All efforts should also be made to harmonize the recognition of Ethnic Nationalities and their inherent rights on the one hand, and citizenship rights of the individual Nigerian on the other by the state, with the Federal and State governments discharging fairly, justly and equitably, the duties laid on them by the Fundamental Objectives and Directives principles of State enshrined in Chapter Two of the 1999 Constitution as Amended.

3. AFFIRMS that the status of the Ethnic groups as separate Nations or Nationalities confers on them certain inherent rights, in particular the rights of self determination including the right of secession in accordance with article 20(1) of the African Charter on Human and People's Rights which provides that "all peoples shall have the unquestionable and inalienable right to self-determination"

The African Charter has been incorporated by national legislation as part of Nigeria's domestic law. It is, therefore, disdainful of the law to stop the proposed National Conference from talking about something prescribed and authorized by the law of the country.

Accordingly, recognition of this right, which is an already existing right, is not inconsistent with the notion of the indissolubility or the perpetuity of the Nigerian State. It is a notion to which most of us adhere.

4. AFFIRMS that, as every Nigerian belongs to an Ethnic group, mutual understanding, mutual respect, co-operation and solidarity among the Ethnic Nationalities are needed to enable Nigeria's many and seemingly intractable problems to be addressed and for the ethnic groups to coalesce into one nation.

5. ADVISES Ethnic Nationalities who have valid claims but are not captured in the list of nationalities in Nigeria to endeavor to validate such claims and seek to be included in the list of Ethnic Nationalities of Nigeria.

6. AFFIRMS that the Ninety delegates allotted to Ethnic Nationalities in the proposed Conference is not only grossly inadequate but is conversely also an eloquent testimony of the disdain with which some functionaries of Government hold Ethnic Nationalities of Nigeria.

7. ADVISES that, whilst the Government's approved modalities for the proposed National Conference do not meet the popular aspiration for a Conference of Ethnic Nationalities that will adopt a new Constitution for Nigeria to be thereafter submitted to the people in a Referendum for approval, there should be no boycott of the Conference for this reason, but the demand for a proper Conference should continue and be intensified."¹⁸

¹⁸ Minority Report, Ethnic Nationalities Conference 2014 pg. 89 - 90

The Ethnic Nationalities represented and signed include Ogba, Esan, Higgi, Anang, Isoko, Yagba, Ogbaru, Ewe, Idoma, Tiv, Kagote Ogoni, Igede, Mwarbi Nunguraba, Ijaw, Etsako, Tangale, Ukwuani, Margi, Bassa-Nge, Itsekiri, Nupe, Adara, Benin, Gbagyi, Chamba, Ika, Kaltungo, Numan, Chibok, Mbula, Ebirra Koto, Ekpeye, Ikwerre, Eleme, Egbira, Bwatiye, Gwadar, Karia Karia, Efik etc. The National Conference was convened at great expense to the state only for the Buhari Government, whose party APC did not participate to make the Report a Museum piece and not one of its recommendations was implemented even those that required executive action by President Buhari.

LIBERAL DEMOCRACY

Liberal Democracy is characterized by fair, free, and competitive elections between multiple distinct political parties, a separation of powers into different branches of government, the rule of law in everyday life as part of an open society, and the equal protection of human rights, civil rights, civil liberties, and political freedoms for all people. Liberal democracy is the predominant political system in the world. In Nigeria civil liberties, organizations and professional organizations were compromised during military regime. Bishop M. H. Kukah in his book titled **Religion and Politics** wrote: “it is not an accident that the issues of religious violence have become so decisive in the Babangida era. In fact, protest has permeated every segment of the society as everyone is compelled to join the struggle for survival. The administration has combined the politics of divide and rule such as was devised by the colonial administration with the politics of what has turned the state into a fiefdom. Babangida’s regime made sure that through keeping the civilian population engaged in a relay race of turmoil, he and his administration can achieve two things. First of all, the government broke organized opposition by sponsoring rival factions in all elections. This started with the Nigerian Labour Congress (NLC), then the Academic Staff Union of Universities (ASUU), Students’ Union, Nigerian Bar Association (NBA)

etc. In all these cases against the tide of popular opinion, the government-sponsored candidates backed by federal might, have always won the elections.”¹⁹

The situation has not changed, rather degraded to an extent that the intelligence agencies seem to control, directly or indirectly, most, if not all civil liberty organizations and professional bodies. It is therefore correct to say, that Nigeria does not have any party in effective opposition. It is usual for members of political parties to cross to the other side once they are defeated, and find themselves on “technical” opposition as a result, special interests, such as gender inequality, ethnic minorities etc are not protected in Nigeria’s model of Liberal Democracy.

OPTIONS FOR SUSTAINABLE DEMOCRACY

It is very clear from the above that Nigeria like most African colonized countries was not sufficiently prepared for independence. Our founding fathers are of two races – the Negro, Nnamdi Azikiwe and Obafemi Awolowo and the Negroid, Ahmadu Bello who was also a descendant of the Fulani settlers. It is therefore not unusual that the Fulani are working very hard to re-colonize Nigeria, notwithstanding what Lugard described as Fulani suzerainty when he wrote: “The misrule of the Fulani had rendered them hateful to the bulk of the population who would welcome their over throw.”²⁰ The Fulanis are presently working very hard to re-colonize Nigeria.

There is need, in the above circumstances, to have a **second wave** of founding fathers that would first help to stem class distinction between ordinary Nigerians and the Nigerian elite. “To have the whiteman's power, i.e. state power, and the grandeur, prestige and mystique associated with it, was the dream of the African elite and politician, creating in them a kind of uncontrollable animal passion. The lust of the African elite or politician, as he contemplated the power and privileged position of the white colonialists, "expresses his dreams of possession - all manner of possession: to sit

¹⁹ Religion, Politics and Power in Northern Nigeria Bishop Matthew Hassan Kukah pg. 243

²⁰ Lugard Colonial Report, Northern Nigeria 1902, pg 19-29, para 5-36

at the settler's table, to sleep in the settler's bed, with his wife if possible". And, says Frantz Fanon, "there is no native who does not dream at least once a day of setting himself up in the settler's place". The envy and lust had produced a preparedness and determination to use fraud and other illegitimate means to try to achieve the dream. Thus, the ready resort to these means by the political class in Africa in the struggle for the control of the state is, to a significant extent, an inheritance, a hang-over, from colonialism."²¹

Is there a Clergy - Muslim and Christian that is not part of the new neo-colonialism of the elite? Nigeria must therefore conform with the existing legal order, constituted by a Constitution, the principle of the Rule of Law, by a Legislative Assembly, a Presidency, a Judiciary and other instrumentalities of government, such as we have in Nigeria, a Constituent Assembly to adopt a peoples Constitution must be provided for by law and a Referendum to approve the Constitution so adopted by the Constituent Assembly, authorized by a law enacted by the National Assembly and assented to by the President. There is no way a referendum can be held in the country under the existing legal order without an enabling law prescribing how it is to be conducted which should also take care of the issue of re-structuring of the country. Anything else outside the legal framework set out in an Act of the National Assembly will not meet the legal requirement of a peoples Constitution. Nigerian unity is not only negotiable but must indeed be re-negotiated for it to stand or survive the test of time. The reality, over the years, remains that despite the best efforts of all our leaders past or present, Nigerian unity is not guaranteed. It is simply, at best, an aspiration not yet an achievement. Hence, the statement that Nigerian unity is "not negotiable" is simply a historical fallacy. Many Nigerians are losing the dream of a united Nigeria because of the obstinate resistance of a few to any idea of reform or restructure of the country. This, indeed, is dangerous to Nigeria's survival as one nation. However, history teaches us that "those who make reforms impossible make revolution inevitable". Many Nigerians love their country but forced to choose, would choose their liberty and freedom.

²¹ Colonialism in Africa: Ancient and Modern Vol.1. Ben Nwabueze, pgs. 24 - 25

CONCLUSION

Those of us who have had the misfortune of being born in British colonial Nigeria and are now under homemade colonialism have suffered what one can regard as double jeopardy. British colonialism had some measure of respect for Human Right and a home country Britain to appeal to by the colonial subjects. The new colonialists are determined to destroy Western civilization and democracy in Nigeria through Boko Haram and Fulani herdsmen. The only option available to us non-Islamists are the courts which unfortunately are being intimidated through appointments and the use of DSS, EFCC etc. Court orders are ignored and thereby questioning the saying that “the court is the last hope of the common man”.

The above facts notwithstanding, the presenter concludes that the courts are still the only non-violent platform for non-Islamist Nigerians to ventilate their grievances and challenge Islamists as such challenges strength our court, and this is necessary before the Islamists totally destroy our country and civilization.