

Thou shall let nothing be wasted
John 6:12

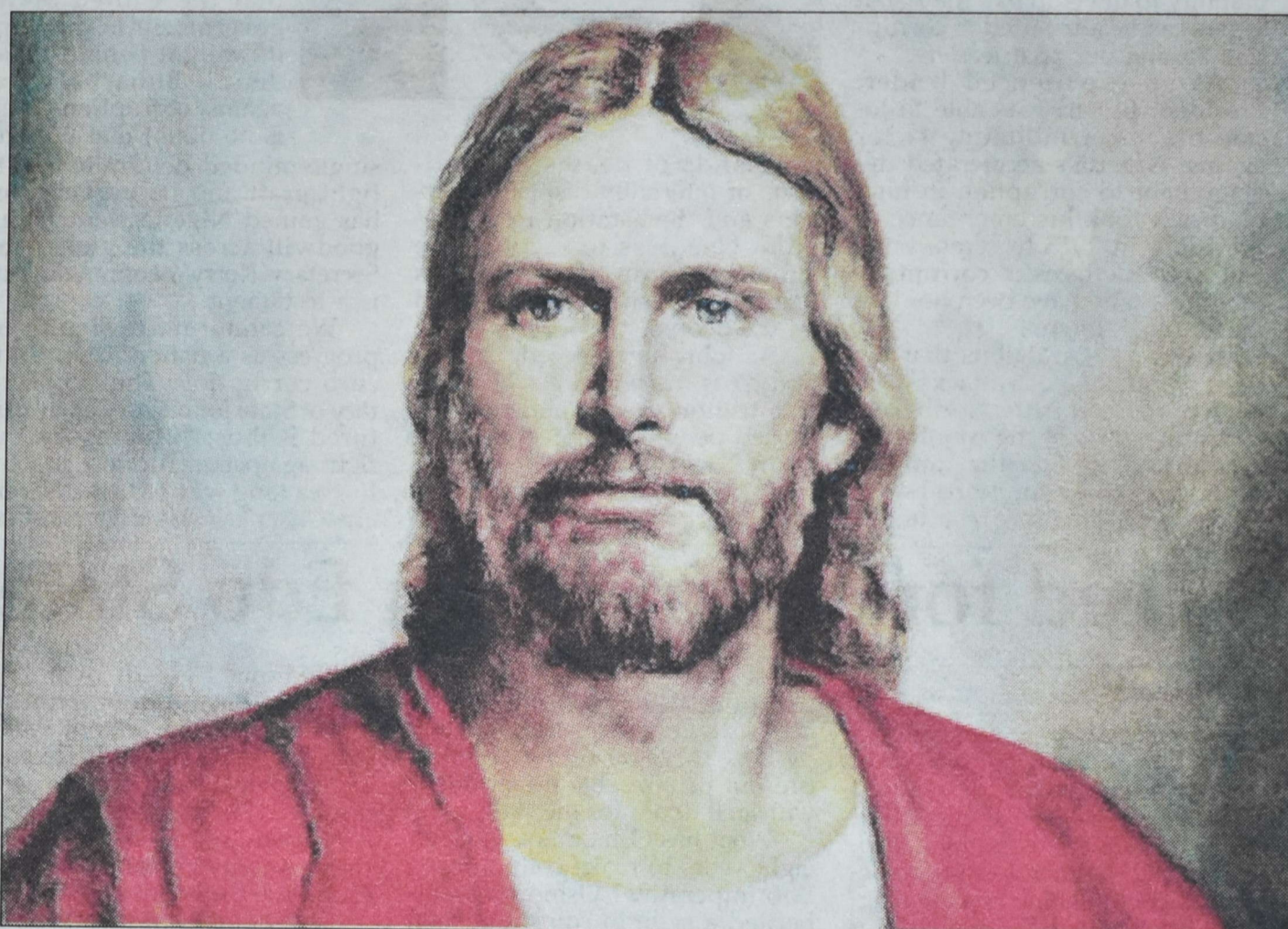
Has capitalism of the worst kind become permanent in Nigeria?

— Resuming a forgotten debate (1)



(184)

Talakawa Liberation Herald
BIODUN JEYIFO



•“Jesus Christ of Nazareth: when he said thou shall let nothing be wasted, he did not have Nigeria, circa 2016, in mind!”

I NDEED, has capitalism of the very worst kind become permanent in our country? I hope not! I have a personal, existential stake in expressing this hope. With other members of my generation, I am in the last “phase” of my physical existence. Certainly, like all human beings, I hope for a long and relatively healthy life. But I am realistic enough to know that when you are a septuagenarian, you have lived considerably far more of your life than the time left for your existence to run out of its allotted time. The oligarchic, thieving capitalism that is in full control of our political economy at the present time is the worst form of capitalism there is. If it has come to stay permanently in our country, it means that for the rest of my life, the hope for a better, more humane and just society in Nigeria will remain precisely that – a fatuous hope with absolutely no possibility of fulfillment. What is even worse is the possibility that this form of capitalism will survive well beyond my life and the lives of all presently living generations in our country. Heavens help us!

The terror of this nightmarish prospect is underscored by the fact that in my lifetime, indeed in the collective lifetime of my generation of Nigerians, we have seen and experienced capitalism of a better, more productive and transformative kind. Because the median age for Nigeria is 18 years, close to about three quarters of the present aggregate of all living Nigerians did not experience that kind of relatively benign capitalism. And so for the most part, what the majority of Nigerians alive now know and have almost come to regard as “capitalism” is the *barawo-jaguda-onyeoshi* (apologies to Wazobian popular lingo) variety now in full force in the land. In a series of three or four essays that begins with this week’s column, I wish to reflect on this profoundly disturbing fact of our political economy. But first, in a few paragraphs, I wish to say a word or two about the whole issue of “good” and “bad” capitalism, beginning with why the form of capitalism in Nigeria, first under the PDP and now under the APC, is the very worst kind of capitalism.

What is the essence of this kind of capitalism? It is consumption as the be all and end all of “production”. In other words, in this kind of capitalism, consumption becomes so unrelated to production that it extends voraciously to products and services that your nation, your society doesn’t and cannot produce. Moreover, and quite significantly, this frenzy of consumption is available, not to everyone in the society but only to a few that are paradoxically typically the least productive members of the society. If we recognize that we are using the term cannibalism metaphorically here, we can describe this kind of capitalism as being profoundly cannibalistic, in essence implying that part of what the few consuming lords of the land consume are the lives of the vast majority of the people. Perhaps the single most frightening feature of this kind of capitalism is the fact that production in general, and virtually all productive processes in particular become so battered, so endangered that everything valuable is wasted on a monumental scale. This observation leads us to the relevance of the epigraph for this essay.

John 6:12: Thou shall let nothing be wasted. This is our epigraph for this essay. [Actually the rendition of this quote in the Yoruba Bible is more poetic, more stunningly evocative: *Eyin ko gbodo je ki ounkoun ki o s’egbe!*] Think of the kind of capitalism in force in our country at the present time – and apparently for the foreseeable future – as a complete reversal

of this injunction of Christ to his disciples thereby giving us the following monstrosity: Thou shalt let everything, everything, go to waste! In the biblical story that serves as the narrative and theological context for this quote, Christ was referring specifically to the leftovers that remained from the huge feast with which he had fed the multitudes, a feast miraculously conjured out of only two loaves of bread and a lump of fish. Theologians have for ages speculated that the literal leftovers that Jesus was referring to in this quote was actually a symbolic representation of spiritual sustenance. In other words, it has been argued that Christ was really saying that if you can apply yourself to the practice of not wasting leftovers of food, you will position yourself well for preventing all forms and sources of sustenance from going to waste. It was Wole Soyinka who, right after the Nigerian-Biafra Civil War, first talked of the “wasted” generation. Since then, the metaphor of waste has been applied to just about every asset and resource that we possess, not only physical and material ones like crude oil and human labour, but human life itself. Waste on this scale and of such widespread dispersion causes untold hardship, suffering, violence, corruption and insecurity. We shall come back to this form of capitalism that is regnant in our country and has been so for a few decades, but for now let us move to the second of our opening reflections, this being the very question of types of capitalism, some “good”, others

“bad”.

A confession: one “inspiration” for my use of the term “good and bad capitalism” is the fact that there is indeed a book of roughly that title that is not only in print but has been in wide circulation since its publication in the year 2007. Here’s the full title of the book: *Good Capitalism; Bad Capitalism: The Economics of Growth and Prosperity*. The authors of the book are William J. Baumol, Robert E. Litan, and Carl J. Schram, all professors of economics at prestigious American universities. The book identifies four types of capitalism in a list that goes from the worst to the best. Here’s their list: oligarchic capitalism; state guided capitalism; big firm capitalism; and entrepreneurial capitalism. Not too long after this book came out, I discussed it in a series when this column, in an earlier incarnation, was written for and published in *The Guardian*. For this reason, I will not go into a lengthy or sustained discussion of the book. For our current purposes in this discussion, here are the four things I wish to say about the book’s postulates about “good” and “bad” capitalism.

First: discussions of varieties of “better” and “worst” forms of capitalism are not new and have been around ever since the emergence of capitalism as the dominant form of modern economic production. Second: most theorists and commentators, both of the Left and of the Right, agree with the authors of this book that the oligarchic form of capitalism is indeed the worst kind. Third: however, barely a year

after the publication of the book, the global economic meltdown of 2008 completely disproved and debunked the authors’ claim that “entrepreneurial capitalism”, American-style, is the “best” form of capitalism the world has ever known. And there is also the quite significant fact that in this year of American presidential elections, devastating critiques of the injustices and inefficiencies of entrepreneurial capitalism constitute perhaps the single most dominant theme of the candidates of the two main parties. Fourth: we must look at other sources for a more productive discussion of “good” and “bad” capitalism, sources that are indeed more relevant to our present historic circumstances. In the present context, I will cite and briefly discuss only two of such sources, one foundational and international, the other quite local to our own recent economic and political history.

It is hard to imagine now, but younger Nigerian socialists and progressives on the Left need to be reminded that Karl Marx and other founding leaders of modern socialism actually considered capitalism a profoundly transformative and indeed “revolutionary” force in modern economic and political history. Indeed, some sections of nothing less canonical than *The Manifesto of the Communist Party*, read like hymns to the progressive vocation of capitalism in general and the bourgeoisie in particular! Simplifying a little bit, here is the underlying idea of this view of capitalism in its “revolutionary” phase: it was releasing and it will con-

tinue to release powers of production on such a gigantic scale that, for the first time in human history, scarcity will become a thing of the past. Consequently, so goes the argument, there will be enough for society on a global scale to be able to undertake a massive redistribution of wealth that will forever abolish poverty and want and the degradations they impose on millions, billions of human beings. Of course Marx and others warned of evolving types within capitalism that would seek to blunt or even stop the progressive and transformative tendencies within capitalism. The chief of such negative, “regressive” types of capitalism is the monopolistic or oligopolistic kind, especially in its tendency to lead to war and a perpetual sharpening and deepening of the gap between the rich and the poor. On this view, the “best” form of capitalism would be that which pays attention to the vital links between the production of wealth and the fair and just distribution of the wealth produced. As a counter to this, the worst form of capitalism is that in which whatever wealth actually or potentially exists is kept away from both the generation of more wealth and fair and just distribution.

It might perhaps come as a shock to many reading these words to learn that much of these things that have been historically and internationally discussed about “good” and “bad” capitalism have not only been very widely discussed in our country but indeed went into the writing of the 1999 Constitution. This is particularly true of Chapter 2 of that Constitution which deals specifically with economic production and the role of the State in ensuring justice and fairness to all. What is more pertinent here is that this Chapter Two of the 1999 Constitution is in fact the product of widespread discussions throughout the country that had gone into the production of both the 1979 and the 1993 Constitutions. Indeed, the so-called “Preamble” to the 1993 Constitution specifically raises the challenge of simultaneously pursuing economic growth and distributive justice at the same time. In this, there is a suggestion that you cannot pursue distributive justice on scarcity, on undeveloped productive powers. But the discussion makes it plain that the best form of government and economy is that which pursues both objectives simultaneously: growth through expanding productive forces and fair and equitable distribution of the wealth of the nation. Thus, though the term “capitalism” does not appear in the 1993 and 1999 Constitutions, there is not the slightest doubt that the idea of a “good” or benevolent capitalism is at the core of these documents.

Let me end this opening essay in a series that will continue next week on a half-playful and half-serious note: on the basis of Section 16, subsection 2, paragraph c of the 1999 Constitution, Saraki, Dogara and indeed all the members of the National Assembly should be in jail right now in defiance of the nation’s governing Constitution. What exactly does this paragraph state? Here it is: “The State shall direct its policy toward ensuring that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or of a group”. We will take this observation as our point of departure in next week’s continuation of the series.

Biodun
bjejifo@fas.harvard.edu

Jeyifo

Has capitalism of the worst kind become permanent in Nigeria? – Resuming a forgotten debate (2)

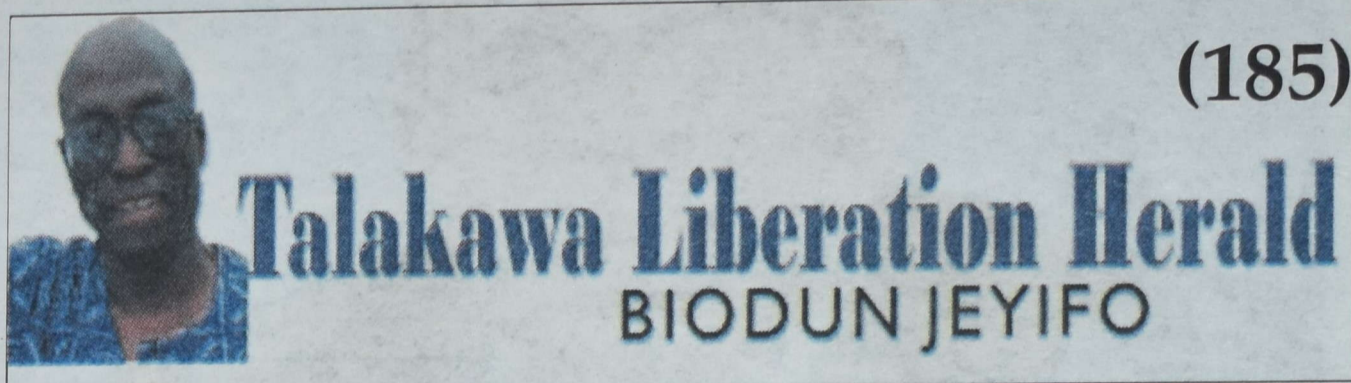
IN ending the discussion last week with an observation that the leaders and all the members of our National Assembly ought to be in jail for openly and egregiously defying the clause in our Constitution that expressly forbids the concentration of the wealth of the nation in the hands of a few individuals or a group, I stated that this was both a half-serious and a half-playful suggestion. Why did I say this? Well, the serious part is that I actually and rather fervently believe that all our legislators, in all the political parties should be in jail for flouting this particular Constitutional provision. Compatriot, please look at the humungous salaries, emoluments and allowances our legislators pay themselves. And then on top of that look at the unconscionable “jara” of billions on naira that they also illegally obtain by padding the Budget sent them by the Presidency. Is this not arrant in its overconcentration of the wealth of the nation in a tiny group? That is the serious part of my suggestion that they all belong in jail right now and for a long time!

The half-playful part of this suggestion comes from my recognition that the relevant section of the Constitution I am invoking here belongs to that part of the Constitution that lawyers call “non-justiciable”. What does this mean? Simply stated, it means that no matter the positive moral force and the degree of public good in the “non-justiciable” clauses of the Constitution, they cannot be enforced by law. In other words, as desirable as a constitutional clause in this “non-justiciable” parts of the Constitution may be, if you take those who flout it to the law courts, your suit on behalf of the nation and its peoples will be thrown out without even being heard. Bearing this in mind, I am almost certain that members of the National Assembly reading this piece and coming across the suggestion that they should all be in jail will be laughing and laughing hard. If that is the case, what then am I making of this fact in the context of this series on the very worst form of capitalism reigning in our country at the present time? Basically, it is this point: in capitalism that is so decadent, so filled with utter impunity as the type that we are now compelled to live under in great sufferance, there really is no distinction between what is justiciable and what is non-justiciable in the unregenerate consumption and wastage of the wealth of the nation by a few at the expense of the vast majority of our peoples. In the main, that is what I wish to discuss this week. But before going into it in detail, first I wish to make some further observations and reflections on why we need to resume the forgotten debate that we once had on good and bad capitalism in this country not too long ago.

Of this I am absolutely certain: most of those reading this piece who are self-declared and sincere socialists and Left-of-center radicals are wondering why I am “wasting” my time in this series talking about “good” capitalism. In equal measure, of this I am also certain: to most readers who are not socialists or Leftists, talking about capitalism of any kind is so rare, so unusual in our country at the present time that they, too, must

“You may know how little God thinks of money by observing what bad and contemptible characters he often bestows it.”

A popular saying attributed to many people among them Alexander Pope and Dorothy Parker



•Supreme Court, Abuja - judicial-administrative heart of the superstructure of Capitalism Nigeriana

be wondering what I am about in this series. To both sides of this divide, I say that anyone who thinks that talking about capitalism in its various types is unusual or amounts to a waste of time suffers from both historical amnesia and ignorance of the fierce contemporary debates going on within capitalism in many nations and regions of the world, not least in the heartland of capitalism itself, the United States. Socialists and Leftists in particular must remember that socialism was founded on debates between *reform* of and *revolution* against capitalism. Often, the two were posed in the form of a complete antithesis as reflected in the well-known phrase, “reform or revolution”. But in the most significant debates and developments, globally and in our own country, reform was not separated, not shut out from revolution; one was seen as connected to or leading to the other. And for all the non-socialists reading this, it is important to remind them that from its very beginnings, the struggles to reform capitalism, to give it a genuine human face has never stopped, with the exception perhaps of a few countries in the world like our own unhappy homeland, Nigeria, first under the PDP and now under the APC. On this note, let us return to the main line of our observations and reflections in this piece, this being the telling details of the extremely bad type of capitalism, of a capitalism that is absolutely without a human face and utterly devoid of the milk of hu-

man kindness in force in our country at present time.

The form of capitalism reigning seriously unchallenged or perhaps seemingly unchallengeable in our country at the present time is so bad that in some of its main structural features, it seems not to be a “true” capitalism at all. In Economics 101, the most elementary level of university courses in the science of economics, students are routinely told that the consolidation and expansion of capital is so crucial that any entrepreneur, any capitalist that always cuts into and perpetually diminishes his or her operating capital will not last long as a businesswoman or man, a capitalist. And indeed, what is capitalism without capital? But this is exactly what Nigerian capitalism, PDP and APC mode, is in its essence. The major structural feature of this reality is as widely known as it also seems to defy anyone, any ruling party being either able or willing to do anything about it: year in year out, in the actual operation of our national and state budgets, recurrent expenditure far outweighs capital expenditure by a magnitude of the order of more than 3 to 1. Moreover, even the little that is left for capital expenditure is for the most part often looted through contracts that are both overinflated and barely ever satisfactorily executed, all with an impunity that can only mean that there really is no difference between “recurrent” and “capital” expenditure in the “capitalism” in force in Nigeria.

Dear reader and compatriot, if you take nothing else away from the dire and unhappy musings of this series, please do take away and bear in mind this particular feature of this virulently thieving, looting and inhuman *Capitalism Nigeriana* of our predators’ republic: no economic and financial crime against the nation and its peoples, no matter how heinous, is really “justiciable” anymore since the difference between *justiciable* and *non-justiciable* as established in our Constitution has been effectively abolished. The worst and simply unbelievable expression of this reality is the fact that ours is the only country in the world, *repeat the only country on the planet*, in which interlocutory injunctions can be “legally” invoked and accepted in criminal proceedings in order to prolong them indefinitely. In every other country in the world interlocutory injunctions and applications for stay of proceedings are recognized and granted only in civil cases. Those calling for the arrest and prosecution of Speaker Dogara for the budget-padding mega-scandal – and I join my voice to their voices – should bear this crucial point in mind: arrest and prosecution is only the start of what typically almost always effectively proves to be in the end “non-justiciable”. For example, how close to, or how far from conclusion are the cases against Dasuki and Saraki? Ask the courts, ask especially the Chief Justice of the Supreme Court who, in the final analysis, must be held

accountable for the terrible miscarriage of justice in our law courts with regard to the unique privilege enjoyed by the mega-looters. In particular, ask the Chief Justice of the Supreme Court why he and his colleagues on the highest court of justice in the land have been remarkably reluctant to comply with and enforce the provisions of the Administration of Criminal Justice Act of 2015 (ACJA) which, if done would significantly do away with all the obstacles to the successful, timely and just prosecution of the alleged mega-looters. I have on the pages of this column myself asked the Chief Justice of Nigeria (CJN), Mahmud Mohammed (who happens to be the first indigenously trained CJN in Nigeria) this question before and ask it of him again today: why is he personally and professionally unembarrassed and unashamed by the fact that we are the only country in the whole world that permits the application of interlocutory injunctions in criminal cases?

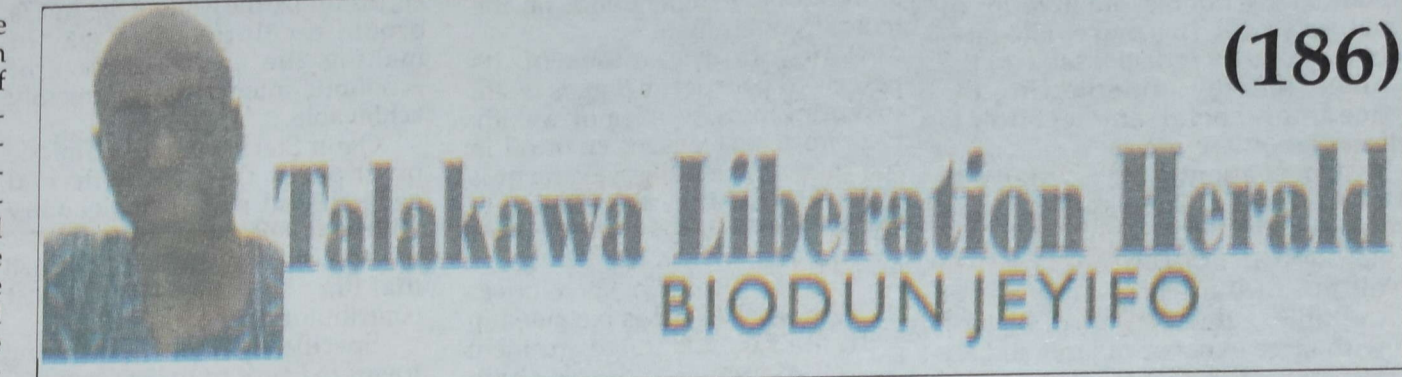
Lest it be thought that I am overstating and over-dramatizing things in this series, let me hasten to admit that the effacement of the distinction between the justiciable and the non-justiciable is not total, not complete in our law courts. Many offenses and infringements that are “justiciable” are still successfully prosecuted in our justice system and in their ordinary or routine operations, the law courts of the land still function, even if some of their administrative operations are so outdated and labyrinthine that it sometimes feels that one is in a medieval and not a modern court of law in present-day Nigeria. But I do hold strongly to my argument that in the most important areas of the economic order in force in the country, the distinction between the justiciable and non-justiciable does not exist because in the end, the huge mega crimes are *effectively* if not legally non-justiciable. This is what slowly – and hopefully wisely – Muhammadu Buhari and his AGF, Abubakar Malami, are gradually finding out in their declared war against corruption and the mega-looters. With most Nigerians, Buhari and Malami are also finding out that the looting has not only continued by and within sections of the leadership of their own party, the ruling APC but also appears to be tending towards the “non-justiciable” legacy left by the PDP. Every form of capitalism has the judicial-administrative superstructure necessary for its functioning and survival. Our criminal justice system, with regard to the open and defiant protection it gives to the unjustly rich and powerful, is one of the most unjust and irrational criminal justice systems in the world precisely because *Capitalism Nigeriana* is one of the worst forms of capitalism in the world. The epigraph to this piece states that if you wish to know what God thinks of money all you have to do is look at the evil and vile characters to whom he bestows wealth. I say that if you wish to know how really evil and vile our judicial-administrative superstructure is, look at the kind of capitalism that it endows with the protection of legality. This will be our starting point next week.

Has capitalism of the worst kind become permanent in Nigeria? – Resuming a forgotten debate (3)

THIS was the first sentence of my closing paragraph last week: Every form of capitalism has the judicial-administrative superstructure necessary for its functioning and survival. Our criminal justice system, with regard to the open and defiant protection it gives to the unjustly rich and powerful, is one of the most unjust and irrational criminal justice systems in the world precisely because *Capitalism Nigeriana* is one of the worst forms of capitalism in the world. In clarification of this observation, let me adduce the evidence or proof provided by the following two astonishing facts.

First: In the year 2005, the former World Bank President, the American Paul Wolfowitz, gave a speech at the so called "Sullivan Summit" (named for the Reverend Leon Sullivan, an African American cleric with a passionate interest in Africa who had been one of the world's fiercest opponents of apartheid) that shocked the whole world, especially the international business community. In the speech, Wolfowitz, with the solid authority of his position as the World Bank President, claimed that between 1970 and 2001, Nigerian political leaders, military and civilian, together with their cronies, had stolen about 300 billion dollars from the Nigerian people, with the effect, among other things, of continuous ruination of the Nigerian economy and the impoverishment of about 75% of Nigerians in both urban and rural communities. Let us note in passing that Wolfowitz made this revelation in 2005, in which case the question naturally arises as to how many more billions of petrodollars have been looted from our country and diverted away from the national economy since then, about eleven years ago? Let us note also that although Wolfowitz was making a moral and humanitarian argument against the effects of corruption in our country, above all else he was speaking as an *economist*, the chief guardian and protector, as it were, of global capitalism. In other words, Wolfowitz was motivated by a bafflement as to what breed, what transmogrification of capitalism was taking place in Nigeria that capital could be so massively and consistently diverted away from our national economy.

Here is the second fact, that I wish to adduce here: After Muhammadu Buhari won last year's presidential elections, there was a widespread optimism, not only in Nigeria but around the whole world, that before the new president's inauguration, looters would flee the country in droves in their private jets but would however find no places in the world in which to hide because wherever they went, they would face repatriation back to Nigeria to face the music. Moreover, it was widely expected that at last corruption would be checkmated in our country and looters would finally be made both to return the stolen loot and face punishment for their economic crimes against the nation. We do not know how many looters tried to flee; all we know is that those who have been arrested and charged have found



•Central Bank, Abuja: does it have a reformed capitalism with a human face in its sights?

seemingly impregnable protection under legal principles and practices in the administration of criminal justice that are unique to Nigeria among all the nations of the world. In this column, I have identified and condemned the very worst of such principles on innumerable occasions, but it is worth repeating again: Nigeria is the only nation on the planet in which interlocutory injunctions are admitted in criminal cases; in every other country in the world, this injunction through which cases can be prolonged for a very long time, is allowed only in civil cases. Seen in the context of the legal cover and protection that it provides for mega-looters – by the way, it is used by and for ONLY alleged mega-looters – this is the single most important legal principle working against the Nigerian national economy because it is the judicial rampart for the superstructure of what I described last week as *Capitalism Nigeriana*, one of the worst forms of capitalism in the world. As a demonstration of this claim, think of the following fact: some mega-looters who have been successful in evading retributive and punitive justice for their crimes in Nigerian courts all the way up to our Supreme Court, have been jailed in courts outside Nigeria, sometimes for the very same charge of money-laundering. Money laundering exists nearly everywhere in the world, but only in Nigeria and other countries with extremely backward and unregenerate forms of capitalism does money laundering enjoy the kind of protection available to looters

in our criminal justice system.

In case it has not been sufficiently made clear in all I have been saying in this series, let me make it clear at this juncture that my focus here is almost exclusively on the *structural* and *institutional* principles and workings of capitalism in our country in about the last three decades. In other words, I am not really concerned in this series with a moralistic and humanitarian critique of capitalism in Nigeria. No doubt this is implied, but it is not the main or real focus of this series that began in this column two weeks ago and will end next week. The commentariat in our newspapers, newsmagazines and online public interest journals are overwhelmingly powered by protests and analyses that are fueled by moralism and humanitarianism. This is all well and good, but in this series, I am arguing for us to pay more attention to structural and institutional factors, these being areas of the public sphere that the commentariat in Nigeria is generally very either uninterested or frankly uninformed, especially as this relates to capitalism and the forms through which it has evolved in the post-independence period. In the closing paragraphs of this piece, let me briefly deal with this observation by posing the following enabling question: was it access to oil wealth on a colossal scale that changed capitalism from a potentially benevolent and transformative kind to the present extremely unregenerate and malevolent *Capitalism Nigeriana*?

Counterintuitively, my answer to this question is no, a resounding no. Before Nigeria became one of the world's largest oil producing countries, we were very well on our way to using surplus accumulation from export or so-called "cash crops" to transform our economy into a modern capitalism with an internal industrial base for light consumer goods for a very large "home" market that embraced virtually all of West Africa. The richest Nigerians then did not depend, as they do now, on patronage from government, federal or regional. The vast majority of the aggregate of all presently living Nigerians did not experience and do not know anything about this form of capitalism but there are enough of us still alive to tell the stories! Let me give a personal testimony about this: in 1970 when I taught for four months at Adeola Odutola College in Ijebu-Ode before returning to the University of Ibadan to begin my graduate studies, I used to travel every weekend to Ibadan. The Ibadan-Ijebu-Ode road on which I made the journeys is still nearly as good and durable it was then, almost fifty years later, while other roads which were either freshly constructed or rebuilt after then all constantly undergo severe and extremely dangerous disrepair. Indeed, that high school at which I taught, Adeola Odutola College, was much better equipped (and probably better staffed) than many of our universities now precisely because the founder and proprietor for whom the school was renamed from its previous name, Olu-Iwa

College, was a true capitalist magnate whose influence and authority were completely independent of the patronage of politicians and governments. Above all else, what I wish to stress in this testimony which does not claim to be an exhaustive analysis of capitalism at that stage of our (under)development is that we were well on our way to transforming a capitalism that was primarily agriculture-based to modern industrial capitalism. If this was the case, it was not a given, foreclosed development that oil wealth should have been diverted away from that trajectory. Indeed, the argument could be made that the oil wealth could very well have been used to augment that trajectory. Nothing in history is preordained to happen the way it usually seems to be after the fact, especially after things have become very fixed and settled along a particular path of mal-development.

On this last note, I wish to emphasize, especially to younger people reading this series, that if the things I am saying and claiming here seem far-fetched, please know that in fact they were very vigorously nationally debated in the not so distant past in our country. I particularly advise those who are eager to find out for themselves the truth of these claims to get copies of the following documents: the "Minority Report" submitted by Segun Osoba and the late Bala Usman in 1976 after they disagreed with the Constitution Drafting Committee (CDC) which had recommended welfarist capitalism in the main document produced by that CDC while Osoba and Usman recommended socialism in their report; the 1979 and 1999 Constitutions, especially the Second Chapters of both documents that contain extensive reflections on fairness and justice in both the ownership of the means of production and the distribution of the wealth of the nation. When Ibrahim Badamasi Babangida formed the two political parties that contested the 1993 presidential elections, the National Reconstruction Convention (NRC) and the Social Democratic Party, (SDP) and stated that one was "a little to the Right while the other was a little to the Left" he was reflecting the considerable influence of these debates on the kind of capitalism Nigeria should both enshrine in its constitution and back up with the force of state policies and actions.

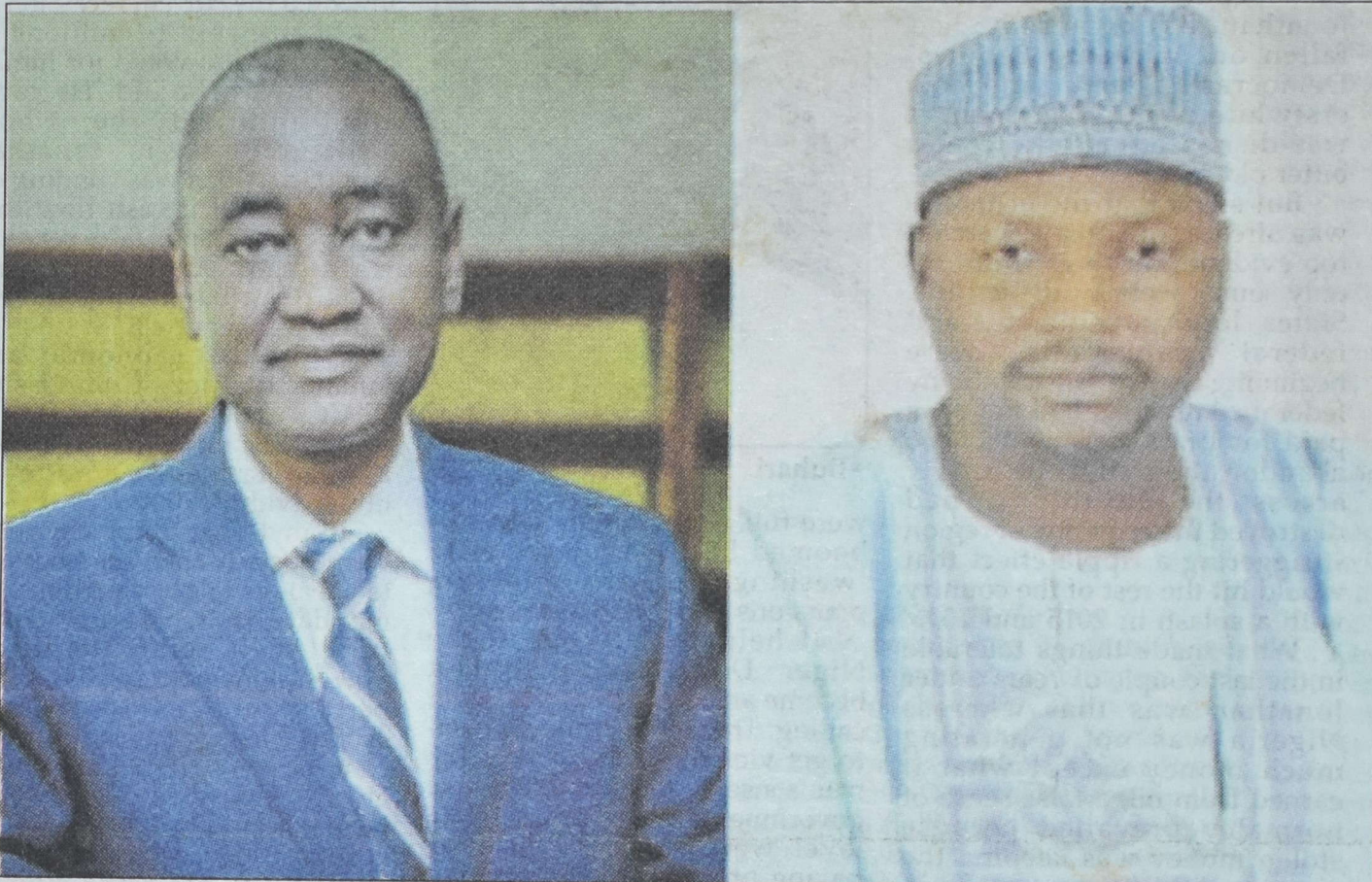
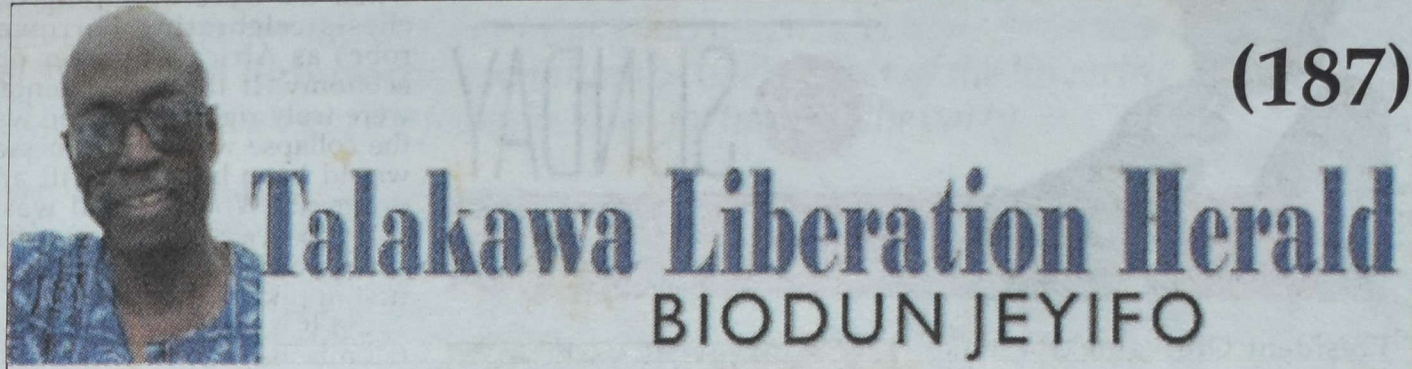
Obviously, we have traveled or strayed far from the paths indicated by those debates. Indeed, anyone who, upon reading all the relevant documents in those debates, claims that she or he could have anticipated an extremely unregenerate and unjust capitalism in which mega-looters and their defenders dominate the political order, the national economy and the judicial system would be hard put to defend that claim. So: how did we get here and how can we get out of it? If there are no simple answers to this question, this does not mean that there are no answers at all. This will be our starting point in next week's concluding piece in the series.

Has capitalism of the worst kind become permanent in Nigeria? – Resuming a forgotten debate (4)

THE following was the last paragraph in this column last week: "Obviously, we have traveled or strayed far from the paths indicated by those debates. Indeed, anyone who, upon reading all the relevant documents in those debates, claims that she or he could have anticipated an extremely unregenerate and unjust capitalism in which mega-looters and their defenders dominate the political order, the national economy and the judicial system would be hard put to defend that claim. So: how did we get here and how can we get out of it? If there are no simple answers to this question, this does not mean that there are no answers at all. This will be our starting point in next week's concluding piece in the series."

I think it is productive to begin this week's column with an online reader's comment that I deem a fit and proper launching pad for the concluding piece in the series. Here's the short comment, quoted in full because of its brevity and succinctness: "My dear Prof., you may as well help us to (sic) with those documents because I know you have them. But in case you don't, I know you know people who have them. Thanks for your ever illuminating pieces".

In response to this reader's comment, I say that both the 1979 and 1999 Constitutions can be downloaded via the Internet. So also can the 1989 Constitution whose Chapter 2 is very similar to the Chapter Two of the 1979 and 1999 Constitutions. Readers may also wish to download the American Constitution in order to avail themselves of the following very pertinent fact: The American Constitution is only 12 pages long. Now, if you add the supplement of Amendments that were ratified (27) and those not ratified (dozens), together with historical and philological notes on the background of these amendments, the entire document is 85 pages long. But the essential document itself is only 12 pages long. In fact, the Constitution of the United Kingdom is zero pages long – since it does not exist in a written form. By contrast, none of our own Constitutions is less than 153 pages long. The reason for this is the fact that while philosophers, businessmen and inventors greatly outnumbered lawyers in the drafting of the American Constitution, overwhelmingly the drafters or "writers" of our Constitutions were lawyers who believe, quite erroneously, that the longer and more cumbersome any legal document is, especially a Constitution, the more "legal" it is. This is an absurd tautology, this idea that something is more legal because its length seems to make it more legal! But that is how in general the law, with notable exceptions, operates in our country – as an instrument, not for illumination but for mystification. As to our online reader's query about how and where to get the **Minority Report** of 1976 produced by Drs. Segun Osoba and the late Bala Usman, while it is widely discussed in articles easily available on the Internet, I have not found any downloadable versions on the Internet. Fortunately, Dr. Osoba is still alive and well and I promise to approach him soon to see if he has a personal copy of that document.



•From left: NBA President Mr. Mahmud and the AGF, Mr. Malami, "Beginning with the law and the criminal justice system on the way to reform of capitalism in Nigeria"

I have a reason for the sarcastic comment that I have just made about lawyers in the preceding paragraph: I want to start with the law in my final reflections in this series on whether or not capitalism can or should be reformed in our country in a future historical path of evolution away from the extremely backward, cannibalistic capitalism in force in Nigeria at the present time. But before I give my thoughts on the law as the very first item on the agenda of reform, permit me for one last time in this series to explain why the very subject of reforming capitalism is neither my or anybody's pipe dream nor a waste of time in pursuit of a lost or unworthy cause.

In this series, I have in mind three particular groups of readers. First, I have in mind self-identified socialists, Marxists, Leftists and revolutionaries. Some of them, especially those of the older generation, are my friends, comrades and acquaintances. In general, they hardly ever talk of capitalism – except to denounce it. Moreover, they denounce capitalism in very vague or generalized terms, without any differentiations as to which capitalism they have in mind, especially with regard to the kind of capitalism in force in our country at the present time in contrast with the past. I remind them that this did not use to be the practice in the past – as they will find out if they go back to the documents I cited in last week's column. And I ask them to remember that reform is not an end but a beginning, a possibility for deeper renewal and development.

The second and third groups of people I have in mind in writing this series are, first, progressives,

democrats, patriots and decent and humane people who do not apply any ideological labels to themselves and, second, compatriots who as a matter of fact and principle, do call themselves capitalists and are fierce opponents of socialists and Marxists. I have met many of these two types of Nigerians and actually have close friends, relatives and acquaintances among them. In my opinion, they have all rather become more complacent than they used to be. For instance, it is a long time that I have seen or read either a robust defense of capitalism or a critique of the kind of capitalism dominant in our country at the present time. Again, this is a departure from what used to be the practice in the past in this country, a past that is not so distant in time from the present moment. In fairness, we do occasionally get criticisms of aspects of the capitalism of these years and decades of the rule of the PDP and the APC, aspects like wholesale privatization of state-owned enterprises and public utilities that has massively and very cheaply transferred their ownership to a few Nigerians, without in the least improving the quality of products and services rendered. But these criticisms are never extended to capitalism as a whole with regard to how the political economy, the fiscal and monetary policies of government at federal and state levels, relations with foreign-owned multinational corporations doing business in our country and the law in general and the criminal justice system in particular all work together at the present time to make what I call *Capitalism Nigeriana* one of the worst, if not the very worst of capitalisms in the whole world.

I have only a modest proposal to offer as a conclusion to this series and it concerns reforms that are not only necessary but that, for once in a long, long time, seem at last to be within our reach. Thus, with the systemic and structural framework outlined above in mind, I see the law and the criminal justice system as pivotal with regard to the all-important question of what to do, and how to stop the super-exploitation, the looting frenzy, the untold suffering and hardship of the vast majority of the Nigerian peoples across the length and breadth of the land. Reform of the law and the criminal justice system in our country is a desirable end in itself, but it has the added advantage that if the reform can be successfully carried out, it will redound to benefit of the system as a whole. Let me be very clear and concrete on this point.

Most Nigerians do not know this, but by far the greatest acts of "looting" going on in our country are being perpetrated, not by the mega-looters – as incorrigibly menacing to the national economy as they are – but by policies through which around 70% of the budgets of all the governments in the country go to so-called recurrent expenditures while only 30% are allocated to capital expenditures. In plain language, the salaries, emoluments and allowances being paid are far in excess of actual services being rendered. As a result of this, the cost of governance in our country is one of the highest in the world; it is one of the most *uneconomic* among the fiscal policies sustaining all the national capitalisms of the planet. If only half of what is consumed annually in cost of governance is used to create employ-

ment for the masses of Nigerians, the multiplier effect on the national economy would be incalculably high. (Remember, apart from the federal government, we have thirty-six states in the country – thirty-six mini-states!) This is completely unacceptable, but as long as mega-looting not only exists but thrives, the popular demand for, and the national will to reform capitalism in Nigeria will never be sufficiently mobilized to take on this much bigger source of looting and wastage in the APC's Nigeria.

There is also the fact that as regrettable as this may be, it is nonetheless true that most Nigerians are far more outraged by mega-looting than "looting" via the immensely bloated cost of governance. Fortunately for us, the law in general and the criminal justice system in particular are the only things blocking a permanent end to mega-looting with impunity in our country. Against this trend, The Administration of Criminal Justice Act of 2015 (ACJA) is gradually aiding the Buhari administration's hugely popular war against corruption and the mega-looters in the law courts. And an internal war is raging within the Bar and the Bench as to where the winds will blow: business as usual and the status quo; or reform to bring criminal justice in our country in line with the justice system in the more benign capitalist systems in diverse nations around the world. It will be a very different Nigeria the day mega-looters are made not only to cough up their stolen loot but to suffer punitive, deterrent justice for their crimes against the nation and the national economy.

At this point, I would like to use the analogy of medical science with regard to treating cancer itself and treating the severely high fevers often caused by cancer to illustrate the point that I am making here about reforming the law and the criminal justice system and reforming the bloated and severely uneconomic cost of governance in our country. The corrupt and compromised criminal justice system is the "fever"; the unregenerate and extremely wasteful cost of governance made possible by the rentier state and its clients in the thirty-six states of the country is the "cancer". As surgeons and physicians know, you must first bring down the fever before attempting to deal with the cancer, otherwise the patient may die on the operating table before surgical operation on the cancer has even started. To extend this analogy of cancers and fevers a bit, it sometimes happens that a minor but aggressively opportunistic disease may kill the patient before either the fever and/or the cancer does: a bad cold; pneumonia; a bad fall caused by the extreme physical exhaustion and debilitation of the patient. There are many such symbolic social diseases lurking around the cancerous, fevered body politic of the nation – ethnic militias; religious bigotry and fanaticism; extreme feminization of poverty; a whole generation of restless youths without any prospects in the present or hopes for the future. Please, treat the "fever" quickly and successfully before any of these other opportunistic ailments finish us off.