

The Rule of Law in Nigeria

Foreign Enterprise in Nigeria: Laws and Policies. PAUL O. PROEHL.
Chapel Hill: University of North Carolina Press, 1965. Pp. xii, 250.
\$7.50.

There are good reasons why the Federal Republic of Nigeria has attracted substantial attention. In area and population it is one of the largest new countries of Africa south of the Sahara. With its diverse resources and energetic population it has the best chance to succeed economically. And with its political leadership it had, until the unexpected military *coup d'état* in January 1966, shown that a newly independent country could weather serious constitutional crises in a manner that respects the role and the orderly processes of the law. This image has now been shattered, although friends of Nigeria continue to be cautiously optimistic over the long run. In any case, Professor Proehl's book, valuable for other reasons, gives some background to the gradually mounting tensions that have so suddenly exploded.

Professor Proehl's book deals with the rule of law in Nigeria. Though focused on foreign enterprise and economic development, the scope is broader and includes constitutional matters as well as an interesting discourse on the sources and prospects of Nigerian law.¹ And this is essential to his logic, for in some respects the assessment of the political and economic future of the country depends more on the direction in which legal processes of individual liberty are allowed to develop than on the very important details of credit legislation or even land law.

It is for a number of reasons refreshing to an economist to read a discussion in well documented² legal terms. One major function of the law is to provide a framework for the settlement of disputed questions greatly superior not only to violence but also to ideology. But the law is also the mechanism by which decisions are translated into action. An economic plan has to be translated into budgets and economic policy decisions, all of which involve a legal framework and legal procedures, including administrative directives derived from and delegated by law. The logic, simplicity, and workability of the legal procedures crucially affect the success of the policies whose execution has been decided upon. Professor Proehl's discussion thus provides a welcome supplement to the usual discussions of a country's economic and political development in terms of economic, political, and sociological categories. And between the dramatic discussion of the sources and prospects of Nigerian law and the equally dramatic discussion of the Western Region constitu-

¹ Pp. 37-70.

² The footnotes take up 41 pages; most of them are references to the relevant laws.

tional crisis in the final chapter,³ Professor Proehl manages to discuss the more pedestrian subjects of property rights, tax incentives, land tenure, the credit system, and problems of nationalization and Nigerianization. He discusses both the legal provisions and the administrative procedures which at times appear to work at cross purposes.

The economist should not look for an economic analysis of developments. The chapter on economic development sketches the background of the First National Development Plan, gives its outline, and describes some of the results of the federal portion of the Plan for the first two years. Although other parts of the book are up to date to 1965, the material on the progress of the plan as a whole is not brought up to date—an impossibility in any case in the rapidly changing African continent. But this is a minor matter, for the purpose of the book may be described as showing the development of the rule of law as it affects everyday economic life and questioning its applicability to Nigeria, and Africa generally.

There is in the political literature a great deal of discussion of whether democratic forms are suitable to African conditions, whether the rule of law is applicable, and whether political opposition can be tolerated in emerging nations. Yet no one doubts that economic development, which also has grown in Western culture, should be applied to African countries. The inconsistency between the acceptance of economic development and the excuses that are too often made by Westerners for political suppression and displays of arbitrariness by African nations suggests that the excuses are a form of race prejudice, posited on the belief that Africans cannot have our kind of political life. It is, of course, true that forms developed in our surroundings are not necessarily applicable in other surroundings. But Africans are men like ourselves, and subject to the same judgments. The desire for economic development—which is a desire for change in our direction—suggests that in other respects too our ideas may be desired and applicable.

The “rule of law” is an inheritance from the colonial past which has become meaningful to the Nigerian nation. But the process of adopting it has, of course, not ended. To determine the extent to which the rule of law is being adopted it is useful to examine some of the evidence developed by Professor Proehl. First, the constitution was amended retroactively in the Western Region in 1963, a highly unorthodox solution of a legal and political problem⁴ which comes close to a perversion

³ Pp. 175-94.

⁴ P. 56.

of the law and may be one of the steps which make the recent political upheaval understandable in retrospect. Second, although under the Republican Constitution the Supreme Court of Nigeria became the final court of appeal,⁵ certain developments in the control and appointment of the judiciary leave room for uneasiness. While Nigeria had reason to pride herself on being one of the few African countries without a preventive detention act, Professor Proehl's account indicates that the price of defeating such an act was loss of the independence of the judiciary. He suggests that there was a "trade-off" in the form of the abolition of the Federal Judicial Service Commission. The trade may have been unwise, for even without the preventive detention act, the power to detain exists in an emergency: "[T]o abolish the Judicial Service Commission was an alteration of profound, but apparently unappreciated, significance for Nigeria and for its legal institutions" which drastically alters "the condition of tenure of judges."⁶ Professor Proehl's discussion of this point is one of the most interesting parts of the book, for it touches upon the very foundation of the state. In his words:

The complete politicization of the higher Nigerian judicial system through the abolition of the Judicial Service Commissions . . . represents a constitutional reorientation of substantial importance, but one not widely appreciated at the time nor since. This cannot solely be attributed to public misapprehension. Clever politics was also responsible, it is believed.

. . . .

The relative assurance of a judiciary free from the pressures and vicissitudes of Nigerian politics, providing a bench mark of stability and predictability in an era of vast change, was surrendered without a struggle.⁷

And Professor Proehl voices "concern for this approach in prosecutions for sedition, where the line between fair and frank criticism and a criminal act is very thin at best."⁸

I have singled out Professor Proehl's discussion of the judiciary precisely because the legal changes were at the time unappreciated both in Nigeria and abroad. Also, for the future of the country, the development of the rule of law and of political stability which allows for orderly change is more essential than the laws under which business men must operate, which provide their security, but which can

⁵ P. 57.

⁶ P. 70.

⁷ Pp. 60-61.

⁸ P. 65.

be changed by comparatively easy and quick legal procedures. It is the strength of the commitment to the legal process which determines whether the changes in rules under which business and labor must operate are made in an orderly or an arbitrary fashion. In evaluating this commitment, Professor Proehl's contribution is most significant. He perceives that despite the ups and downs of the judicial process, to which parallels in our country could be found, the rule of law had taken hold. (If he had been forced to conclude that it had not, one would despair of the possibility of economic development.) Professor Proehl reminds us that just as our constitution is constantly being reinterpreted, so is the Nigerian Constitution, which of course is a much more detailed document.⁹

Politicians are sometimes impatient with legal procedures, and politics is a rough game in Nigeria as elsewhere. Elections get stolen there as they have occasionally in the United States, and aggrieved losers resort to violence in Nigeria as elsewhere. The remarkable fact is that for many years under the leadership of a skillful prime minister, now tragically dead, and despite many not so justifiable actions, no shortcuts were taken to achieve political ends. When shortcuts were taken, the increasing disintegration of political life led to the military *coup d'état* which, in this interpretation, appears not so much a break with, as a reaction against, the politicians' perversions of the rule of law.

A new constitution is promised which may work.¹⁰ The breakup of the dominant Northern Region into several smaller regions of a size more similar to that of the southern regions is a distinct possibility, which would solve some political problems while, of course, creating new ones. The military government has thus far not interfered with the civil service nor the judiciary, nor has it curtailed individual liberties or instituted censorship. Thus, one can agree with Proehl's final cautiously optimistic assessment that "if Nigerian leadership can maintain balance and flexibility, the political order that evolves by 1975 will be strong, cohesive, and purposeful."

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⁹ As Proehl points out: "A constitution is not a contract. . . . It is a living document . . . ; it must be read and applied in context. It regulates a dynamic and changing society, not a static condition or relationship." P. 186.

¹⁰ See the constitutional reform suggested by former President Nnamdi Azikiwe, *Essentials for Nigerian Survival*, 43 FOREIGN AFFAIRS 447 (1965).

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