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A Nation on Paper: Making a State in the Republic of Biafra

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In May 1967, a lorry driver lost control of his vehicle on a highway in eastern Nigeria, killing a woman hawking produce on the side of the road. He fled the scene, but the police arrested him later that day.[1] As he awaited trial, the Eastern Region of Nigeria declared independence as the Republic of Biafra, instigating a war that would last for nearly three years and cost millions of lives. The negligent driver was charged with manslaughter in a Biafran court, and what might have been an ordinary hit-and-run case became a small referendum on the new country's character. The driver, Ibrahim Bakar, was a Muslim from northern Nigeria. The deceased was an Igbo refugee named Ugo Anidire, who had left the north for her ancestral home in the Eastern Region—now Biafra—the previous year. Anidire was a "loyal Biafran," as the state prosecutor described her, and Bakar was a foreigner from an "enemy" territory. To those watching the trial from the gallery, the road accident reproduced in miniature the violence against Igbos that had sparked Biafra's secession. Bakar and Anidire became symbols of the war erupting just outside the courtroom.

Legal records from the Republic of Biafra contain rich information about this short-lived country, how it worked, and what it meant in its time. Court cases tell stories banal and extraordinary, ranging from everyday quarrels to acts of violence only imaginable in a time of famine. That there were courts at all suggests that Biafra was not just a rabble, or a façade with no internal

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[1] Nigerian National Archives, Enugu (hereafter NNAE) BCA (Biafran Court of Appeal) 5/31/6, *The State v. Ibrahim Bakar*, 19 Dec. 1967. The names of criminal defendants in unreported cases have been changed to protect their privacy.

structure.[2] Due process was followed in the Bakar case, even though the political stakes were high. The driver was acquitted on a technicality and "deported" to Nigeria. Biafra, the judge claimed, would be magnanimous and just in ways that Nigeria had never been. *The State v. Ibrahim Bakar* is not only a snapshot of a small event in a large war; it is a picture of how judges tried to create a national identity through law.[3] This case and others like it also reveal something broader about proceduralism. African law is often presumed to be too weak, unruly, or derivative to establish standards, maintain order, or define rights and duties.[4] The fact that law can have force even somewhere as inchoate as Biafra suggests that African legal systems—including ones that operate in less extreme circumstances—are more systematic, and more instrumental, than they have been given credit for. Legal procedure played a prominent role in public administration, and soldiers and civilians clung to legal institutions as the war disrupted daily life. Biafra is important not because it was chaotic, but because it was more orderly than anyone has appreciated.

There is a deep background to the Nigerian Civil War, but the most immediate cause of Biafra's secession was an episode of mass violence. In January 1966, five years after Nigeria had won independence from Britain, a group of five majors in the Nigerian military staged a coup, overthrowing the civilian government in the name of ending corruption. Six months later, officers from northern Nigeria staged a counter-coup and installed a young Major General, Yakubu Gowon, as head of state. Emboldened by the coups, northern politicians exploited a long history of economic resentment to turn ordinary people against the Igbos who lived there as an internal diaspora of merchants and bureaucrats. Over the space of several months, tens of thousands were killed across the north. Violence of this type had taken place before, but the scale of the 1966 massacres was unprecedented.[5] Nigeria's

[2] On the challenges of governing in these conditions, see Zachariah Cherian Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life during War* (Ithaca: Cornell University Press, 2011); Marielle Debos, *Living by the Gun in Chad: Combatants, Impunity, and State Formation* (London: Zed Books, 2016).

[3] This argument builds on an important body of scholarship on colonial rules of law. See, for example, Richard Roberts and Kristin Mann, eds., *Law in Colonial Africa* (Portsmouth: Heinemann, 1991); Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Portsmouth: Heinemann, 1998); Sally Falk Moore, *Social Facts and Fabrications: 'Customary' Law on Kilimanjaro, 1880–1980* (Cambridge: Cambridge University Press, 1986); Bonny Ibhawoh, *Imperial Justice: Africans in Empire's Court* (Oxford: Oxford University Press, 2013); Judith Surkis, *Sex, Law, and Sovereignty in French Algeria, 1830–1930* (Ithaca: Cornell University Press, 2019).

[4] Many parties have an interest in tarring contemporary African legal systems in this way, from presidents who discredit their own judges to undercut critique, to foreign corporations that use judicial dysfunction as an excuse to ignore local laws. See Hannah Appel, *The Licit Life of Capitalism: US Oil in Equatorial Guinea* (Durham: Duke University Press, 2019): 162–66.

[5] The definitive account of this episode is Douglas A. Anthony, *Poison and Medicine: Ethnicity, Power, and Violence in a Nigerian City, 1966 to 1986* (New York: Heinemann, 2002).

failure to stop the killings gave credence to the idea that this was the beginning of a genocide, and several million Igbos fled to the Eastern Region in the first months of 1967. The east was overwhelmed by refugees and gripped by fear. On 30 May 1967, its military governor declared independence, citing the federal government of Nigeria's failure to protect the lives and interests of easterners. The country he proclaimed was the Republic of Biafra, which took its name from a historical term for the eastern stretch of the Atlantic coast. Its leader was an ambitious Lieutenant Colonel named Chukwuemeka Odumegwu Ojukwu. Nigeria was unwilling to let Biafra go its separate way; to do so would embolden other groups to secede, and the country would splinter into pieces. Since the eastern region contained most of Nigeria's oil reserves, there were economic stakes as well. Nigeria began a "police action" to reclaim its errant province, which quickly swelled into a war. Biafra called it a revolution, a "war of survival," or an assertion of self-determination. Nigeria called it a civil war.

By and large, historians and the Nigerian public remember Biafra as a bid by Igbos to create a country of their own. This is only a partial truth. Looking at Biafra from within gives a different picture of what spurred this experiment in state-making. Not all Biafrans were Igbos, and not all Igbos were Biafrans, at least at the beginning of the war. Biafra's judges usually articulated citizenship in ethical terms rather than ethnic ones, and propaganda for an internal audience seldom spoke of ethnicity directly. Vigilance and fealty to the cause were more important in determining who was a Biafran. Early in the war, a quiz appeared in the state-run *Biafra Sun*, entitled "The True Biafran Scorecard." It began with an admonition; "be honest with yourself, good Biafrans are honest." Questions included, "Yes or no—when walking on the street I do not look carefully on strange faces," and "Yes or no—I house strangers without checking who they are with the police because a true Biafran should be kind."[6] Ethnicity was conspicuously absent. Fundamentally, being a "true Biafran" required being loyal to the cause, exhibiting discipline in one's daily life, and disavowing the violence that Biafrans alleged had driven them out of Nigeria. Political ethnicity was part of Biafra's ideology, but it was there obliquely. It was never the only thing that defined the state.[7] In Biafra as elsewhere, ethnicity is not a key that unlocks politics; it is a "rusty but comforting tool," as Tejumola Olaniyan wrote, which is more likely to jam the mechanism it is used upon than open it up.[8]

[6] *Biafra Sun*, 3 Aug. 1967: 2. The correct answer to both questions was "no."

[7] The ethnic dimensions of Biafran ideology are treated comprehensively in Apollos O. Nwauwa and Chima J. Korieh, eds., *Against All Odds: The Igbo Experience in Postcolonial Nigeria* (Glassboro: Goldline and Jacobs Publishing, 2011).

[8] Tejumola Olaniyan, ed., *State and Culture in Postcolonial Africa: Enchantings* (Bloomington: Indiana University Press, 2017), 11–12. See also Paul Tiyambe Zeleza, *Manufacturing African Studies and Crises* (Dakar: Codesria, 1997), 102–8.

In law, objects of study are often examined from their extremes. A principle can be tested by finding its margins and anomalies, or a process can be understood by looking at the places where it falls apart. In the history of postcolonial Africa, the Republic of Biafra is one of those places. As brief as it was, Biafra's history offers a way into several important questions about the nation-state. Which characteristics of African states were derived from colonialism, and which were not? Was self-rule a rupture with the colonial past, or a point of continuity?[9] At issue in the historiography of independence (or "decolonization"—a term that captures the processual nature of liberation but keeps colonialism at the center of the story) is whether, and to what degree, certain features of postcolonial states—especially their corruption, violence, and fragility—are bequests of empire. Some argue that drawing a firm line at formal independence conceals the colonial origins of those problems, pinning them on independent governments that inherited them but did not create them.[10] Others see independence as a revolution in a Kelsenian sense—a change that restructured power in meaningful ways, even if the political systems it created bore a resemblance to those they replaced.[11] A more radical faction finds both perspectives shortsighted, arguing that late twentieth-century African politics can only be understood in the *longue durée*, even if the states in question have a colonial provenance.[12] It is true that the politics of identity in Biafra were shaped over the long term, for example by ethnogenesis in the deep past and by the region's integration into the Atlantic trade in enslaved people.[13] But affinities and structures that predated

[9] Frederick Cooper's influential *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press, 2019[2002]) argued for continuity across the moment of independence in its periodization—formal independence passes almost unnoted for many of the countries described. Many historians of independence have followed this lead.

[10] Marxist scholars began making this point almost immediately after independence, arguing that the class of "compradors" who took power in most former colonies were members of a bourgeois elite whose rule was best understood as a continuation of colonialism. Debates about how to characterize Nigeria's elites continue. See Hakeem Ibikunle Tijani, *Britain, Leftist Nationalists, and the Transfer of Power in Nigeria, 1945–1965* (New York: Routledge, 2006); Adam Mayer, *Naija Marxisms: Revolutionary Thought in Nigeria* (London: Pluto Press, 2016).

[11] On Kelsen, see J. W. Harris, "When and Why Does the Grundnorm Change?" *Cambridge Law Journal* 29, 1 (1971): 103–33.

[12] Richard Reid, "State of Anxiety: History and Nation in Modern Africa," *Past and Present* 229, 1 (2015): 239–69; Jean-Pierre Chrétien, *The Great Lakes of Africa: Two Thousand Years of History*, Scott Straus, trans. (London: Zone, 2003); David Schoenbrun, *A Green Place, a Good Place: Agrarian Change, Gender, and Social Identity in the Great Lakes Region to the 15th Century* (Portsmouth: Heineman, 1998); Nimi Wariboko, *Ethics and Society in Nigeria: Identity, History, Political Theory* (Rochester: Rochester University Press, 2019).

[13] On these longer questions, see Adiele Afigbo, *The Igbo and Their Neighbours: Inter-Group Relations in Southeastern Nigeria to 1953* (Ibadan: University of Ibadan Press, 1987); C. C. Ifemesia, *Southeastern Nigeria in the Nineteenth Century: An Introductory Analysis* (New York: Nok Publishers, 1978); Kenneth Dike, *Trade and Politics in the Niger Delta, 1830–1885* (Oxford: Clarendon Press, 1956); Ugo Nwokeji, *The Slave Trade and Culture in the Bight of*

colonialism, while they could be rhetorically powerful, did not figure prominently in how Biafrans defined themselves and their new nation. In other African countries, intellectuals set about creating "usable" pasts, as nationalist historians and their fellow travelers saw their task.[14] Biafra, in contrast, defined itself not by constructing its past, but by describing its future, one in which law and bureaucracy would have pride of place.

"Citizenship," writes Frederick Cooper, "is a claim-making concept," and "citizens," continues Francis Nyamanjoh, "are not citizens in abstraction, but citizens through binding relationships and social action."[15] This was true in the first flush of independence, when African governments demanded new obligations from their new citizens, who in turn expected more from their leaders than they had from colonial governments. Citizenship became less obviously about mutual claim-making in the period of military takeovers, personal regimes, and civil wars that followed; states continued to make claims on their citizens, but it was not always a two-way arrangement. Those who lived in military regimes learned not to expect much from their governments. In Nigeria's crush of coups and crises, jurists questioned whether citizenship meant anything at all.[16] They were not the only ones to worry. Doubts about Nigeria's viability as a nation-state became common to the point of being a cliché, and many Nigerians came to feel that their state (and the form of citizenship that came with it) was hollow. It was difficult to account for how this had happened, except by invoking the truism that Nigeria was a British invention. A more complete answer lies in the Biafran courtroom, where judges tried to summon a new national identity into existence through legal argument, poetics, and paperwork. They failed, but

Biafra: An African Society in the Atlantic World (New York: Cambridge University Press, 2010). More generally, see J. F. Ade Ajayi, "Colonialism: An Episode in African History," in Toyin Falola, ed., *Tradition and Change in Africa: The Essays of J. F. Ade Ajayi* (Trenton: Africa World Press, 2000).

[14] The cracks that showed through were not a referendum on their ability as storytellers, but rather a reflection of how difficult this task was. Bogumil Jewsiewicki, "African Historical Studies Academic Knowledge as 'Usable Past' and Radical Scholarship," *African Studies Review* 32, 3 (1989): 1–76.

[15] Frederick Cooper, *Citizenship, Inequality, and Difference: Historical Perspectives* (Princeton: Princeton University Press, 2018), 144; Francis B. Nyamanjoh, "Citizenship," in Gaurav Desai and Adeline Masquelier, eds., *Critical Terms for the Study of Africa* (Chicago: University of Chicago Press, 2018), 57. See also Peter Geschiere, *The Perils of Belonging: Autochthony, Citizenship, and Exclusion in Africa and Europe* (Chicago: University of Chicago Press, 2009); Emma Hunter, ed., *Citizenship, Belonging, and Political Community in Africa: Dialogues between Past and Present* (Athens: Ohio University Press, 2016).

[16] Abiola Ojo, "The Search for a Grundnorm in Nigeria: The Lakanmi Case," *Nigerian Journal of Contemporary Law* 1, 2 (1970): 117–36; Epiphany Azinge, *Law-Making under Military Regimes: The Nigerian Experience* (Benin City: Oliz Publishers, 1994).

their failure would be consequential for Nigeria, and for the broader history of the nation-state in Africa.

During the first year of the fighting, before famine set in, the Biafran government set about defining who belonged to this new country and articulating what it stood for. Its bureaucrats performed the tasks and rituals of a nation-state—they registered people, printed identity documents, and hauled people before courts. Gregory Mann writes that postcolonial citizenships were made not by jurists and legislators, but by "migrants, rebels, policemen, and bare-knuckled diplomats."[17] Although some of the judges discussed here might be described as jurists, they were not authorities who proclaimed from on high. They were civil servants navigating the terrain of a new legal order, marking out its boundaries as they went along. African national identities were not made by fiat—they were manufactured. In Biafra, the court was the most important site of production, and this makes its legal records indispensable for its political history. I use the papers that legal procedure left behind to describe the ideology of order as it operated in Biafra, and to trace the role that law played in Biafra's administration. The article then moves on to a discussion of how legal process overlapped with politics, using court cases from Biafra—many of them on appeal from prewar Nigerian courts—to describe how Biafra crafted an identity through law, and how it changed over time. The final section considers what Biafra reveals about African nation-states more broadly. Looking at Biafra through the lens of its legal system provides a granular view of a postcolony under duress, and it points a way out of the paradox that "weak" and artificial African states can also be resilient.[18]

LAW AND ORDER AS IDEOLOGY

The story of state formation is often told as a shift from the rule of guns to the rule of law books. Law's function in a new country, this story goes, is to replace the scattershot violence that founds the new order—be it through secession, dispossession, or conquest—with a legalistic form of power where violence is channeled, centralized, and monopolized by the state. Biafra's founders tried to skip straight to legalism; law, not force, would be the bludgeon they used to found the state, which they hoped would make it a more just, humane, and orderly society than the one they broke away from. In fact, it was impossible to detour around chaos—the war with Nigeria made that

[17] Gregory Mann, *From Empires to NGOs in the West African Sahel: The Road to Nongovernmentality* (New York: Cambridge University Press, 2015), 5.

[18] Important discussions of this problem include Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (Princeton: Princeton University Press, 2000); Robert H. Jackson and Carl G. Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood," *World Politics* 35, 1 (1982): 1–24.

abundantly clear—and Biafra's legal institutions could not constrain the unfocused violence of a state in the making. Biafra existed for less than three years, but its composition and character changed between secession and surrender. At its inception, Biafra was an ethnically plural republic, one with a consciousness of its own diversity and an emergent political ideology. By the war's end, it had become something else. At the time of surrender, the only people who remained in Biafra were Igbos, since nearly everyone else had fled or been driven out. Its ethos of legalism had been overwhelmed by the state of siege. What was left of Biafra in January 1970 was a starving, isolated, and ethnically homogenous stub. The notion that Biafra had only ever been an Igbo cause entered the historiography shortly after, and there it has stayed.

At the beginning of the war, Biafra was a state of a different nature. Those who spoke for the Biafran government emphasized its orderliness, in contrast to an anarchic and despotic Nigeria, and judges spoke of themselves as the true inheritors of the English common law tradition. They seldom made Biafra's case in ethnic terms. Chief Justice Sir Louis Mbanefo stressed to the outside world that "the Biafran authorities were not irresponsible rebels who had seized power for the sake of power: on the contrary they had maintained law and order and the courts system."[19] Biafra's leaders were committed to the idea that their national project was a "modern" one, even though actually implementing the rationalist bureaucratic system to which they aspired proved difficult in the circumstances.[20] Biafra governed in innovative ways; it experimented with new ways of knowing and registering its population, with state-led industrial development, and with a form of African socialism distinct from those emerging elsewhere on the continent. In a constitution-like document called the Ahiara Declaration, a group of Biafran intellectuals defined as its core attributes unity, non-alignment, justice, and the abnegation of violence, all derived from what Chinua Achebe, one of its authors, called "ancient traditional virtue."[21] Biafra's animating spirit, they proclaimed, was "the plight of the black struggling to be man. From this derives our deep conviction that the Biafran Revolution is not just a movement of Igbo,

[19] National Archives of the United Kingdom, FCO 38/216, Summary of meeting between Lord Shepherd and Sir Louis Mbanefo, 11 June 1968.

[20] On Biafra's complicated relationship with the idea of "modernity" see Douglas Anthony, "Resourceful and Progressive Blackmen: Modernity and Race in Biafra, 1967–1970," *Journal of African History* 51, 1 (2010): 41–61. In the contemporary literature that reevaluates how bureaucracy operates as an implement of administration, see Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (Cambridge: MIT Press, 2012); Peter Crooks and Timothy Parsons, eds., *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century* (Cambridge: Cambridge University Press, 2016); Matthew S. Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012).

[21] Chinua Achebe, *There Was a Country: A Memoir* (New York: Penguin, 2012), 144.

Ibibio, Ijaw and Ogoja. It is a movement of true and patriotic Africans."[22] The Ahiara Declaration reveals something about how Biafra's intelligentsia thought of their cause, but it is not a guide to how the state actually worked. "We were very good at improvisation," Ojukwu would later recall, which describes Biafra's governmentality better than the declaration's long, mostly unimplemented statements of principle.[23]

Biafra is hard to understand using the familiar scripts of African history. It was not a step toward African integration—if anything it was a step away from the goal of a united continent. It was not the puppet of a global power, like Katanga had been, and it was not a colonial construct, even though its structure owed much to Britain. Its shape was determined by battle, not by the European geopolitics that established Nigeria's borders a century earlier.[24] Familiar colonial institutions had largely been done away with; the neo-traditional "warrant chiefs" empowered by the British had been marginalized, and the marketing boards that had once structured the agricultural economy had been dissolved. Cut off from the outside world, Biafra featured little of the "gatekeeping" that describes other African states in this period.[25] And although it tried to know its population in various ways—including an ambitious regime of fingerprinting and identity cards—it fell far short of being biopolitical.

How, then, did Biafra work? Biafra's survival depended on its army, but its internal administration was a task for its courts. Imbricated in the day-to-day work of governance, Biafra's legal system spent as much energy keeping the state running as it did in dispensing "justice." For this reason, Biafra's administrative logic can be found in its legal records.[26] "Since our Revolution has its foundation in the Rule of Law," Biafra's founders collectively declared,

[22] Significantly, this is the only time "Igbo" appears in the declaration. Chukwuemeka Odumegwu Ojukwu, *The Ahiara Declaration: The Principles of the Biafran Revolution* (Geneva: Markpress, 1969).

[23] "Chief Chukwuemeka Odumegwu-Ojukwu," in H. B. Momoh, ed., *The Nigerian Civil War, 1967–1970: History and Reminiscences* (Ibadan: Sam Bookman, 2000), 758.

[24] On European statecraft, law, and the articulation of colonial boundaries, see Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge: Harvard University Press, 2018); Steven Press, *Rogue Empires: Contracts and Conmen in Europe's Scramble for Africa* (Cambridge: Harvard University Press, 2017); Tekena Tamuno, *The Evolution of the Nigerian State: The Southern Phase, 1898–1914* (London: Longman, 1972); J. C. Anene, *The International Boundaries of Nigeria 1885–1960: The Framework of an Emergent African Nation* (New York: Humanities Press, 1970).

[25] Frederick Cooper, "Gatekeeping Practices, Gatekeeper States and Beyond," *Third World Thematics* 3, 3 (2018): 455–68.

[26] The evidence for this logic is admittedly partial. Biafra's legal records are very scattered and incomplete, and it is impossible to count cases in any given town or court with confidence. The fragments that survive suggest a wide and varied use of the courts, however, even though the importance of Biafra's legal institutions is difficult to establish quantitatively.

"the Judiciary becomes a most important arm of the state."[27] These were political articles of faith rather than empirical descriptions; administration was untidy and contingent, but public servants insisted that Biafra was a place of order even as it became manifestly clear that it was not. Biafra did not feature the rule of law in any conventional sense—that would imply a greater coherence to its muddle of statutes and edicts, and a greater capacity of its courts to check the executive, than there actually was.[28] But Biafra did rule *by* law. Law had instrumental power, and it retained it through the war's darkest days.[29] Even in this famously disordered episode, Biafra's courts had generative force—of jurisprudence, of legal subjects, and even of a state ideology. In the midst of a crippling humanitarian crisis, the state devoted the few resources it had to the operation of its legal system. Legalism—tattered as that idea became in a time of war—remained at the heart of Biafra's administration. Judges sometimes disavowed that role; "the court does not legislate," ruled Justice Nkemena in a 1967 slander case. "It is not open to the court to go behind what has been enacted and to inquire how it came to be." But in practice, this is exactly what they did.[30] In the absence of a constitution, a patchwork of laws and norms guided Biafra's administration, including emergency measures, common law, and generalized notions of "native custom." The friction between those normative orders fueled politics, and as the war chipped away at Biafra, it became the only politics that happened at all.

Biafra's judges came from a particular class position. They were elites, and their reasoning did not reflect how ordinary Biafrans thought about their national predicament. Nor did they always agree with Ojukwu and his advisors. They were committed to their intellectual independence, and they clashed regularly with the executive, with the military, and with one another. In judges' rulings, we find not the singular voice of the state, but a raucous debate between some of its most influential citizens. All had been educated in Britain or Ireland, followed by practice in Nigeria or elsewhere in the British Empire. A few, including Chief Justice Sir Louis Mbanefo, were known internationally. Only one, a magistrate named Ada Adogu, was a woman. They had great confidence in the common law tradition of their training, and they doggedly carried on with legal routine even as conditions

[27] Emeka Ojukwu, *The Ahiara Declaration: The Principles of the Biafran Revolution* (Geneva: Markpress, 1969).

[28] As Samera Esmeir argues, the rule of law can conceal and reproduce the forms of despotic power that it allegedly constrains; *Juridical Humanity: A Colonial History* (Stanford: Stanford University Press, 2012), 199. See also Gregory Mann, "What Was the 'Indigénat'? The 'Empire of Law' in French West Africa," *Journal of African History* 50, 3 (2009): 331–53.

[29] On this idea broadly, see Tom Ginsburg and Tamir Moustafa, *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008); Sally Falk Moore, *Law as Process: An Anthropological Approach* (London: Routledge, 1978).

[30] Enugu State High Court, uncatalogued collection, *Innocent* [illegible] *and Patrick Ali*, 13 June 1967.

deteriorated. "The whole thing was fluid and volatile," Justice Aniagolu recalled of his time sitting on the Biafran bench. "We were always happy whenever we met or were informed that none of us was hurt. But we sat till the end."[31]

Despite judges' commitment to the common law tradition, Ojukwu and his advisers believed that civilian law could not meet the needs of a society at war. Emergency measures were implemented in the first days of the war and remained in place for its duration. Biafran administration worked at two speeds—one civilian and one military—and the entitlements of soldiers came to surpass those of civilians.[32] All of Biafra's courts operated under the sign of emergency, but the legal institution most directly tied to the war was the Special Tribunal of Biafra, established under the Law and Order (Maintenance) Edict of 1967.[33] It was, in effect, a military tribunal for civilians, and its jurisdiction crept into many areas of life over the course of the war. Its remit included misconduct by soldiers, acts of sabotage, the unauthorized possession of arms, and public disturbances by civilians. A military officer or state prosecutor could bring anything related to the conduct of the war, or involving soldiers, before a tribunal instead of a civilian court. Initially, the tribunal's jurisdiction only covered the "disturbed areas" of Biafra, but it was not specified what made an area "disturbed," and six months into the war it was decided that *all* of Biafra would be classed as such. After that, the Special Tribunal heard a larger number of cases on a wider range of offences.[34] Ojukwu also reserved for himself the ability to detain anyone at will, which he did constantly.[35] The tribunal consisted of two civilian judges and a military officer, and it moved with the war's fronts. Its proceedings were accordingly irregular, and they were recorded hastily, often by the judges themselves. Tribunals were a "rough" form of justice, as one lawyer recalled—a necessary concession to the war's demands that

[31] Ekong Sampson, *The Path of Justice Chike Idigbe* (Lagos: Distinct Universal Limited, 1999), 75–76.

[32] I borrow this language from Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (Oxford: Oxford University Press, 2017 [1941]).

[33] *Biafra Sun*, 5 June 1967: 1. Like other aspects of the Biafran legal system, the declaration of the state of emergency had its origins in colonial legal and administrative practice. Emergency measures had been implemented at many junctures in colonial Nigeria, most notably in the southeast in the context of the 1929 *Ogu Umunwaanyi*, a major anti-colonial rebellion led by market women in Aba. See Misty L. Bastian, "Vultures of the Marketplace: Southeastern Nigerian Women and the Discourses of the *Ogu Umunwaanyi* (Women's War) of 1929," in Jean Allman et al., eds., *Women in African Colonial Histories* (Bloomington: Indiana University Press, 2002).

[34] NNAE MINJUST (Ministry of Justice) 115/1/1, "Special Tribunal Nbawsi—Return of Cases," 11 Dec. 1969.

[35] NNAE MINJUST 90/1/31, M.O.I. Idigo to Chukwuemeka Odumegwu Ojukwu, 2 July 1968.

everyone hoped would be temporary.[36] Their hopes were in vain; tribunals and other implements of martial law would long outlive Biafra.

No Biafran institution captured the spirit of the independence project—and the tensions within it—better than the Special Tribunal. Administrators argued that only the tribunal could reflect the interests and character of the new state. It was not beholden to the precedent Biafra shared with Nigeria (and other countries) through the English common law, and judges were advised to ignore the example of other tribunals. Its judges could make new principles in the moment, unconstrained by existing rules or traditions. In late 1967, the Attorney-General of Biafra admonished the Special Tribunal "not to apply judicial decisions based on foreign law to situations in my country," chastising the judges of the tribunal for citing cases from Ghana and Sierra Leone to determine what constituted profiteering.[37] This was not just a matter of procedure, but a statement of Biafra's independent identity. The Special Tribunal was the place where Biafra would make its case, and to this administrator, the niceties of due process could not be allowed to undermine that task. As is often the case, it was in the jurisprudence of emergency where the state's fragility and vulnerability were most obvious. But what transpired in Biafra's tribunals was not only a fragile state trying to defend itself—it was also *defining* itself.

From a perspective within Biafra, the story of the war is one of gradual loss. Biafra's state apparatus came apart at the seams, just as Biafran families, fortunes, and territory did. In law, the vanishing boundary between common law and military tribunals made for substantial confusion over procedural matters. Legal practice increasingly appeared to be guided not by the "constant and perpetual disposition to render every person his or her due" that Biafran lawyers considered their lodestar, but by something more vague and sinister: the exigencies of war.[38] This threw into doubt whether this assemblage of tribunals and courts was in fact a system, and whether it was "legal" in a way that lawyers and litigants could recognize. Was this madcap order even law? To most Biafrans, the answer remained yes. Although Biafran law was politicized, it was still a system of rules backed by institutional force, and it was the only one they had. It was not always just, but it had positivist coherence. Biafran law would lose much of this coherence over the course of the war, but even in the most frenzied moments of fighting it remained more than an abstraction.

[36] Interview with Anthony Mogboh, in his chambers in City Layout, New Haven, Enugu, 2 Oct. 2014.

[37] NNAE MINJUST 115/1/1, Attorney-General/Commissioner for Justice to the Chairman, Special Tribunal, Nbawsi, 10 Nov. 1967.

[38] Interview with Mike Onwuzunike, Holy Ghost Cathedral, Enugu, 14 Sept. 2014.

PRIVATE MATTERS, PUBLIC ETHICS

The courtroom was the forum where Biafra's new national identity would be defined, and the platform from which it would be broadcast to the public. Technical matters blurred into commentaries on the character of the Biafran state, and cases about violence, especially, were imbricated in larger discussions about public morality. Judges used the bench as a pulpit to argue for Biafra's independence, often by recounting the violence that Igbos had faced in Nigeria. All of this took place in the service of creating a new moral economy—what Natasha Wheatley calls the "conceptual work of naming and hailing new persons" through legal metaphor, performance, and anecdote.[39] Biafra would be guided by a new ethics, and its citizens would be a new people. "In revolutionary Biafra," the Ahiara Declaration proclaimed, "The citizens should understand what law and justice are about."[40] Judges would be the ones to teach them.

Since law had this didactic function, Biafran judges needed an audience. Few trials in Biafra were show trials—they did not usually have preordained outcomes—but they were public events. They were made even more public by the fact that many took place outside, in the ruins of government buildings, or in village squares where trees or canopies served as the only cover. Even tribunals were frequently held in the open. Hearings were well-attended, often by bored civilians waiting around for distributions of food or news from the front. Political trials with well-known defendants attracted especially large crowds. When a high-ranking army officer was tried for subversion early in the war, a journalist for *Drum* magazine described how "hysteria and white-hot hate" were palpable among those milling outside the courthouse, where "thousands of men and women" gathered to "exchange views and gossips about how the secret trial was going."[41] Judges knew that they were being watched, and they sometimes addressed the public directly. Transcripts do not usually note who a judge is speaking to, but occasionally he would turn to the crowd to give a lesson. Following the trial of some civil defenders who had overstepped their bounds, a tribunal judge thundered at the spectators gathered at the back of the room, "No one has a right to kill another Biafran on the mere pretext that the person being killed is an enemy infiltrator."[42] Those who did not attend in person could hear about law in other ways. Biafra's state-run newspapers diligently reported on trials,

[39] Natasha Wheatley, "Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State," *Law and History Review* 35, 3 (2017): 753–87. See also Martha Merrill Umphrey, "Law in Drag: Trials and Legal Performativity," *Columbia Journal of Gender and Law* 21, 2 (2011): 516–31.

[40] Ojukwu, *Ahiara Declaration*.

[41] Nelson Ottah, *Rebels against Rebels* (Lagos: Manson and Company, 1981), 124.

[42] NNAE MINJUST 116/1/1, *The State v. Emmanuel Eke Onwuachimba and Six Others*, 1969.

sometimes reproducing transcripts of the proceedings. But if law in Biafra was a conversation, it was mostly one-sided. Ordinary Biafrans could not speak back to these lessons except through suits and appeals, and there was little democratic or participatory in how Biafra's legal elites went about crafting the state.

Judges regularly asserted Biafra's independence through proceduralism. For example, in a July 1967 case, an incarcerated man made an application for bail on constitutional grounds—but the constitution that he invoked was Nigeria's. Seeing an opportunity to make a point, the state staged an open trial, and the court invited the press to report on what would normally have been a minor procedural matter. "A new state of Biafra has been born and proclaimed," remarked Justice Chukwudifu Oputa in the denial of his application. "The Constitution is the most fundamental law, the organic law, and it will be derogating from its sovereignty if the Republic of Biafra were to be controlled by the Constitution of another state." He ruled that Nigeria's constitution was "a law unknown to the Republic of Biafra," even though two months earlier he had been responsible for defending that constitution in his capacity as a Nigerian judge.[43] Biafra's independence rested on the fiction that there had been a clean break with Nigeria and that 1967 was a "year zero" that made history irrelevant—both of colonialism and the Nigerian First Republic. This was not only a political fiction, but a legal one. When they were not in the public eye, judges regularly used Nigerian cases as precedent, cited their former colleagues on the Nigerian bench, and acted as if the Nigerian criminal code was still in force. They saw the irony of this arrangement. Biafra was making a separate identity for itself through law, but its entire legal system was derived from Nigeria.[44]

Judges also made more abstract statements through their rulings, using individual cases to make pronouncements on Biafra's past, present, and future. For example, it was important to Biafra's leaders that secession be seen as a matter of life and death, not a political calculation. This point was driven home in a 1968 case that was, fittingly, about blood. Before the war, a teacher named Magdalene Nwabia had given birth in a difficult caesarian section at Enugu General Hospital, where she bled heavily and had to have a blood transfusion. In the middle of the night, it became clear that the two pints of blood matched to her would not be sufficient to save her life, and the presiding physician authorized a third pint to be released by the hospital's laboratory. He dispatched Nwabia's husband to collect it. The technician on duty, a Mr. Okon, refused to fill the order, claiming that he had

[43] Enugu State High Court, uncatalogued collection, *Peter Iwoha and Commissioner of Police*, 21 July 1967.

[44] Judges sometimes commented on this tension in their rulings. See Enugu State High Court, uncatalogued collection, *Nicholas Mbagwu and Chief Marcus Odum*, Aug. 1967.

no blood that would suit her in the hospital's stock, making veiled references to the fact that Nwabia and her husband were Igbo. He frantically bargained with Okon until the technician demanded a bribe, which he could not pay. Okon contemptuously told him to "[raise] a loan of twenty pounds from members of his town union."

The hospital technician came from the town of Uyo, and he was an outsider in Igbo-majority Enugu. His mention of the town union insinuated that Igbos like Nwabia had secret, illicit sources of credit that only they could access. This ethnic stereotype was common among non-Igbos in Uyo, who found something sinister and conspiratorial in their neighbors' prosperity. While the husband pleaded with the technician to honor the doctor's order, Nwabia and her child died. The technician was subsequently tried for manslaughter, found guilty, and sent to prison. On appeal in a Biafran court four years later, the judge upheld Okon's conviction. Expanding on the Nigerian court's decision, the Biafran judge took official judicial notice both of the ethnic discrimination that underlay Okon's refusal to provide the blood (which the Nigerian court had not remarked upon), and the corrupt nature of his demand for payment. Speaking for the court, Justice Chike Idigbe wrote, "We would like to express our whole-hearted condemnation of the conduct of the appellant [the technician], as one of the worst examples on record of a dereliction of duty on the part of a civil servant, and we express the hope that his conviction would remain for long a deterrent to [anyone] who may shamelessly wish to turn such a position of responsibility into a means of acquiring filthy lucre over and above his lawful remuneration."[45] This decision was more than a rendering of justice, it was a lesson: good Biafrans do not discriminate against one another on the basis of ethnicity, and they fulfill their duties without favor or avarice. Idigbe also underscored Biafra's legitimacy by reminding his audience that Igbos had not been safe in the Nigerian Federation. If this kind of discrimination could take place even in Enugu, where Igbos were in the majority, then Biafra's secession was justified in the name of protecting them.

Matters of criminal procedure often had larger political implications. For example, Biafran courts were consistently more sympathetic to claims of self-defense and provocation than Nigerian courts had been. These decisions were not only interpretations of criminal law—they were digressions on Biafra's history as a state born of self-defense at the level of national politics. When called to account for the new state, Biafra's representatives consistently justified secession on the grounds that they had been provoked by the pogroms against Igbos, and that the war against Nigeria was a fight of self-preservation. Judges recapitulated this language in the criminal court, such as

[45] NNAE BCA 1/1/3, *Nsisong Okon v. The State*, 19 Mar 1968.

in *Iguo Okon Usung Urua v. The State*. The appellant was a woman who had incurred the displeasure of her husband after giving birth to twins, which was "regarded in their community as an abomination." He had abused her repeatedly over the course of their fifteen-year marriage, and after the birth he began to berate her for not bringing money into the household. She told the court that one night in September 1966, while the pogroms in the distant north were in full swing, her husband

> took up his matchet[e] and sharpened it. When he finished sharpening the matchet, he told me that the matchet will eat me. He said no matter what happened he would finish with me, that that matchet will eat me today. I told him that husband and wife [may] quarrel and fight, but the husband never [may] carry a matchet and want to kill the wife. He said that he had asked bad things to leave him alone. I told him that I am a nursing mother, that is why I could not do any work so as to get money, is that the reason why he should call me bad thing.

He fell asleep that night with the machete at his side, and during the night she killed him with it and dumped his body in the cesspit. Her defense before the court was that she had been provoked: "I kill my husband because of fear because I thought he would kill me mostly according to what he told me," she testified. Deciding on the case before secession, the Nigerian High Court in Calabar rejected her defense, finding her guilty on the grounds that killing a man in his sleep could not be an act of self-defense. The Nigerian judge rejected her claim of provocation because she had had sufficient "cooling off" time before she killed him. Moreover, the husband's threat was "insubstantial" since he had threatened her many times in the past without actually trying to kill her. She was convicted of murder and given a life sentence.

By the time she was granted an appeal in January 1968, Biafra had seceded, and her case came before a Biafran judge. Overturning the earlier Nigerian decision, the court ruled in her favor, finding that "there is no prescribed time limit" for an impassioned quarrel to cool: "There was in this case, as we have seen from the statement of the appellant which the judge accepted, a series of hostile acts by the deceased towards the appellant which reached its culmination on the night the deceased was killed. In deciding whether the appellant acted before there was time for her passion to cool, it would not be right to regard the 'final act of provocation in isolation,'" as the Nigerian court had done, citing precedent from the Privy Council. They also found the husband's threats substantial, which the Nigerian court had not: "It is clear from the statement that her mind was agitated because of the threats by the deceased and that it was in that state of agitation when she picked up the matchet and killed the deceased." With Mbanefo presiding, the Biafran Court of Appeal ruled that the Nigerian judge failed "to give proper consideration to the appellant's state of mind at the time of the act causing the death of the deceased, [which] amounts to a misdirection." Her charge

was reduced to manslaughter.[46] There was an affinity between ordinary criminal matters like Urua's killing of her husband and the Biafran cause writ large. Passion and fear, the same emotions that led Biafra to its "illegal" secession, were legitimate defenses in Biafra's criminal courts to a greater extent than they had been in Nigeria's. To those who watched this trial take place, the decision's larger meaning would have been clear.

Other seemingly minor legal questions had political valences in Biafra. In liability cases, savvy lawyers argued that failing to protect the goods or individuals in the care of an authority—state or otherwise—constituted willful intent to harm. After all, this was the argument that Ojukwu had made to justify Biafra's secession. The political dimensions of culpability informed the case *L. O. Uchendu v. Nigerian Railway Corporation* of 1968, in which the plaintiff sued the Nigerian Railway Corporation in a Biafran court.[47] Several years before, Uchendu had contracted with agents of the Nigerian Railway Corporation to transport a rail car of *garri* (a processed grain) from Aba to Kano. A strike at the Enugu railyards over overtime pay resulted in a backlog, and in the time that it took to resolve it, his goods spoiled. The railway offered to compensate Uchendu twice, but, hoping that he could get a better settlement in court, Uchendu sued. He did so not on grounds of negligence, on which he probably would have won, but for the more serious charge of willful misconduct, which if successful would award him damages above the cost of the goods. In bringing this charge, the plaintiff brought upon himself the onus of proving that the railway's failure to deliver his goods constituted an intentional act of malice. At the end of a lengthy series of appeals that started in a prewar Nigerian court and came to an end in wartime Biafra, the Biafran Court of Appeal ruled in favor of Uchendu.[48] The judge took the opportunity to make a political point. Noting that "misconduct embraces both acts of omission and commission," he drew a comparison to the Nigerian Federal Government's failure to act to protect Igbos in 1966. Whether it was a container of perishable goods or a vulnerable population, the decision implied, government agencies had a responsibility to protect what (or who) was entrusted to their care.

ETHNICITY AND THE BIAFRAN NATIONAL COMMUNITY

In a public edict, Ntieyong Akpan, the head of the Eastern Nigerian (imminently Biafran) civil service issued a warning. Before the choice to secede was made, he wrote, the government "must satisfy itself that, taking a

[46] NNAE BCA 1/1/11, *Iguo Okon Usung Urua v. The State*, 19 Jan. 1968.
[47] NNAE BCA 1/1/54, *L. O. Uchendu v. Nigerian Railway Corporation*, 2 Apr. 1968.
[48] Uchendu's victory meant little, however, since secession had made the decision moot. The Nigerian Railway Corporation had ceased to exist as far as Biafra was concerned, and in 1968 the part of the railway still operating in the east was calling itself the "Biafra Railway Corporation," a different entity from the one Uchendu sued.

long term view, this is the best thing for *OUR PEOPLE.* I emphasise the words *OUR PEOPLE*, because in this present struggle for survival, even the Christian principle of selflessness must be forgotten, and our Fate and Destiny as a people made paramount."[49] Beneath this rhetoric was a reluctance to define who exactly made up "our people," a hesitance born of Akpan's own status as a non-Igbo minority. Biafra was not straightforwardly an ethno-state. The July 1967 order to begin conscription into the Biafran Army lists many characteristics that a Biafran soldier must have: he must be of a certain age and height, and he must have a certain level of education depending upon his rank. The matter of his ethnicity was not addressed, the only requirement being that he "be a Biafran," which the order left undefined.[50] Biafra had been founded in the name of defending Igbos, but that did not mean that it was an Igbo state.

Biafra's ethnic identity was most salient in cases involving foreigners. The "strangers" who appeared in Biafran courtrooms, most of them non-Igbo Nigerians who for whatever reason had chosen to stay after secession, were made the objects of public discourse about the state's identity. In late 1966, the Eastern Region government issued an edict expelling all northerners from the east, which resulted in chaos in the small Hausa neighborhoods of its towns. There was nothing in the edict about how the expulsion would be carried out. In practice, people would arrest their northern neighbors and take them to police stations, from where they would be dispatched to the north by train at their own expense. With the tacit approval of the Eastern Region government, people used the expulsion to extort money from northerners, or lay claim to their property. Locals who were seen to be friendly towards northerners also suffered abuse, and special contempt was reserved for Igbo women married to northern men. The Eastern Region government did little to stop this harassment, ostensibly because the Northern Region was, as far as they knew, not only failing to protect easterners resident in the north, but actively encouraging violence against them. The memory of the 1966 pogroms was fresh. Merely expelling northerners seemed generous compared to the treatment Igbos had received.

The tension between the spirit of the moment and the law manifested in *Ephraim Onwumere and Two Others v. The State*, decided by the Biafran Court of Appeal.[51] The case concerned an unmarried couple who lived together in a village outside Abakaliki—Bettina Okpe was an Igbo retired prostitute, and her lover Magaji was a Hausa rag dealer from the north. They were disliked by the other people who lived in their compound, and their

[49] "The Fateful Decision," reproduced in Ntieyong U. Akpan, *The Struggle for Secession, 1966–1970: A Personal Account of the Nigerian Civil War* (London: Frank Cass, 1972), 78.
[50] Nigerian National Archives, Calabar 609 CAD 396/1/vol. x 3/3/356, "Recruitment into Biafra Army," 7 July 1967.
[51] NNAE BCA 1/1/74, *Ephraim Onwumere and two others v. The State*, 12 Mar. 1968.

mixed relationship was made even more controversial by their disreputable occupations. In September 1966, four men broke into their house in the night. Magaji was away doing business, and Okpe testified that the men abused her and called her names, eventually leaving with her handbag, a basket of kola nuts, some head ties, and twelve pounds in cash. She initially claimed that she did not know Magaji but, following testimony from her neighbors, she broke down and admitted that they lived together. As the Court of Appeal noted, the events of the case "occurred at a time when Hausas were requested by the Government of Eastern Nigeria (now Biafra) to leave the country and members of the public, anxious to assist in ridding the country of Hausas exhibited unbridled zeal in this direction." The men's defense was that they were being patriotic, following the military governor's order to arrest any northerners whom they encountered. Indeed, harassing Hausas and others "illegally" residing in Biafra had been given a blind eye. The High Court found them guilty, but the Biafran Court of Appeal made the unusual decision to hear their petition even though it raised no new legal questions. This pointed to intervention by a higher authority. The men remained in prison for six months while their appeal was processed, which eventually took place in March 1968. Taking Okpe's initial denial that she was Magaji's lover as proof of her unreliability, the court concluded that "Her credit is, at the least, very doubtful; and she alone gave the eyewitness account of the alleged burglary. In any event, we are satisfied that the defence of the appellants did not receive sufficient consideration in the court below; their conduct was equally consistent with that of citizens overzealous in their endeavor to assist in the execution of an *order* given by the Government." In a politically motivated decision, the state council chose not to contest the decision, resulting in an acquittal for all four men. Here, as in many Biafran cases, the principles of justice and equitability that were central in Biafran rhetoric chafed against the us-and-them mentality that the war ingrained.

The presence of eastern minorities in Biafra, many of whom did not see themselves as Biafrans, muddled matters further. Hausas like Magaji were beyond the pale of Biafran nationality, but the place of non-Igbo easterners like members of the Efik, Ijaw, and Ibibio ethnic groups in the new nation was ambiguous. Debates about their position in Biafra appeared most frequently in cases involving customary law—the patchwork of "traditional" principles governing personal status, chieftaincy, land use, and much else that had underpinned colonial law in rural areas. Grouping people into ethnic units on the basis of their "customs," and governing them through those customs, had been a mainstay of imperial administration.[52] By the time

[52] Rabiat Akande, "Secularizing Islam: The Colonial Encounter and the Making of a British Islamic Criminal Law in Northern Nigeria, 1903–58," *Law and History Review* 38, 2 (2020): 459–93; Mahmood Mamdani, "Historicizing Power and Responses to Power: Indirect Rule and

Biafra declared independence, this logic had lost much of its appeal in the east.[53] The tide had turned against customary courts, which jurists—especially in southern Nigeria, and Igbos most of all—had decided were too corrupt, too unsystematic, and too tainted by colonialism to figure in a modern legal system.[54] Yet even though customary law's fortunes had fallen, its logic was slow to fade. It could be found in oaths and other points of procedure, for example, even in common law courts that did not "see" ethnicity. Transcripts invariably recorded the "native village" of witnesses and defendants, whether they had ever lived there or not, which was a proxy for ethnicity. This was not unique to Biafran courts—Nigerian recordkeeping worked the same way—and the idea that legal identity was a function of being "native" to a particular place was common throughout former British colonies in Africa. Nonetheless, that Biafran courts chose to preserve that part of the legal boilerplate, while changing others, shows that custom had a place in how the new state defined its citizenry.

Custom had its uses in making Nigerians into Biafrans. Early in the war, Biafran courts used customary jurisdiction to lay claim to the ethnic minorities who comprised about a third of Biafra's population. Judges defined them as Biafrans by arguing that Biafran courts were competent to rule on their traditions; they did not need their own customary courts, and as Biafran citizens they were entitled to the same judicial services as everyone else. For example, when Etubom David Henshaw contested a chieftaincy appointment in Calabar in 1967, the Biafran High Court in Aba declared itself competent to decide the case—an esoteric succession dispute governed by Efik tradition—even though the matter at hand was not one of Igbo custom.[55] By asserting their right to rule on all such disputes within Biafra's borders, judges were implicitly making an argument about the place of

Its Reform," *Social Research* 66, 3 (1999): 859–86; Thomas Spear, "Neo-Traditionalism and the Limit of Invention in British Colonial Africa," *Journal of African History* 44, 1 (2003): 3–27.

[53] The closure of the customary courts did not mean the end of custom in Biafra. Informal customary arbitration over property and matters of family continued throughout the war, which the Ministry of Justice tolerated, and matters of custom appeared before magistrate's courts regularly.

[54] They believed this despite efforts to standardize and codify customary law, most notably the Restatement of African Law project at the School of Oriental and African Studies in London. Customary law would later have a resurgence, but in the first flush of independence most African jurists felt that their fellow citizens deserved something better. See *African Conference on the Rule of Law, Lagos, Nigeria January 3–7, 1961: A Report on the Proceedings of the Conference* (Geneva: International Commission of Jurists, 1961).

[55] Enugu State High Court, uncatalogued collection, "In re: Obongship of Calabar," 9 Dec. 1967.

ethnic minorities in the new nation. Non-Igbos, they contended, were Biafrans whose disputes could be settled in Biafran courts.[56]

The connection between Biafra and the Igbo people became stronger as the army lost control of the regions where minorities lived. In the final year of the war courts no longer heard cases concerning Efik or Ijaw custom, because those regions were now occupied by Nigeria. Igbo custom and Biafran law converged as the country shrank, which is illustrated by a case about the killing of a masquerader during a harvest festival in an Igbo village.[57] In his initial trial, the accused argued that the masqueraders' decision not to visit his father's house on their circuit through the village constituted an act of provocation, to which he had responded by killing one of them. The trial, which started before secession, turned not only on the events of the killing, but on the role of the masquerade in Igbo tradition. The man's lawyer argued that a visit from the masquerade was a sign of standing in Igbo villages, and the masqueraders' decision to skip his father's house constituted a grave insult. This, he contended, was sufficient provocation to reduce the charge from murder to manslaughter. The judge agreed, and the man was found guilty, but only of manslaughter. In Biafra's final month, the case was reopened on the grounds that new evidence was available. The Biafran Court of Appeal convicted him of murder, ruling that the Nigerian court had misinterpreted the case's customary dimensions, which constituted "the basic law of this our Republic." The new evidence was testimony from a village elder, who disagreed with the lower court's conclusions about Igbo custom. The accused was found guilty of murder, and he was hanged just weeks before Biafra surrendered. By the end of the war, judges ruled on Igbo tradition as if it were the law of the land, and they did so with no compunction about the place of custom in a "modern" legal system.

Judges labored greatly to define and put down on paper the identity of their new country, even as it collapsed around them. To the general public, however, the question of who counted as a Biafran was not such a difficult one; Biafra had seceded to protect Igbos, and they constituted the largest and most important part of its national community. British High Commissioner Sir David Hunt visited the east in the weeks before Biafra's secession, where he reported that the atmosphere was "sulphorous and lurid":

> Any reasonably vertical surface is plastered with warlike posters. The commonest is one which would certainly fall under the condemnation of the recent British Race Relations Act and is reminiscent of some of the less attractive manifestations of Der Stürmer. It depicts a row of sinister non-Ibo faces and exhorts the public to report to the police

[56] See also a case involving Igbo Biafrans who became caught up in a matter of Annang law, ultimately resulting in a mistrial. NNAE BCA 1/2/3, *Nwamiri Anyiso and Nwaonumara Anyiso v. The State*, 3 June 1968.

[57] Enugu State High Court, uncatalogued collection, *The State v. Ikenna Odoh*, 9 Dec. 1969.

the presence of anyone who looks like them. It is a melancholy fact that racialism (I almost wrote apartheid) is the primary political emotion in Africa South of the Sahara.[58]

Hunt was fond of hyperbole, and his opposition to Biafra was so relentless that he was reprimanded by his government for taking sides (even though Britain supported Nigeria). Nonetheless, he had observed something important. In all likelihood, more Biafrans derived their sense of the national cause not from law, but from propaganda of the type Hunt described.[59] There was no space for the nuance of a judicial ruling there. Posters, pamphlets, and radio broadcasts told Igbos that their survival was only possible in an Igbo country, and that Biafra was that country. Legal judgments were not the only public texts that circulated here, and, to many Biafrans, citizenship's affective meaning was not found on paper at all, but in the more intangible realm of feeling.

Nonetheless, in Biafra, law—including common law, custom, and emergency measures—was indispensable in defining the nation. Biafra inherited its legal system, its language, and its underlying administrative rigging from Britain, but what Biafrans did with that inheritance cannot be explained by looking at the colonial archive. Colonial logics of nationality—whether understood as a "rule of difference," or a "politics of difference," or in other ways of describing colonialism's racial and ethnic taxonomies—did not disappear at independence.[60] Biafrans attempted to fashion a new national identity that broke with those logics, one that emphasized discipline for the purpose of survival.[61] They did not succeed, and Biafra's ethnic identity became sharper and more exclusive as conditions deteriorated in the shrinking and embattled enclave. Examining decolonization from the Biafran battlefield suggests that independence was tightly constrained, not only by inherited borders and neo-colonial politics, as is well-known, but also by the nation-state form itself.[62]

[58] National Archives of the United Kingdom, FCO 25/232, "Confidential Report by David Hunt, Lagos," 23 Mar. 1967.

[59] On Biafra's propaganda, see Roy Doron, "Marketing Genocide: Biafran Propaganda Strategies During the Nigerian Civil War, 1967–70," *Journal of Genocide Research* 16, 2/3 (2014): 227–46; Arua Oko Omaka, "Conquering the Home Front: Radio Biafra in the Nigeria–Biafra War, 1967–1970," *War in History* 25, 4 (2018): 555–75.

[60] See, respectively, Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton: Princeton University Press, 1993); Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton: Princeton University Press, 2011).

[61] National Archives of the United Kingdom, DO 186/1, "Transcription of Ojukwu's 29th May Biafran Anniversary Address."

[62] On these borders, see Paul Nugent and A. I. Asiwaju, eds., *African Boundaries: Barriers, Conduits and Opportunities* (London: Pinter, 1996); Carl Gösta Widstrand, ed., *African Boundary Problems* (Uppsala: Scandinavian Institute of African Studies, 1969).

These small stories of road accidents, miscarriages, and spoiled grain reveal something broader about the state form in postcolonial Africa.[63] Biafran cases did not produce anything enduring in law; their precedent was quietly voided in postwar Nigeria, and the state that Biafra's judges were trying to create through procedure and poetics did not last. Rather, their importance lies in what they reveal about the government that staged them. They show a nation-state, replete with legalism and bureaucracy, at work in a context where those things have been presumed to be absent. In a period of civil wars, Cold War meddling by outsiders, and dictatorships that were as fragile as they were repressive, African nation-states' most obvious feature seemed to be their thinness.[64] If states were examined at all, they were treated as artifacts of colonial rule, or mere shells that contained where "real" politics took place. They only had meaning as actors in international politics; they were important for their allegiances and their UN votes, but not as "empirical" states that could govern effectively within their own borders.[65] Artificiality and decadence appeared as their most noteworthy characteristics, and repression and co-optation their main modes of governance. As the editors of a recent volume on policing in Africa write, "It is no exaggeration to say that in the last quarter of the twentieth century, almost everything written on Africa that has come to be regarded as seminal has in some way documented, or borrowed its spirit from, the spectacle of decline."[66] Nations came to be seen as "the exotic receptacles of a host of often distinctively potent *subnational* identities," as Richard Reid writes.[67] Other scales of analysis were more compelling. Villages, regions, and ethnicities seemed more meaningful as units of identity, and, in the other direction, it seemed like international institutions, not national governments, were driving African politics. The evisceration of state services and bureaucracies under structural

[63] Comparatively, see Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton: Princeton University Press, 2018).

[64] Reconciling that apparent thinness with their capacity to be repressive was a task for all who wrote on African states in this period. Robert Bates, *When Things Fell Apart: State Failure in Late Century Africa* (Cambridge: Cambridge University Press, 2008); Crawford Young, *The Postcolonial State in Africa: Fifty Years of Independence, 1960–2010* (Madison: University of Wisconsin Press, 2012); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996); Christopher Clapham, *Africa and the International System* (Cambridge: Cambridge University Press, 1996). Critically, see Eghosa Osaghae, "Fragile States," *Development in Practice* 17, 4–5 (2007): 691–99; Julius Ihonvbere, "The 'Irrelevant' State, Ethnicity, and the Quest for Nationhood in Africa," *Ethnic and Racial Studies* 17, 1 (1994): 42–60.

[65] Robert H. Jackson and Carl G. Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood," *World Politics* 35, 1 (1982): 1–24.

[66] Jan Beek, Mirco Göpfert, Olly Owen, and Johnny Steinberg, eds., *Police in Africa: The Street Level View* (London: Hurst, 2017), 2.

[67] Richard Reid, *A History of Modern Uganda* (Cambridge: Cambridge University Press, 2017), 5.

adjustment made African states look even more ephemeral—"shadows" and "pantomimes" were among the terms used to describe them.[68] They appeared to have little internal structure, and their legal systems were almost completely invisible. And yet here, in the middle of a civil war, we find the citizens of the most tenuous nation-state of them all immersing themselves in law—suing one another, defending themselves, and getting caught up in a legal system that interpellated them in ways subtle and not. The tendency to see normative order as something that sits outside the state, rather than being derived from and constitutive of state power, has prevented scholars of postcolonial Africa from seeing how states use law to give flesh to abstractions like citizenship, and how citizens access the state through courts. Those who have found no substance to African governmentality have been looking for it in the wrong places; sometimes a state's inner life is found not in a public text like a constitution, but in the utterances of its judges. Legalism *is* the state, and never more so than in a place like Biafra.[69]

Nigeria is the subject of extensive scholarship that starts from a basic question: why does the country still exist, despite everything working against it?[70] Africa's largest country is, as two influential political scientists call it,

[68] Jean-François Bayart, *The State in Africa: The Politics of the Belly* (Cambridge: Polity, 2009), 41; Patrick Chabal and J. Daloz, *Africa Works: Disorder as Political Instrument* (Oxford: James Currey, 1999), 95. Social scientists offer many different terms for understanding the state in postcolonial Africa. See among them William Reno, *Corruption and State Politics in Sierra Leone* (Cambridge: Cambridge University Press, 1995); Elísio Salvado Macamo, *The Taming of Fate: Approaching Risk from a Social Action Perspective: Case Studies from Southern Mozambique* (Dakar: Codesria, 2017); Crawford Young and Thomas Turner, *The Rise and Decline of the Zairian State* (Madison: University of Wisconsin Press, 1985); Jean Comaroff and John Comaroff, eds., *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006); Achille Mbembe, *Necropolitics* (Durham: Duke University Press, 2019); Didier Fassin, ed., *At the Heart of the State: The Moral World of Institutions* (London: Pluto Press, 2015); Jini Kim Watson and Gary Wilder, eds., *The Postcolonial Contemporary: Political Imaginaries for the Global Present* (New York: Fordham University Press, 2018). See also Nancy Rose Hunt, *A Nervous State: Violence, Remedies, and Reverie in Colonial Congo* (Durham: Duke University Press, 2016); Paul Nugent, *Africa since Independence: A Comparative History* (Basingstoke: Palgrave, 2004). On structural adjustment in Nigeria, see Adebayo O. Olukoshi, *The Politics of Structural Adjustment in Nigeria* (London: James Currey, 1993); A. O. Adeoye, "Of Economic Masquerades and Vulgar Economy: A Critique of the Structural Adjustment Program in Nigeria," *Africa and Development/Afrique et Développement* 16, 1 (1991): 23–44.

[69] This fundamental insight of the law and society approach is a given in legal scholarship elsewhere. See John Fabian Witt, "Law and War in American History," *American Historical Review* 115, 3 (2010): 768–78. Among recent reevaluations of the nation-state's history, see Julie MacArthur, "Decolonizing Sovereignty: States of Exception along the Kenya-Somali Frontier," *American Historical Review* 124, 1 (2019): 108–43; Miles Larmer, "Nation-Making at the Border: Zambian Diplomacy in the Democratic Republic of Congo," *Comparative Studies in Society and History* 61, 1 (2019): 145–75; Lydia Walker, "Decolonization in the 1960s: On Legitimate and Illegitimate Nationalist Claims-Making," *Past and Present* 242, 1 (2019): 227–64.

[70] Richard Sklar, *Nigerian Political Parties: Power in an Emergent African Nation* (Princeton: Princeton University Press, 1963); John Campbell, *Nigeria: Dancing on the Brink* (New York: Roman and Littlefield, 2010); Karl Maier, *This House Has Fallen: Midnight in Nigeria*

"the State that does not make sense."[71] Scholars have exhaustively described the forces working against its unity—regionalism, separatist movements, corruption, and religious extremism, among others—which makes it hard to understand why it stubbornly remains a place on the map.[72] A better way to understand Nigeria would be to ask not why it survives *despite* the forces arrayed against it, but how those forces have *enabled* it to survive.[73] Nigeria is among the nation-states that "can hardly imagine themselves except through the memory of [civil war]," as David Armitage writes.[74] In the closing months of the war, the military governor of Lagos State wrote to Nigeria's first president (and Biafran turncoat) Nnamdi Azikiwe: "The current civil war is tragic enough, but it is not unprecedented in the history of other nations at a comparable stage in their development. Britain, the United States, the Soviet Union and Spain, all had their civil wars, after which they have been able to strengthen their corporate existence as nations. So shall it be with this great country to become a virile nation."[75]

Fifty years later, Nigeria's persistence suggests that he was correct. Its "virility" is up for debate, but it still very much exists.[76] Biafra's secession was a rupture in Nigeria's national history, but it was also a galvanizing experience. It compelled administrators, jurists, and ordinary people to reflect on what was valuable about Nigeria; the slogan "To keep Nigeria one

(New York: Public Affairs, 2000). See also Chinua Achebe's tongue-in-cheek polemic, *The Trouble with Nigeria* (Enugu: Fourth Dimension, 1983).

[71] Patrick Chabal and Jean-Pascal Daloz, *Culture Troubles: Politics and the Interpretation of Meaning* (London: Hurst, 2006), 261. Nigeria has the largest population on the continent by a significant margin.

[72] It is important to consider whose interests Nigeria's fragility might serve. Michael Watts makes the point that Nigeria's capacities are asymmetrical—some parts of its administrative apparatus are coherent and discernable, while others are spectral. As he writes, Nigeria's state structure "has been informalized for particular purposes, vested with certain robust state capabilities, and made functional (i.e., instrumentalized through networks, pacts, and coalitions) via specific modalities and ordering of power." Michael J. Watts, "State as Illusion? A Commentary on *Moral Economies of Corruption*," *Comparative Studies of South Asia, Africa and the Middle East* 39, 3 (2019): 551–58, 554. See also Steven Pierce, *Moral Economies of Corruption: State Formation and Political Culture in Nigeria* (Durham: Duke University Press, 2016); Eghosa E. Osaghae, *Crippled Giant: Nigeria since Independence* (Bloomington: Indiana University Press, 1998); A. Carl LeVan, *Contemporary Nigerian Politics: Competition in a Time of Transition and Terror* (Cambridge: Cambridge University Press, 2019).

[73] In this vein, see Ebenezer Obadare, *Humor, Silence, and Civil Society in Nigeria* (Rochester: University of Rochester Press, 2016); Richard Bourne, *Nigeria: A New History of a Turbulent Century* (London: Zed Books, 2015); Ebenezer Obadare and Wale Adebanwi, eds., *Encountering the Nigerian State* (New York: Palgrave Macmillan, 2010).

[74] David Armitage, *Civil Wars: A History in Ideas* (New York: Alfred A. Knopf, 2017), 15.

[75] Lagos State Research and Archives Board, CSG 1.4, Lagos State Military Governor Mobolaji Johnson to Nnamdi Azikiwe, 15 Oct. 1969.

[76] The historian Tekena Tamuno offered a similar interpretation in the 1970s, in "Introduction: Men and Measures in the Nigerian Crisis, 1966–1970," in Tekena Tamuno, ed., *Nigeria since Independence, Volume VI, The Civil War Years* (Ibadan: Heinemann, 1989).

is a thing that must be done" emerged in the context of the civil war, not in the negotiations leading up to independence (even though it would have been just as apt then). Only when Nigeria was threatened by Biafran secession did many Nigerians begin to think of it as something worth preserving.

The historiography of decolonization has come to hinge on an important question. How did Africans imagine what the continent would look like after independence? The answer is anything *but* a series of nation-states, which is what in fact transpired. In different ways, scholars including Frederick Cooper, Olúfẹ́mi Táíwò, Abdourahman Waberi, and Luise White have demonstrated how unlikely that outcome was.[77] Adom Getachew writes that the Anglophone nationalist tradition, of which Biafra's founders were a part, "marked a radical break from the Eurocentric model of international society and established nondomination as a central ideal of a postimperial world order."[78] Indeed, Biafra tried to bring a new kind of society to fruition. It was a laboratory for ideas about governance, and its leaders thought of it as an ethical project as well as a political one. Its propagandists valorized public order, and its judges treated citizenship as a covenant between the state and those it governed—something that not all states and few "rebel" movements have.[79] But Nigeria's civil war also reveals that, as creative as postimperial projects could be, the nation-state was the form with the greatest purchase.

As its legal record shows, Biafra was drawn on a familiar pattern. It was not part of a regional bloc, a pan-African community, or any other novel political form. Instead, it was a nation-state self-consciously committed to the English common law and evermore constrained by the politics of ethnicity. Colonial law had posited that Africans lived in immutable ethnic categories, bound together by blood, in defined territories, and Nigeria's independence had given Igbos the tools to think of themselves as a national community.[80] As the dream of a law-bound independence deteriorated into a nightmarish crisis, that is what they did. Biafra's turmoil makes it a fraught

[77] Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960* (Princeton: Princeton University Press, 2016); Olúfẹ́mi Táíwò, *Africa Must Be Modern: A Manifesto* (Bloomington: Indiana University Press, 2014); Abdourahman A. Waberi, *In the United States of Africa* (Lincoln: University of Nebraska Press, 2009); Luise White, *Unpopular Sovereignty: Rhodesian Independence and African Decolonization* (Chicago: University of Chicago Press, 2015).

[78] Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton: Princeton University Press, 2019), 11.

[79] See Will Reno, "African Rebels and the Citizenship Question," in Sara Dorman, Daniel Hammett, and Paul Nugent, eds., *Making Nations, Creating Strangers: States and Citizenship in Africa* (Leiden: Brill, 2007).

[80] Comparatively, see Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (New York: Cambridge University Press, 2014); Pieter M. Judson, *The Habsburg Empire: A New History* (Cambridge: Harvard University Press, 2016).

example of how writs, edicts, and legal arguments can make a national community, but it also shows that law can shape political belonging even in extreme circumstances.

CONCLUSION

Biafra's short, bloody history shows that the nation-state loomed large in how Africans thought about the future after independence. Proof of this can be found not only in the legal archive, but at the cenotaph; those killed in the Nigerian Civil War died in the name of creating a nation-state, or preserving one, depending on which side they were on. Treating African nation-states as accidents, imports, or counterfeits, or as a "curse" inflicted on the continent, makes it difficult to see why anyone would die in their name, as millions of Africans did in the second half of the twentieth century.[81] Africa's wars of state-making took place from Katanga to South Sudan and in many places between, and they were fought for national projects both noble and ignoble, fruitful and futile. Many of the states that resulted were neocolonial, repressive, or delicately constructed; but even so, the forms of solidarity they offered were powerful. As Gary Wilder writes, "To presuppose that national independence is the necessary form of colonial emancipation is to mistake a product of decolonization for an optic through which to study it."[82] But as Biafra shows, the possibility of imagining alternative political forms to the nation should not be overdrawn.[83] Even as they tried to imagine a different future, Biafra's leaders, and especially its judges, were beholden to a logic that bundled together people, culture, and land in discrete national packages. In this respect, Biafra was animated not by the spirt of African unity that had become a commonsense among intellectuals, but by a form of nationalism that would not have been out of place in nineteenth-century Europe.[84] It shared this with many other African states, including Nigeria. In the end,

[81] Basil Davidson, *The Black Man's Burden: Africa and the Curse of the Nation-State* (New York: Times Books, 1992). See also W. Alade Fawole, *The Illusion of the Post-Colonial State: Governance and Security Challenges in Africa* (Lanham: Lexington, 2018); Michael Neocosmos, *Thinking Freedom in Africa: Toward a Theory of Emancipatory Politics* (Johannesburg: Wits University Press, 2016); Ernest Wamba-dia-Wamba, *History of Neo-colonialism or Neo-colonialist History? Self-Determination and History in Africa* (Trenton: Africa Research and Publications Project, [1984]).

[82] Gary Wilder, *Freedom Time: Negritude, Decolonization, and the Future of the World* (Durham: Duke University Press, 2015), 4.

[83] Those alternatives seemed especially likely to people in international institutions, on both the left and the right. See Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009); Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge: Harvard University Press, 2018).

[84] See John D. Kelly and Martha Kaplan, "Legal Fictions after Empire," in Douglas Howland and Luise White, eds., *The State of Sovereignty: Territories, Laws, Populations* (Bloomington: Indiana University Press, 2009), 169–95.

Biafra is a reminder that nation-states are fragile legal fictions. But it was no more constructed than other nation-states, in Africa or anywhere else. Biafra was not to Nigeria as a "fake" country is to a real one, but as one fake is to another.

Abstract: What role did law play in articulating sovereignty and citizenship in postcolonial Africa? Using legal records from the secessionist Republic of Biafra, this article analyzes the relationship between law and national identity in an extreme context—that of the Nigerian Civil War (1967–1970). Ideas about order, discipline, and legal process were at the heart of Biafra's sense of itself as a nation, and they served as the rhetorical justification for its secession from Nigeria. But they were not only rhetoric. In the turmoil of the ensuing civil war, Biafra's courts became the center of its national culture, and law became its most important administrative implement. In court, Biafrans argued over what behaviors were permissible in wartime, and judges used law to draw the boundaries of the new country's national identity. That law played this role in Biafra shows something broader about African politics: law, bureaucracy, and paperwork meant more to state-making than declensionist views of postcolonial Africa usually allow. Biafra failed as a political project, but it has important implications for the study of law in postcolonial Africa, and for the nation-state form in general.

Key words: Nigeria, Biafra, law, sovereignty, citizenship, decolonization, customary law, Nigerian Civil War, judges, courts