

# Constitutionalism in Nigeria

*Samantha Tancredi*

## Introduction

2019 marks twenty years since the establishment of the most recent constitution in the Federal Republic of Nigeria.<sup>1</sup> This milestone is significant for its attempt to unify the dismantled government of a divided country, with a history of much unrest, and constant coups d'états.<sup>2</sup> With the official constitution being a relatively new ruling document established in 1999, it is important to look at the history that led to this new political revelation.<sup>3</sup> Moreover, examining the past provides a foundation for building the future, which is especially important for an analysis about the future of Nigeria. This paper sets out a brief overview of Nigeria's convoluted history both pre-and-post-colonialism. When discussing constitutionalism in general, it is of utmost importance to expose the specified country's history in an effort to understand the document's political significance and, moreover, reach an understanding of constitutional development in an appropriate historical context. Using the case of Nigeria, it will be evident that a disunion between North and South has always been clear. It is thus unsurprising that disparity in the social and legal realms is prevalent, both largely influenced by the contemporary political climate. With a non-secular Northern region and a westernised, secular South, Nigeria acts as a fascinating case study of a country whose legal system, as argued in this essay, is inevitably bound to fail.

Secondly, this paper explains how Nigeria's unsteady political history has shaped its legal system. The functionality of the courts in the South matches that of the court system of the United States, yet the North continues to rely upon Sharī'ah law to interpret legislative code. In this way, religious law also impacts the manner in which society behaves. This is because the legal system holds significant social influence and has the power to shape how citizens behave through setting rules. The legal polarisation in Nigeria has consequential social and religious effects but it has an impact on the way the system has been organised. Namely, as I argue through this paper, the legal system acts as a reflection of the Nigerian society as a whole, with the North a region influenced by Islamic law, and the South being a westernised region. Finally, this essay explores the prospect of democracy pervading the constitution. Since both history and legal systems are

<sup>1</sup> 1999 Constitution of the Federal Republic of Nigeria.

<sup>2</sup> Sakah Saidu Mahmud, 'Nigeria' (2004) 47(2) African Studies Review 86.

<sup>3</sup> 1999 Constitution of the Federal Republic of Nigeria.

intrinsically connected with a discussion of constitutionalism, the initial discussion seems to be supporting evidence for this paper's final claims about democracy.

In doing so, this essay explores two political theories surrounding Nigeria's future. The first relates to the idea that the Nigerian case proves the theory presented by the political scientist, Francis Fukuyama, who argues that all states will ultimately head toward a democracy.<sup>4</sup> Nigeria, interestingly, is nearly halfway there with a democratic-based South. Second, Fukuyama's thesis is outlined and compared to his philosophical rival, Samuel Huntington, who argues that inevitable clash of civilizations has clear relevance to Nigeria's future state.<sup>5</sup> With two drastically differing regions, Huntington would argue that there is no way for Nigeria to reach constitutional success in the long-term. Insofar as one may proceed to make determinations on one's own accord, these two theories ultimately outline Nigeria's undeniable fate – the country itself will disintegrate by its own division. Sociological factors have too prevalent of a role to ignore; those same principles defining much of the future of the Nigerian state.

Through looking at a case study in Nigeria that exemplifies the lack of balance between North and South, the inconsistencies within the legal realm support the claim that the rift needs to be addressed. The solution, this paper argues, is to offer a proper divide between the regions, as their differences remain too great to unite under one constitution. As this essay will demonstrate, it is simply unsustainable and unreasonable to predict a consolidated future for a country so divided on the basis of religion – exemplified by two different court systems. This divide is reflective of a divided government, which ultimately reveals an underlyingly dysfunctional constitution.

With respect to the contentious political terrain into which this essay embarks, it is essential to highlight the competing principles that may challenge the idea that democracy is functional in non-secular countries. But, as this article explains, the notion that democracy can sleep in a theocratic system is misconceived. Despite this, this evaluation does not deny the need for all countries who are members of international bodies (like the United Nations) to maintain an international standard to ensure that all citizens are treated in a humane and just manner.

Ultimately, constitutionalism in Nigeria suggests the need for a consideration of the two sectors, North and South, and a more effective way to address the social concerns with two completely polarising ideologies at the center of politics. Alternatively, it is argued here that the North and South should become two independent jurisdictions, as they were not meant to be unified in the

4 Francis Fukuyama, 'The End of History?' (1989) (16) *The National Interest* 3-18.

5 Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon & Schuster 2011).

first place. With cultural division and inconsistent politics, it is difficult for one codified constitution to govern such a population fairly, especially with a large portion of that population being non-secular.

## 1. A Look at Nigerian History

Nigerian history is the key to understanding how the country's issues today have come into existence. This section looks at turning points in Nigerian history. Perhaps the most useful tool to understanding Nigeria in its early history is using pluralism to address the composition of the original society. Nigeria has always had a diverse population and a general lack of homogeneity due to the presence of 'ethnic, religious, legal and linguistic' differences across its many states. This has provided room for internal struggles to arise, thereby emphasising the challenge of unity within one political border.<sup>6</sup> With groups varying from one another on principle and 'the pre-colonial Nigeria [being] comprised of over 250 nation states, embracing over 500 ethnic and linguistic groups,' eventual conflict is more than inevitable — some may say it is expected.<sup>7</sup>

Before the British colonisation of Nigeria, what would eventually become the Republic was already quite divided. The states shared minimal interaction and different tribes lived independently from one another. The sheer differences in lifestyle between citizens, on the basis of social factors, were vast. In the Northern region, Islam was introduced 'in the 11th to 14th centuries'.<sup>8</sup> This quotation describes the birth of Islam into what would eventually become the Northern state of Nigerian:

The introduction of Islam did not automatically wipe out the traditional practices of the people, and by the eighteenth and early nineteenth centuries it was found that 'Islamic learning and practice in most of Hausaland [Northern Nigeria/Sokoto Caliphate] was no more than a shadow of real and true Islamic teachings and practice'.<sup>9</sup>

Following the arrival of Islam in Nigeria, Shari'ah Law became accepted as the law of the land.<sup>10</sup> Significantly, Islam was deeply rooted in Northern Nigerian society far before the British arrived in the 1800s. Pierre Bourdieu's theory on cultural capital helps explain this assertion, as he argues that religious law and practices, when deeply implemented, lack malleability and are not

<sup>6</sup> Rainer Grote and Tilmann J Röder, *Constitutionalism in Islamic Countries Between Upheaval and Continuity* (1<sup>st</sup> edn, Oxford University Press 2012) 90.

<sup>7</sup> *ibid* 90.

<sup>8</sup> *ibid* 93.

<sup>9</sup> *ibid*.

<sup>10</sup> *ibid*.

susceptible to change.<sup>11</sup> While this theory continues to apply to an individual's social status in society, it also has relevance in terms of an unchanging society. In the case of Nigeria, this ideal applies to the consistently religious nature of the North.<sup>12</sup> Simultaneously, groups located in what would later be called the Southern region of Nigeria practiced less institutionalised forms of religion that were founded mainly on tradition. The small-scale of these religions made the South more vulnerable to conversion following the British invasion, as the colonisers brought strongly institutionalised Christianity along with them, interested in spreading their beliefs to their new territory and determined to create a Christian state. By and large, the British succeeded in this venture in the South, as the people abandoned their past ideals and accepted the new.

British colonisation of Nigeria began in 1850.<sup>13</sup> While no independent and autocratic territory simply yields power to another voluntarily, the British arrived to the future Nigeria certain to succeed: while '[t]here existed resistance to the British machinations in the area...through treaties of protection against the French and German incursions..., the chiefs came to cede their territories to the British'.<sup>14</sup> This indigenous leaders saw this as a worthy sacrifice in effort to protect their own land and people against other enemies. The British were incentivised to explore and conquer Africa in pursuit of 'gold (or resources to keep the industries producing goods for export), and glory—prestige for the (competing) colonisers'.<sup>15</sup> With the Southern region rich in oil as a natural resource, the British tapped into a lucrative and bountiful market that would not only result in further globalisation, but also a hefty paycheck to the British empire.<sup>16</sup> Thus, Britain would not be quick to leave Nigeria and all that it had to offer on the basis of pure economic gain.

However, the British also likely sought territory using religion as both an impetus and justification. Namely, 'the promotion of God (through Christianity) for the natives' acted as a major motive for colonisation.<sup>17</sup> Soon after British occupation, the conquerors began to import Bibles and introduce missionaries to the area in order to convert the locals. With previously established religious practice concretely institutionalised in the North, most Muslims resented the attempts of conversion.<sup>18</sup> However, in the Southern region, people were more inclined to accept. Many tribes in the South regarded Christianity as their ticket to success, which would lead

11 P Bourdieu, 'The forms of capital' in J Richardson, *Handbook of Theory and Research for the Sociology of Education* (New York, Greenwood 1986) 241-258.

12 *ibid.*

13 E Ike Udogu, 'A History of Nigeria' (2009) 55 (4) *Africa Today* 124.

14 *ibid.*

15 *ibid.*

16 Grote and Röder (n 6) 91.

17 *ibid.*

18 *ibid.*

to a unification with the other tribes as a community sharing the same belief system at its core.<sup>19</sup> While reality took a different turn and no state in the South ultimately conquered the others to form one large territory, it is important to note that the South mostly subscribed to the ideals and promises Christianity held, while the North adhered to Islam.

The historical relationship between Nigeria and Britain was one of 'indirect rule'.<sup>20</sup> This concept is best defined as 'a system of government of one nation by another in which the governed people retain certain administrative, legal, and other powers'.<sup>21</sup> While the British remained broadly in charge, they elected local leaders to assist them in their control of their new colony.<sup>22</sup> Moreover, these appointed local officials contributed toward a continuation of previous ways of life in the North and a more adaptive approach in the South. Thus, the British were able to 'avoid potential problems that would arise in any radical disruption of the people's way of life'.<sup>23</sup> In implementing indirect rule, the British also addressed the Islamic North through the Native Courts Proclamation of 1900, which provided that Sharī'ah courts should:

administer the native law and custom prevailing in the area of jurisdiction, and might award any type of punishment recognised thereby except mutilation, torture, or any other which was repugnant to natural justice and humanity.<sup>24</sup>

The British left decision-making up to the indigenous, and in the North, this meant an adherence to Islamic principles. After officially forming what is presently known as Nigeria in 1914, 'the various ethnic groups existing within the territory largely retained their independence under a native administration system which ensured that the people governed themselves'.<sup>25</sup> Thus, there was further cultivation of Islam in the North, bringing an even greater following to the religion, than before and inherently strengthening its presence. By contrast, the South continued to become westernised as time passed. Today, the two regions remain divided, which leads to the next topic that analyses constitutionalism in Nigeria.

## 2. A Constitutional Analysis: Nigeria's Constitution and Court System

<sup>19</sup> *ibid.*

<sup>20</sup> Grote and Röder (n 6) 91.

<sup>21</sup> See definition of 'indirect rule', *Oxford English Dictionary* (2<sup>nd</sup> edn, OUP 1989).

<sup>22</sup> Grote and Röder (n 6) 92.

<sup>23</sup> *ibid* 91.

<sup>24</sup> E A Keay & S S Richardson, *The Native and Customary Courts of Nigeria* (Sweet & Maxwell 1966) 325.

<sup>25</sup> Grote and Röder (n 6) 92.

Understanding constitutionalism in Nigeria requires a very clear understanding of how such a document may be expressed. Simply put, a constitution can be defined as ‘a body of fundamental principles or established precedents according to which a state or other organisation is acknowledged to be governed’.<sup>26</sup> The entire purpose of instituting a constitution derives from a government’s wish to have a codified structure of how the country in question should be run. The idea of establishing further affirms a definitive way of government while appointing relates to a governmental ideal of delegating leadership into different sectors, often led by appointed representatives.

However, Nigeria distinctively struggles to align with these straightforward definitions as it has faced significant political turmoil since gaining independence in 1960, which saw that Nigeria established itself in the form of a ‘Westminster-style’ codified constitution.<sup>27</sup> Since, Nigeria has reformed its government via six different constitutions (in 1960, 1963, 1975, 1978, 1989, and 1999), along with additional amendments exempt from that total.<sup>28</sup> Thus, the people have struggled throughout time to identify with the government, especially as it has tampered with various layouts of successful rule in terms of dealing with administrative law, as well as coping with the question of Shari’ah law.<sup>29</sup>

A brief history of Nigerian constitutionalism is worth looking at. Firstly, ‘the subordinate legal status of Sharīah under Nigerian law as established by the British colonialists essentially remained the same after the country attained independence in 1960’.<sup>30</sup> Thus, the position that Nigeria could be multi-religious was maintained. However, with the restructuring of the constitution after 1963, ‘the constitutional status of Sharīah became a controversial issue’.<sup>31</sup> One of the main proposals suggested in terms of Sharīah law, was that if Islamic law was to be made relevant under the law, there would be clear issues posed given that judges would not necessarily be Muslim, nor would they be able to successfully address and apply religious law. Implementing Islamic law as in all Nigerian courts also presented other challenges:

[Many] aspired to Islamise Nigeria, and make Sharīah, at least the Muslim personal law, generally applicable in all parts of the country. However, that ambition did not

<sup>26</sup> ‘constitution’, *Oxford English Dictionary* (2<sup>nd</sup> edn, OUP 1989).

<sup>27</sup> Grote and Röder (n 6) 100.

<sup>28</sup> *ibid* 99-101.

<sup>29</sup> *ibid* 90-108.

<sup>30</sup> Zachary Elkins, Tom Ginsburg, and James Melton, *The Endurance of National Constitutions* (Cambridge University Press 2009).

<sup>31</sup> Grote and Röder (n 6) 95.

materialise, and since that time up to October 1999, when some northern states of Nigeria began to expand the application of Shariʿah into the realm of criminal law, only the personal aspects of Islamic law—dealing with such issues as marriage, divorce, inheritance, guardianship, legitimacy, and intestacy—were applicable, and only in the northern states of Nigeria.<sup>32</sup>

While Shariʿah had influence, it was not widely adopted throughout Nigeria, so it remained less of a threat to the overall development of the country. Southern Nigeria was stronger, based purely on the luck of geographic advantage. With a massive natural resource—oil—at its fingertips, the South was able to gain monetary strength and boost its own economy and thereby grow disproportionately compared to the North. The social and geopolitical nature of the different regions is crucial to understanding the role of Shariʿah law in Nigeria.<sup>33</sup> Anti-Shariʿah politicians, often from the South, purported that ‘essentially, [...] Shariʿah should be allowed only a limited role in the Nigerian multi-ethnic and multi-religious society and should not enjoy a dominant constitutional status. In short, it should be confined to the personal arena and apply only to Muslims: just the same way it was applicable during and after the colonial era’.<sup>34</sup> However, the idea that Shariʿah could only apply to the Muslim sector would hardly have been feasible under a united country. As time progressed, citizens in the same country preferred being endowed with the same rights and be subject to the same regulations. Thus, the constitution needed to evolve as well to meet the demands of a non-homogenous nation. Contrarily, those who advocated Shariʿah, argued that it had an effective role in society and that a large percentage of the population (in the North) believed in Shariʿah law as the means to regulate their daily affairs.<sup>35</sup> A less compelling argument was also advanced: that ‘Muslims in Nigeria have compromised enough, [and that] it is unfair to expect them to do all the giving’.<sup>36</sup> Moreover, advocates for an enhanced Shariʿah system ultimately claimed that any other solution would be accepting colonial rule and justifying its legacy in the form of government discretion.<sup>37</sup>

As Ogechi Anyanwu argued ‘nowhere in recent times has the question of Shariʿah produced such a challenge to the prevailing justice system as in Nigeria’.<sup>38</sup> Stemming all the way from the colonial period’ the British dismissed Shariʿah law as barbaric and replaced it with the Western-

32 *ibid* 96.

33 *ibid* 97.

34 *ibid*.

35 *ibid* 98.

36 *ibid*.

37 *ibid*.

38 Ogechi E Anyanwu, ‘Crime and Justice in Postcolonial Nigeria: The Justifications and Challenges of Islamic Law of Shari’ah’ (2006) 21 (2) *Journal of Law and Religion* 315.

style criminal code.<sup>39</sup> During the colonial period, the law served a punitive purpose, and imposing a judicial system was ‘a vital step in consolidating imperial authority’.<sup>40</sup> However, it was not blanketly successful as ‘Muslims saw this arrangement as an affront to their cultural identity, which did not subside after independence’.<sup>41</sup>

While Islam has successfully coexisted with other religions in the world, applying Shari’ah law is also difficult, as it has its own set of punitive aims. Thus, it was recommended that Muslims retain their own separate courts to address personal matters as the moral code overlaps with that of the legal code, both of which could not be applied to the population at large. In 1978, ‘Muslim delegates at the Constituent Assembly unsuccessfully demanded a constitutional amendment to provide for the establishment of a Federal Shari’ah Court of Appeal’.<sup>42</sup> However, the fight continued, as the rift between North and South deepened. In 1999, ‘twelve Muslim states in northern Nigeria successfully expanded Shari’ah law to exercise jurisdiction over the criminal justice system’.<sup>43</sup> And thus, a clash of legal systems ensued. It was ultimately decided that ‘Shari’ah may be applicable in states where it may be deemed necessary, but only in the area of personal law, and that Shari’ah courts, including appeals instances, may be established by any state of the Nigerian federation that needs them to administer the Muslim personal law’.<sup>44</sup> This agreement remained consistent through both the 1979 and 1999 Nigerian constitutions. After, following two articles implemented in the 1999 constitution, the next development seemed to be no surprise:

Article 244: An appeal shall lie from decisions of a Sharia Court of Appeal to the Court of Appeal as of right in any civil proceedings before the Sharia Court of Appeal with respect to any question of Islamic personal law which the Sharia Court of Appeal is competent to decide.<sup>45</sup>

Article 262: The Sharia Court of Appeal shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law.<sup>46</sup>

<sup>39</sup> *ibid* 316.

<sup>40</sup> *ibid*.

<sup>41</sup> *ibid*.

<sup>42</sup> *ibid* 316.

<sup>43</sup> *ibid*.

<sup>44</sup> Grote and Röder (n 6) 94.

<sup>45</sup> 1999 Constitution of the Federal Republic of Nigeria.

<sup>46</sup> *ibid*.



The wording of the 1999 constitution is as just as important as the specific clauses used to distinguish the State as a whole. In section 1(1) of the constitution, it is stated that the 'constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria'.<sup>47</sup> Moreover, section 1(3) reaffirms this exact ideal in reinstating: 'if any other law is inconsistent with the provisions of this constitution, this constitution, shall prevail, and that other law shall, to the extent of the inconsistency, be void'.<sup>48</sup>

Throughout its constitution, on the surface, the state sought to preserve the idea that Nigeria would remain a secular state. Section 10 of the constitution provides clarity to a previously ambiguous area of Nigerian history in so far as it states '[t]he government of the Federation or of a state shall not adopt any religion as a State Religion'.<sup>49</sup> This also provides international security for the Nigerian government as the international organisations take great measures to enforce the safe treatment of all human beings:

Importantly, the totality of all of the foregoing provisions leaves no one in doubt that in Nigeria's constitutional democracy Shari'ah is allowed to operate only in the personal or private arena. More importantly, by limiting the application of Shari'ah to defined civil matters, the constitution avoids the application of certain Shari'ah criminal punishments that are generally considered objectionable and inconsistent with certain international standards—particularly human rights standards.<sup>50</sup>

In deciding the future of the country, the constitution remains the first legal starting point – as it provides a set of conduct for citizens, and all public and private bodies. This version of the constitution also allows one to appreciate how the Nigerian has evolved into what it is today. Interestingly though, all constitutional reform and configuration in Nigeria was performed by the Constitution Drafting Committee ( or 'CDC'), a committee solely composed of those who came from the secular military ruling-class.<sup>51</sup> This drafting pool was far from representative of the entire population. Indeed, any constitution should be amenable and acceptable to the population as a whole, especially in a society as fragmented as Nigeria. Instead, key articles of the constitution seem to tell only one side of the story – hinting at the corruption that exists within those in power as Nigeria's coup d'état-filled history.<sup>52</sup> Press involvement also lead to a more skewed viewpoint of those on the CDC. The debate surrounding the Sharia'ah question was

<sup>47</sup> Grote and Röder (n 6) 100.

<sup>48</sup> Section 10 of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>49</sup> *ibid.*

<sup>50</sup> Grote and Röder n (6) 104.

<sup>51</sup> *ibid* 97.

<sup>52</sup> *ibid* 98.

crafted by the press, and afterwards absorbed by the observing citizens. Thus, the CDC needed to make decisions, concurrent with the press, in order to evade major criticism from the population. Indeed, an incensed population staging an uprising would provide greater apprehension for the ruling class.<sup>53</sup> It is worth noting that even prior to the 1960 coup d'état, the Shari'ah question had been extensively debated. Yet at the time, people remained disinterested given that Shariah only applied to personal aspects of life such as 'marriage, divorce, and inheritance' among others.<sup>54</sup> Though constitutionally defined as secular, many Muslims still sought to assert their religion and have the option of applying religious law.<sup>55</sup>

Lastly, the concept that 'the constitution is the law of the land that must go unchallenged' is one shared with many Western democracies where such a principle is demanded.<sup>56</sup> So it is fascinating that even when looking at a country with such a starkly different political history shared undertones exist regarding the codification of these constitutions. Furthermore, the respect afforded to a given constitution is a shared value consistent in Ireland, the United States of America, and Nigeria, among other nations. The constitution is the ultimate source of the rule of law and its supremacy determines the political and legal system. This importance highlights why there is a need for a constitution that applies to all citizens and their needs; but this is far from the case in Nigeria. Even though a *détente* seems to have been reached by the 1999 constitution, the North follows the constitution differently to that of the South and implements different hierarchy of law in their own courts. This inconsistency has led to a discrepancy in the law, and arguably the need for a solution to address reality.

### 3. Democracy and the Future of Nigeria

Samuel Huntington's 'Clash of Civilizations' attributes future conflict in global politics, not to economic or even ideological stratification, but to the idea of an impending clash of civilisations, or cultures.<sup>57</sup> Since previous conflicts in the beginning of political timelines were largely incited based on conflict between rulers, Huntington takes the time to clarify that instead, the future sees a much more robust approach to conflict in the form of civilisations, and that by transitive property, only one ultimately prevails.<sup>58</sup> With Nigeria, two issues should be addressed. When the British arrived in Nigeria, there were multiple tribal groups, who were not unified or subject to

<sup>53</sup> *ibid* 97.

<sup>54</sup> *ibid* 96.

<sup>55</sup> *ibid*.

<sup>56</sup> Section 1 (1) 1999 Constitution of the Federal Republic of Nigeria.

<sup>57</sup> Huntington (n 5).

<sup>58</sup> *ibid*.

any consensus.<sup>59</sup> Rather, they coexisted independently of one another, never intending to be a part of the same nation. Thus, the British motive to imperialise and reap economic gain from the territory forced a 'Clash of Civilizations' of its own between North and South.<sup>60</sup> Furthermore, the constitution barely addresses this discrepancy in so far as it attempts to act as a unifying body. Notwithstanding, starkly different societies cannot be swept under the rug, and citizens and government leaders have so far remained on edge about this clash. The constitution leaves a great deal of matter up to the courts to discern, and its vague wording may only function for a short time to come. Due to worldly interconnectedness, there may be an increase in insecurity relating to differing identities worldwide.<sup>61</sup> Globalisation has the power to 'stimulate fragmentation on an ethnic and cultural scale'.<sup>62</sup> So a clash of civilisations in the near future is hardly far-fetched. More importantly, Huntington's theory applies in terms of domestic affairs, one of the two—North or South—must prevail. Eventually, there will be a requirement to confront the discrepancies between the two regions. While this paper supports the idea of not attempting to fix an issue that is not broken, this disparaging cultural difference can no longer be overlooked with confidence for a prosperous future. There remains conflict, and this conflict is seeping into the legal realm.

This cultural discrepancy is best exemplified by the case of *Tsoffo Gudda v Gwandu Native Authority* which was brought to a Shari'ah court in the Northern region of Nigeria.<sup>63</sup> In this case, Gudda killed a man who was found to have had sexual relations with his wife. The Shari'ah court sentenced him to death, as he was guilty of murder; however, in his appeal to the British-imposed West Africa Court of Appeal, he was found guilty of manslaughter, not murder. Because of the difference between the handling of such crimes, capital punishment was no longer the correct punishment, with manslaughter evading a death sentence as a result. This exemplifies the clash in the cultural, religious, and legal ideals of the North and South. It gives the Western method of thinking greater power over that of the Shari'ah-based system. Which system will prevail? It must be submitted that there need be an address of this discrepancy; it cannot remain untouched. With an ambiguous balance between Northern and Southern courts, there is a lack of consistency that serves only to heighten the pre-existing rift between the two regions.

Francis Fukuyama takes a different approach in his work titled 'The End of History and the Last Man' which asserts that all countries will ultimately revert to democracy, and that all countries

<sup>59</sup> Grote and Röder (n 6) 91.

<sup>60</sup> Samuel Huntington (n 5).

<sup>61</sup> Ogechi E Anyanwu, 'Crime and Justice in Postcolonial Nigeria: The Justifications and Challenges of Islamic Law of Shari'ah' (2006) 21(2) *Journal of Law and Religion* 341.

<sup>62</sup> *ibid.*

<sup>63</sup> *Tsoffo Gudda v Gwandu Native Authority*

will eventually give in to the prevailing system of democracy.<sup>64</sup> Moreover, Fukuyama establishes the lack of war between countries with matured democracies.<sup>65</sup> In the case of Nigeria, the South has more democratic trends as it not only exhibits secularism. The South also has great economic prosperity, due to a trade partnership with many Western democracies, which thereby have influence on the region. The issue of trade is important for several reasons, particularly since the North relies upon the South for its economic affluence: without the oil-rich Niger Delta to engage in the global market, the North would be desolate and poor.<sup>66</sup> However, this reliance will not last forever, and it almost promotes a ‘straw-that-broke-the-camel’s-back’ argument in so far as it suggests that war will ultimately break out when the two are not in congruency due to a lack of fairness or overall systematic disagreement. According to Fukuyama’s thesis, the South would prevail due to not only its democratic persistence and vast economic resource compared to that of the North. But it is worth noting that the international community would largely be more inclined to support the South than the North even if it ever came to those terms.

While the 1999 constitution provided a certain level of clarity regarding the status of Shari’ah law, this paper concludes with a firm statement on the future of Nigeria that contradicts this clarity. In light of the fact that Nigeria has had much political turmoil in the past, it is difficult to assume a steady and peaceful future, despite a sound constitution that is largely accepted throughout the country. Instead, it is more likely that in the future, Nigeria will witness the rise of members of the ruling military class again. Inherent distrust in the government continues to exist. And unfortunately, the constitution does not provide a great sense of security for the future of the nation as its recent instatement lacks the proven ability to pass through political unrest and militant pressure. Hence, there is no true way of knowing its effectiveness, at least not within the next twenty years.

Through time, there has been an increasing reliance upon international treaties and documents to affirm that the international community upholds certain set of standards to ensure that global peace is maintained to the best of every participating country’s ability. Whether or not these international treaties are wanted, let alone upheld, is up to the discretion of each specific country; but a lack of participation in general is indicative of monumental issues to come – especially, where they may have to face the countries that signed these treaties with the utmost certainty, intent on protecting liberties at an international level. The future of Nigeria will likely continue in the same course. Nevertheless, there needs to be more clarity given the North and South divide in order to maintain good-will both domestically and internationally. Perhaps the most viable

64 Fukuyama (n 4).

65 *ibid.*

66 Grote and Röder (n 6) 91-92.

solution is to split the two regions into two completely separate countries with different jurisdictions and general independence. Despite the constitution seemingly handling the situation, it is unreasonable to predict that this could be maintained for any extraordinary amount of time. The Northern region already adheres to Sharī'ah law, as it has for years, by contrast, the South adheres to secular law and principles. The Northern states have already 'created over one hundred Sharī'ah courts'.<sup>67</sup> Meanwhile, the westernised South struggles to accept the Sharī'ah code, which they view as having 'brutality and inhumanity involved in punishments'.<sup>68</sup> Yet Muslims have simply employed a penal code they see as consistent with their belief system. This does not in turn mean that the entire country should adopt it. Rather, it is that the South should respect the practices of the North and separate with due reason. Ultimately, the possibility that non-Muslims could be affected by Sharī'ah law cannot be ruled out either, and the bottom line should be that each citizen should of be held liable for and abide by their own customs and laws.<sup>69</sup>

### Conclusion

Through a short historical account of Nigeria prior to colonisation, this paper has explained why North and South Nigeria should not remain unified as one state. Unification was a byproduct of colonisation and the consolidation of the British empire. The two regions never shared characteristics that would result in a successful union and as a country, despite being bound by the legal woes of a constitution. Moreover, it is purely illogical to presume that constitutionalism in Nigeria exists in the first place, as the language associated with the constitution seems weak given that the writers were forced into broad and vague terms to consider the vastly different North and South.

In sum, the current constitution does not fairly attribute rule to the Northern region as power always reverts to the constitution, blatantly denying the role of religious law and its influence and power over the North. Thus, this essay suggests that for stability in the long-term, the country needs to either address the Sharī'ah question that was left largely unanswered, or it needs to separate the North and South into two independent states with their own constitutions, respective laws, and separate jurisdictions. With no solution to its current problems, and a barely functioning, imbalanced constitution, Nigeria seems to be headed towards an uncertain future.

<sup>67</sup> Ogechi E Anyanwu, 'Crime and Justice in Postcolonial Nigeria: The Justifications and Challenges of Islamic Law of Shari'ah' (2006) 21(2) *Journal of Law and Religion* 335.

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*