

**THE DYNAMICS OF COLONIALISM, POLITICAL DIVISION  
AND THE MILITARIAT IN SIERRA LEONE AND THEIR  
IMPACT ON LAW AND SOCIETY**

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I. INTRODUCTION

Sierra Leone is still in the process of recovering from a long civil war. That war, however, officially ended seven years ago. The country operates as a republic with a president and a multi-party system of government with elected officials.<sup>1</sup> The government has enacted legislation, such as anti-corruption laws,<sup>2</sup> to address past ills that have

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1. U.S. Dept. of State, Background Note: Sierra Leone, <http://www.state.gov/r/pa/ei/bgn/5475.htm> (last visited Jan. 9, 2010).

2. *Id.*

contributed to the country's economic, societal, and political decline. These laws originate from the country's constitution, legislation enacted by parliament, and a judiciary system made up of lower and appellate courts, as well as chief-led tribal courts.<sup>3</sup> Though statutory and customary laws are on-going institutional establishments, the civil war exacerbated economic, societal, and political problems created by colonialism, corruption, and ethnic group clashes.<sup>4</sup> There appears to be progress, however. In 2007, Ernest Koroma was elected president<sup>5</sup> and staffed his ministries in accordance with the 1991 Sierra Leone Constitution.<sup>6</sup> The government is looking to its country's history to achieve sustainable recovery from war but is also looking forward toward progression. This outlook, combined with an analysis of the historical evolution of law and governance in Sierra Leone and its impact on society, will aid the country in addressing what is necessary to restore stability.<sup>7</sup>

In light of Sierra Leone's history, this article seeks to examine how state law may be shaped not only by formal aspects, such as colonialism or military rule, but also by informal or communal aspects, such as tribal or cultural laws and procedures. This article first explains the Socio-Legal Positivist theory in Part II. Based on Western and African<sup>8</sup> materials regarding colonialism and culture in

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3. *Id.* For a general overview of Sierra Leonean laws, see The Sierra Leone Web, The Laws of Sierra Leone, <http://www.sierra-leone.org/laws.html> (last visited Jan. 9, 2010).

4. See U.S. Dept. of State, *supra* note 1 (suggesting Sierra Leone's corrupt government led to a seriously degraded economy).

5. *Id.*

6. The Republic of Sierra Leone: Official Website of President Ernest Bai Koroma, Cabinet, <http://www.ernestkoroma.org/cabinet.htm> (last visited Jan. 9, 2010) (identifying the President's elected cabinet members); CONST. OF SIERRA LEONE, 1991, ch. X, pt. I, sec. 154, available at <http://www.sierra-leone.org/Laws/constitution1991.pdf>.

7. See generally THE QUEST FOR SUSTAINABLE DEVELOPMENT AND PEACE: THE 2007 SIERRA LEONE ELECTIONS (Nordic African Inst. 2008) available at <http://www.nai.uu.se/publications/download.html/978-91-7106-619-0.pdf?id=25265> (suggesting that Sierra Leone's struggles can be overcome by integrating a democratic form of government with specific strategic methods).

8. The Western perspective includes material written by European, American, and English writers, historians, researchers, professors, and sociologists. The African perspective encompasses material written by members of the same profession but of African origin.

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Sierra Leone, this article compares and contrasts each type of material and its respective perspective on the impact of law and governance on society. The sources, which encompass various accounts on history, law, ethnicity, and culture, will provide an in-depth look at Sierra Leone, examined in Part III. This article then outlines the tribal and cultural laws and procedures in Parts IV through VI. Further, this article examines the impact of colonialism and culture within the country and proposes recommendations in Part VII regarding how Sierra Leone can attain political, economic, and social stability.

## II. THE RELEVANCE OF THE SOCIO-LEGAL POSITIVIST THEORY

In order to determine a solution, the problem must first be understood from a historical perspective. To better understand the relationships among governance, law, and society, this article examines the materials of both Western and African origin. The author will apply the Socio-Legal Positivist theory<sup>9</sup> to explain the Western and African perspectives. This theory, based on a two-pronged approach, shows how society's impact on law should be studied.<sup>10</sup> This section will discuss whether the above-noted perspectives actually employ the theory or whether the theory can apply to the two contrasting types of source material. Either approach seems to lead to the conclusion that British colonialism created both political and ethnic fractures and economic underdevelopment within Sierra Leone and may have prevented what would otherwise be a natural progression toward stability.

The first prong of the Socio-Legal Positivist theory is the Separation Thesis, which states “[t]here is no necessary connection between law of whatever manifestation or kind, and morality or functionality.”<sup>11</sup> Simply stated, the law should be what it is on its face. There is no need to connect law to morality nor is there any need for law to function in some way to achieve a purpose.<sup>12</sup> Law, in any society, should be viewed with no particular objective in mind.<sup>13</sup>

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9. For more details on this theory, see BRIAN Z. TAMANAHA, *A GENERAL JURISPRUDENCE OF LAW AND SOCIETY* (Oxford Univ. Press 2001).

10. *Id.* at 156-57.

11. *Id.* at 157.

12. *Id.* at 156-58.

13. *Id.*

Implied in this theory is the concept that pre-judgment or pre-conceived notions of what the law should be can disrupt the sterility of the law and its impact on society. In summary, law should be regarded as a sterile entity that impacts society without any pre-determined purpose.

The second prong of the Socio-Legal Positivist theory, the Social Sources Thesis, declares law as an unconstrained rule, practice, or principle<sup>14</sup> without connection to something else; even if a connection can feasibly exist, the law is “manifested through human social practices.”<sup>15</sup> According to Tamanaha, “law is the product of a complex of social practices [which] give rise to law, and through these practices we can identify the existence and content of the law.”<sup>16</sup> The practices and standards people engage in must be looked at within that society’s perspective to understand the law created.<sup>17</sup> People help mold and shape a given law into what it will be.<sup>18</sup> In essence, law exists as the people practice it. The practices and standards of the people, a social fact, determine what the law is.<sup>19</sup>

When applying the Socio-Legal Positivist theory to Sierra Leone and to the effect of law on the people inhabiting the country (and vice versa), the best way to view the impact and define what law exists is from an internal perspective. The questions to ask are: How does society perceive the law? What are society’s responses and inclinations? With regard to these questions, this theory appears to invite the internal perspectives of both the British colonists and the Sierra Leoneans of various descendants—indigenous people, non-indigenous blacks, and African settlers.<sup>20</sup> The theory is subjective but

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14. *See id.* at 159 (observing that the Social Sources Thesis applies to all law, including state, customary, international, transnational, religious, and natural law).

15. *See id.* (applying this idea to natural law, which may be “derived from a non-human source,” such as God, but is manifested through social practices).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *See generally* ARTHUR ABRAHAM, CULTURAL POLICY IN SIERRA LEONE (1978) [hereinafter ABRAHAM, CULTURAL POLICY]; Barbara Harrell-Bond, “Native” and “Non-Native” in Sierra Leone Law, in XVII FIELDSTAFF REPORTS 1 (1977) [hereinafter Harrell-Bond, *Native and Non-Native*].

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unrestrained.<sup>21</sup> Both colonial and tribal rule should be understood from the perspective of the people for which the rule is intended and not necessarily constrained to what the law is expected to do or achieve.

In addition to the internal view, there must be an external examination of the theory.<sup>22</sup> The external examination looks “for patterns of behaviour, which can shed light on the understandings of the people involved.”<sup>23</sup> Similar to the internal perspective, one must look at the people for understanding under the external perspective.<sup>24</sup> Patterns of conduct with regard to law among a group of people can reveal whether the general goals of the group are met.<sup>25</sup> These patterns of conduct are called “behaviourism.”<sup>26</sup> Overall, both an internal and external examination is needed for an in-depth understanding of the relationship between law, governance, and society.<sup>27</sup>

### III. SIERRA LEONE BEFORE COLONIALISM

In order to provide background on Sierra Leone and a foundation for the contrasting perspectives of the country’s development up to present day, perceptions from both Western and African material should be explored under a generalized external perspective. The historical roots of the country, as defined by the scholars under the two contrasting perspectives, foretell how colonialism, military rule, and the war are regarded. It also forecasts how law and governance under native Sierra Leoneans were regarded and whether there was a need for the colonial institutions to incorporate themselves into the country. When exploring pre-colonial history, this article presents a glimpse into the divergent views on the assessment of the colonial impact on the creation of class division and economic development (or underdevelopment).

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21. See TAMANAHA, *supra* note 9, at 155-56.

22. *Id.* at 162.

23. *Id.*

24. *Id.*

25. *Id.* at 162-63.

26. *Id.* at 163.

27. *Id.*

### A. *Western Perspectives of Sierra Leonean History*

Sierra Leone is a country that has been inhabited and settled for thousands of years, first by coastal peoples (such as the Temne, Limba, and Bulom) and later by peoples who immigrated from the inland (such as the Mende, Vai, and Loko) and spoke the Mande language.<sup>28</sup> The country consisted of chiefdoms (or kingdoms) with established councils to the chief.<sup>29</sup> Secret societies, which seem to be likened to modern-day political parties, were formed in order to maintain societal customs.<sup>30</sup> In brief, Sierra Leone was a functioning society consisting of peoples and smaller societies that the chiefs governed. The Western perspective depicts group or communal congregations as the ruling governance in pre-colonial Sierra Leone.<sup>31</sup>

Further, in *A History of Sierra Leone*, Christopher Fyfe describes the country as a land with a peninsula that is “a small mountainous lump . . . [that] protrudes abruptly from the West African coast.”<sup>32</sup> He proceeds to describe the country as flat and swampy by the sea and hilly or mountainous about fifty to eighty miles inland, where the rivers flow “roughly[,] . . . which divide rather than open the country.”<sup>33</sup> Fyfe’s use of imagery suggests the country is rife with geographic inconsistencies, reflected in the changing land patterns.<sup>34</sup> Further acknowledging these inconsistencies, Fyfe states that the Portuguese, when discovering the land in the mid-1400s, named it “Serra Lyoa” for the “wild-looking, leonine mountains.”<sup>35</sup> This seems to indicate the country was a wild, untamed region in need of some

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28. Sierra Leone: History, BRITANNICA ONLINE ENCYCLOPEDIA, *available at* <http://www.britannica.com/EBchecked/topic/543356/Sierra-Leone> (last visited Jan. 9, 2010).

29. *Id.*

30. *Id.*

31. *See generally* CHRISTOPHER FYFE, *A HISTORY OF SIERRA LEONE* (Oxford Univ. Press 1962) (introducing a brief history of Sierra Leone). *See also* Harrell-Bond, *Native and Non-Native*, *supra* note 20; Barbara Harrell-Bond, *The Unofficial Urban Courts in Freetown Part 1: The Institutionalization of Tribal Headmen* (1979) [hereinafter Harrell-Bond, *Unofficial Urban Courts*].

32. FYFE, *supra* note 31, at 1.

33. *Id.*

34. *Id.*

35. *Id.*

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kind of structure. Interestingly, Fyfe considers the Portuguese discovery the beginning of Sierra Leone's pre-colonialist history.<sup>36</sup>

Fyfe presents the relationship between the Portuguese and native Sierra Leoneans as primarily economic, with slavery and trade as defining characteristics.<sup>37</sup> He asserts that when the Portuguese landed on the southern shores of the coast, their "traders brought the Bulom and Temne European manufactures: in return they gave slaves and ivory."<sup>38</sup> From the start, the Portuguese primarily traded with the coastal peoples.<sup>39</sup> There were also individual Portuguese who broke ranks within their group and dispersed; these individuals settled and then traded with and married the indigenous people of Sierra Leone.<sup>40</sup> But despite this break, the Portuguese were still able to maintain trading posts in the country.<sup>41</sup>

In the early 1600s, a Portuguese Jesuit named Balthasar Barriera began preaching to indigenous blacks and baptized several kings (or chief-kings) before the Muslim travelers stalled them in the northern region of the country.<sup>42</sup> This religious imposition of Christianity into an Islam-dominated region may have opened the society up to the Christian religion that would eventually be practiced under British Colonialism. Later, in the early 1700s, a Holy War led by the Muslim Fula of Upper Niger and Senegal broke out in Futa Jalon, a country north of Sierra Leone.<sup>43</sup> The Fula displaced the Susu people and pushed them to the southern and western regions of Sierra Leone.<sup>44</sup> This resulted in the dispersing or driving out of ethnic peoples to other regions in the country, which likely further contributed to the spread of Islam.<sup>45</sup> Christianity, first introduced by the Portuguese by

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36. *See generally id.* (suggesting Portuguese voyagers were the first foreign language speaking inhabitants of the peninsula).

37. *See generally id.* at 2-3.

38. *Id.*

39. *See id.*

40. *Id.* at 1-2.

41. *See id.* at 2. Generally, the groups traded peaceably. *Id.* However, "some ship's-captains . . . seized slaves without paying." *Id.* In response, the chiefs made European ships send hostages on shore prior to making a trade. *Id.*

42. *Id.*

43. *Id.* at 5-6.

44. *Id.*

45. ABRAHAM, CULTURAL POLICY, *supra* note 20, at 22.

Barriera,<sup>46</sup> was later reintroduced by the British.<sup>47</sup> Eventually, Christianity would be concentrated in Freetown while the majority of the country continued to practice the Islamic faith.<sup>48</sup>

When addressing the ethnic groups of Sierra Leone's history, Fyfe first describes the Temne.<sup>49</sup> By 1690, the Temne had displaced the Bulom, or Sherbro, on the southern shore and supplanted the Loko in Mitombo while cutting off the Bulom on the north from the Atlantic coast of the peninsula.<sup>50</sup> The Poro, a secret society, limited the power of the king in the "Sherbro-Cape Mount area" by enforcing "obedience to its orders" and forbidding women, including non-members, to "witness its rites," which indicated that this secret society undercut the authority of the ruling king.<sup>51</sup> Furthermore, there seems to be a persistent sense of division or separation among the ethnic people when depicting governance of ethnic tribes.<sup>52</sup>

Yet, the fact that trade was the main interaction between the Portuguese and Sierra Leoneans turned out to be an economic advantage to the country. English traders settled in Sierra Leone in the early seventeenth century and, by 1628, they set up a trading post among the Sherbro, where camwood and ivory were in abundance.<sup>53</sup> As a result, European business was incorporated into the country. The Royal African Company, formerly the Royal Adventures of English Trading, established in 1672, continued leasing factories to traders.<sup>54</sup> After the Sherbro factory moved to the swampy area on the northeast coast of Sherbro Island, "[t]he Company paid 'Cole' (which included rent, tribute and the right to trade) to the King of Sherbro for York Island, and to kings [(also known as chiefs)] in the rivers for sub-

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46. FYFE, *supra* note 31, at 2.

47. *See id.* at 5.

48. *See generally* Harrell-Bond, *Unofficial Urban Courts*, *supra* note 31, at 6 (identifying those natives of Freetown who adopted the "Creole" way of life, including Christianity, acquired a Western education, and owned property contrary to the rest of the natives outside of Freetown); U.S. Dept. of State, *supra* note 1, at 1-2 (providing background history on the city of Freetown).

49. FYFE, *supra* note 31.

50. *Id.*

51. *Id.* at 3.

52. *See id.* at 10-11.

53. *Id.* at 4. Trading posts were also known as "factories." *Id.*

54. *Id.*



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factories.”<sup>55</sup> Overall, the pre-colonial period of Sierra Leone focuses primarily on economic history but gives little attention to anything cultural or inherent to society’s behaviors or their relationships among one another. In essence, the Western perspective portrays pre-colonial Sierra Leone in terms of economic usefulness to Portuguese and British trade.

*B. African Perspectives of Sierra Leonean History*

*i. African Perspective—History Through Culture*

In contrast to the Western perspective, the African perspective tends to be more detailed and precise about the people of Sierra Leone. Prior to discussing the cultural policy of the country in his work, author Arthur Abraham delves into some of the region’s history in his book *Cultural Policy in Sierra Leone*.<sup>56</sup> Abraham states that the Portuguese arrived on the coast, where the Limba, Temne, and Bullom tribes resided, forming the Sape, or Sapi, confederacy.<sup>57</sup> The Vai people lived further down the coast, leaving their kindred, the Kono people, behind.<sup>58</sup> The Kono resided on the northeast coast while the Soso inhabited the upper northwestern part of the coast above the Limba. He notes that the Mende peoples are not acknowledged until the late seventeenth century.<sup>59</sup> The regional, familial, and ethnic connections recognized by Abraham denote a communal importance that will be touched upon later with regard to the African perspective on law and governance.<sup>60</sup>

While Fyfe focuses almost entirely on trade relations between the Portuguese and Sierra Leoneans, Abraham broadens his focus. He mentions the invasion of the Mende-speaking Mani people which

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55. *Id.*

56. *See generally* ABRAHAM, *CULTURAL POLICY*, *supra* note 20, at 14-21.

57. *Id.* at 18. *Cf.* FYFE, *supra* note 31, at 1 (where Fyfe depicts these three tribes as separated from one another). Fyfe only states that these tribes spoke a different language. *Id.*

58. ABRAHAM, *CULTURAL POLICY*, *supra* note 20, at 20. By so noting, Abraham is able to bring attention to the familial connection among the two ethnic tribes. *See generally id.*

59. *Id.* at 18-20.

60. *See discussion infra* Part II.B.ii.

occurred in the mid-1500s.<sup>61</sup> When the Mani overran the Sapi confederacy in the northern region, they also attempted to overtake the Soso people. The Mani instead were crippled by the poisoned food the Soso left behind when they retreated.<sup>62</sup> Following what Abraham describes as “decimation” of the Mani, the remaining Mani retreated to the peninsula.<sup>63</sup> There they formed four kingdoms: the Boure, or Sierra Leone (the kingdom was the center of the peninsula); the Selbora (the southern kingdom); Bullom (the kingdom in the northern region above the peninsula); and Logo, or Loko, (located on Port Loko, a trading post, adjacent to the peninsula on the east).<sup>64</sup> The last ethnic group, the Krio, arrived in the eighteenth century prior to the establishment of Freetown.<sup>65</sup>

Abraham states:

It is believed that the Loko and the Mende were products of the Mani invasions—an admixture of the Mani/Mande conquering stock and a pre-existent aboriginal Temne/Bullom stock. The Mende and Loko languages are mutually intelligible, and this has led some writers to assert that the Loko represent an advance-guard of the migrating Mende from the interior westwards towards the coast.<sup>66</sup>

The fact that Abraham identifies the similar patterns of language among the two ethnic groups suggests a genuine interest in seeking out how some Sierra Leone peoples developed. In addition, his regional exploration suggests an interest in the movement of various ethnic peoples, which Fyfe also explores, but not quite as in-depth.<sup>67</sup> Under Abraham’s generalized external perspective, pre-colonial history is rich with dialect, movements of diverse tribes, and communal or familial connections.<sup>68</sup>

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61. *Id.* at 20.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Compare ABRAHAM, CULTURAL POLICY, *supra* note 20, with FYFE, *supra* note 31.

68. See ABRAHAM, CULTURAL POLICY, *supra* note 20, at 18-20.

*ii. African Perspective—History Through Heroism*

Another African perspective can be found on the Sierra Leone Web, where the text *Sierra Leonean Heroes* is featured.<sup>69</sup> The text goes slightly further than Abraham's view by presenting revered historical figures that either led ethnic peoples or fostered relationships between the indigenous people and the British.<sup>70</sup> According to the text, the Warrior-Kings, Farma Tami and Mansa Kama, led the Temne people in the fifteenth century, and the Koranko people in the sixteenth century, respectively.<sup>71</sup> Farma Tami is credited with establishing the kingdoms for the country's Temne people,<sup>72</sup> while Mansa Kama is credited for his practical leadership.<sup>73</sup> According to the site, Farma Tami:

[C]ame from the east with a great army, conquering and destroying all opposition in his advance, until he reached the estuary of the Rokel River. He established his capital in what is now Koya Chiefdom at the town of Robaga, near modern Freetown. Temne elders say that Farma Tami ruled when there were still no guns or swords, only spears, shields, knives and bows and arrows.<sup>74</sup>

This is a whimsical portrayal of the triumph of an ancient leader who achieved greatness without modernized technology.<sup>75</sup> Farma Tami "came in the early 1500s with advanced concepts of government, elaborate chiefly rituals, and improved methods of weaving and iron manufacture."<sup>76</sup> In addition, his soldiers "carried spears, bows and arrows, knives strapped to their upper arms, and

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69. The Sierra Leone Web, *Sierra Leonean Heroes*, <http://www.sierra-leone.org/heroes2.html> (last visited Jan. 9, 2010) [hereinafter *Sierra Leonean Heroes II*].

70. *See id.*

71. The Sierra Leone Web, *Sierra Leonean Heroes*, <http://www.sierra-leone.org/heroes1.html> (last visited Jan. 9, 2010) [hereinafter *Sierra Leonean Heroes I*].

72. *Id.*

73. *See id.*

74. *Id.*

75. *See id.*

76. *Id.*

shields made from tight bundles of reeds.”<sup>77</sup> Farma Tami is regarded as a warrior-king who personified strength and endurance through the development of ancient weaponry.<sup>78</sup> He brought to the Temne people a cultural practice of rituals, economic productivity, and established government,<sup>79</sup> all of which indicate a functional chiefdom occurred prior to colonialism.

Mansa Kama, on the other hand, is credited with not only being a great leader, but also for founding a major kingdom.<sup>80</sup> According to the site, Mansa Kama moved from Sankaran country into the modern-day Republic of Guinea, located in “the extreme northeast of the Sierra Leone interior.”<sup>81</sup> He traveled with a Sesay *alfa*<sup>82</sup> and founded the town of Kamadugu, which he named after himself, near the northern part of the Rokel River.<sup>83</sup> “By the end of the 16th century, Mansa Kama had fought his way from Kamadugu to reach the coast.”<sup>84</sup> He established a base at Rowala in the mid Kholifa country, where “he stayed as a ruler of this new Koranko country until his death.”<sup>85</sup> Again, like the description of Farma Tami, Mansa Kama is portrayed whimsically, but with a more subdued image of practical leadership when compared to the previous leader.<sup>86</sup>

In addition to the kingdom leaders, Sierra Leonean Heroes identifies five other important figures in Sierra Leone history.<sup>87</sup> The first is Nemgbana, known as the “last Temne ruler” of the chiefdom in

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77. *Id.*

78. *See id.*

79. *Id.*

80. *See generally id.*

81. *Id.*

82. An *alfa* is an Islamic scholar, charm-maker, and teacher. *Id.*

83. *Id.* *Dugu* is a suffix meaning “town,” usually added to the name of the founder. *Id.* Kamadugu was formerly a chiefdom and is now part of the Sengbe Chiefdom in the Koinadugu District, and of Kholifa, which constitutes a chiefdom in today’s Tonkolili District. *Id.*

84. *Id.*

85. *Id.*

86. Farma Tami organized his kingdom by “conquering and destroying all opposition in his advance,” while Mansa Kama moved onwards after first receiving blessings from established leaders. *Id.*

87. Sierra Leonean Heroes II, *supra* note 69.

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the Sierra Leone peninsula, who signed control of the region over to the British in 1788.<sup>88</sup>

The second is Thomas Peters, an American-born slave. Peters escaped to join the British Army during the American Revolution. At the end of the war, he and other former slaves were evacuated to Nova Scotia, Canada.<sup>89</sup> Peters founded the Freetown colony after first courageously returning to England to acquire ships.<sup>90</sup> Back in Nova Scotia, he convinced over 1000 former slaves to travel to Sierra Leone to establish the settlement in 1792.<sup>91</sup>

Another figure, Pa Demba, was a tribal headman of a Temne village “whose generous offer of help may have saved the Freetown colony.”<sup>92</sup> In 1794, he offered shelter to Nova Scotian settlers in Freetown who were in danger of attack from French warships and the enemy Koya Temne.<sup>93</sup>

The fourth figure, Gumbu Smart, was a ruler of the Rokon in Masimere. He initially sold goods advanced by the British, but he eventually cut those ties, rose to power, and established a military.<sup>94</sup> He trained with the Wunde secret society of the Kpaa Mende people, which specialized in military training.<sup>95</sup>

Lastly, Dala Modu Dumbuya is described as a Soso community ruler: a businessman for his role as a commercial force in the region, and a diplomat for his role as liaison between the British colonial government and the local tribal rulers.<sup>96</sup>

88. *Id.*

89. *Id.*

90. *Id.* (“He was in grave danger from the moment he left Canada, as he was still legally a slave in the newly-independent United States, and could have been taken there and sold back into slavery by an unscrupulous sea captain.”).

91. *Id.*

92. *Id.*

93. *Id.* (“Pa Demba set aside political differences with the settlers and did what was humanly right.”).

94. *Id.* After gaining the trust of the British, Gumbu Smart became a slave-buying agent. *Id.* But instead of always buying slaves as agreed, Gumbu Smart would buy his own Loko people, not as slaves but as followers. *Id.* He eventually built up such a powerful force that he was able to sever all ties with his former masters. *Id.* In fact, he became so powerful that his former masters could not even “ask him for a refund of the goods they had advanced him.” *Id.*

95. *Id.*

96. *See id.*

The admiration and respect for these leading figures carries through to modern customary practices of tribal chiefs and district councils. These five figures are regarded as heroes and could be viewed as an important connection to a natural progression of governmental, cultural, and economic development that both Abraham and Fyfe presented but may have been lost when colonialism took hold.

#### IV. THE IMPACT OF COLONIALISM ON SIERRA LEONE

In Barbara E. Harrell-Bond's "*Native*" and "*Non-Native*" in *Sierra Leone Law*, she defines two categories of Sierra Leone people—Native and non-Native<sup>97</sup>—and discusses how the law applied to both.<sup>98</sup> She characterizes Natives as the indigenous people and African settlers who migrated to Sierra Leone,<sup>99</sup> where non-Natives consist of the freed slaves and their descendants.<sup>100</sup> She states:

By 1860 the city of Freetown had already contained distinct ethnic communities, each with its own administrative structure. Although the first attempt to incorporate them into the official colonial administration was in 1890, legislation regulating the ethnic communities was not enacted until 1905. This legislation recognized, to some extent, the right of the communities to maintain their own cultural patterns and customary legal systems, and gave authority to their selected leaders, who were called "Tribal Rulers."<sup>101</sup>

As a result, most Natives fell under and adhered to the Tribal System, which seems to indicate the British colonial administration created distinctions between different types of peoples in Sierra Leone, allowing Natives to retain some customary practices.<sup>102</sup>

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97. Harrell-Bond, *Native and Non-Native*, *supra* note 20, at 1.

98. *See generally id.* Harrell-Bond's work is most closely aligned with the purpose of this article in that it studies the impact of statutory law on Sierra Leonean people.

99. *Id.*

100. *Id.*

101. *Id.*

102. *See generally id.*

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In contrast, non-Natives became a people associated with practicing Christianity and receiving a Western, English-based education.<sup>103</sup> They enjoyed greater privileges under British colonialism than their Native counterparts.<sup>104</sup> Reflecting this disparity, provisions of 1905 legislation allowed a Native to change his or her status from Native to non-Native,<sup>105</sup> suggesting Natives needed to reach a certain status to be acknowledged by the colonial administration as a legitimate people. But most Natives retained their status, especially after 1932 legislation removed a provision that allowed Natives, who were permanent or temporary residents within Freetown, to be subject to the authority of the Tribal Headmen of their respective tribes.<sup>106</sup> The effect of the removed provision led to displacement of the Natives and a decline in their economic status below the elite non-Natives. Very few Natives were able to achieve a status on par with that of non-Natives who had prominent roles in such areas as government and education.<sup>107</sup> Under the colonial administration that Harrell-Bond describes, a class division along economic lines developed.

While British statutory law was the explicit rule, the recognition or deferral to customary practices is regarded as another type of rule. Three types of law exist: English or statutory law; customary law, commonly practiced by the Natives; and Islamic law, which was prominent within the region prior to colonialism.<sup>108</sup> “Although English-type courts and statutory law have been gradually extended throughout the country, everyone living in the provinces [in the late 1970s] has access, if they so wish, to local courts which administer customary law.”<sup>109</sup> These courts, which execute customary law by ethnic group, still exist today and hold greater importance to the Sierra Leonean people than codified or constitutional law.<sup>110</sup> In general, the

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103. *Id.*; Harrell-Bond, *Unofficial Urban Courts*, *supra* note 31, at 8.

104. Harrell-Bond, *Native and Non-Native*, *supra* note 20, at 1; *see generally* Harrell-Bond, *Unofficial Urban Courts*, *supra* note 31, at 6.

105. Harrell-Bond, *Native and Non-Native*, *supra* note 20, at 1.

106. *Id.* at 2.

107. *Id.*

108. *See* Harrell-Bond, *Unofficial Urban Courts*, *supra* note 31, at 3.

109. *See id.*

110. *See generally* Vivek Maru, *The Challenges of African Legal Dualism: An Experiment in Sierra Leone*, Open Society Justice Initiative, Feb. 7, 2005,

people of Sierra Leone adhere to the decisions of the district councils and tribal chiefs as a matter of respect and tradition.

From a Western perspective, three separate institutions of law seemed to exist and function under the Supreme Law—English law.<sup>111</sup> This is implicit by the colonial provisions that determine what policies should fall under customary practice and who is permitted to receive the benefits of certain policies.<sup>112</sup> Under a Western perspective, preconceived notions of what the law is and what the law should achieve come into play—all of which clash with the Socio-Legal Positivist theory about how law should be examined in relation to society. Natives appear to have very little impact on how the categorizations of law are shaped when the colonial administration dictates law. As a result, English law maintains the status of non-Natives while Natives become displaced. Thus, Sierra Leoneans are subject to practices due to the status or category ascribed to them.<sup>113</sup>

In contrast to Harrell-Bond's view, author Eliphas Mukonoweshuro, taking a Marxist approach, presents details on how colonialism undermined the development of Sierra Leone.<sup>114</sup> For example, Mukonoweshuro describes a situation that occurred between the early 1900s and World War II where the competing "indigenous petty bourgeoisie"<sup>115</sup> factions, classes created by English law and policy, struggled to gain entrance into the "colonial state apparatus" of the Protectorate.<sup>116</sup> Mukonoweshuro notes that chiefs and their officials were mobilized more as a social group for political reasons.<sup>117</sup> The chiefs' "reproduction as a colonial social group depended on the policy of the colonial state, which, through the creation of Native Authority systems, enhanced the chiefs' ability to

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[http://www.soros.org/initiatives/osji/articles\\_publications/publications/justice\\_20050207/Justice\\_africa.pdf](http://www.soros.org/initiatives/osji/articles_publications/publications/justice_20050207/Justice_africa.pdf).

111. See *id.*; Harrell-Bond, *Unofficial Urban Courts*, *supra* note 31, at 3.

112. See generally Harrell-Bond, *Unofficial Urban Courts*, *supra* note 31.

113. *Id.* at 8.

114. ELIPHAS G. MUKONOWESHURO, *COLONIALISM, CLASS FORMATION AND UNDERDEVELOPMENT IN SIERRA LEONE* 95 (Univ. Press of Am. 1993).

115. *Id.*

116. See generally *id.* at 58.

117. *Id.* at 90.



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maximize surplus extraction within the given social relationships in the countryside.”<sup>118</sup>

Mukonoweshuro’s view, interestingly similar to Fyfe’s, is largely from an economic standpoint. The indigenous petty bourgeoisie sought to garner higher placement within the government hierarchy.<sup>119</sup> Yet, Native Authority systems were created, and these systems nurtured a “modified peasant mode of production.”<sup>120</sup> In doing so, Mukonoweshuro asserts that colonialism was able to isolate the struggles of lower status people.<sup>121</sup>

In Mukonoweshuro’s view, the government’s policy was to keep the indigenous petty bourgeoisie within an agricultural economy.<sup>122</sup> By contrast, Mukonoweshuro describes the coastal petty bourgeoisie as the “trading petty bourgeoisie” who functioned “as a mediating link between individual peasant household productive units and the bulk-buying representatives of merchant capital.”<sup>123</sup> The practices of the coastal petty bourgeoisie became a template for an institution-oriented organization amounting to a petty bourgeoisie protectorate—the mobilization of chiefs and councils who perceived they played a role in the administration.<sup>124</sup> As the chiefs, particularly the educated faction possessing trade experience, became more incorporated in the colonial administration, they gained support within government to represent their cause.<sup>125</sup> However, wage earners and peasants, who were gradually emerging as a working class, did not.<sup>126</sup>

118. *Id.*

119. *See generally id.* at 95.

120. *Id.* at 90.

121. *See generally id.* Mukonoweshuro classifies wage earners and peasants as “lower status people.” *Id.*

122. *Id.* In order to keep the petty bourgeoisie in the agricultural sector, the government provided “significant amounts of capital” to the rural chiefs. *Id.* This capital did not, however, translate into the robust agrarian sector the government ostensibly desired; nor did the capital’s presence significantly improve the condition of the petty bourgeoisie. *Id.* Rather, the capital remained in the chiefs’ hands, because the chiefs did not invest in the agricultural infrastructure necessary to transform the petty bourgeoisie’s traditional socio-economic structure into a more productive capitalist system. *Id.*

123. *Id.* at 4.

124. *See id.* at 142.

125. *Id.*

126. *Id.* It was not for a lack of effort, however, that wage earners and peasants

Notwithstanding that wage earners and peasants had yet to gain collective representation for their rights, the government institutionalized the chiefs' "political maturity" after the end of World War II through:

- (i) participation in the new political institutions created by the state for the sole purpose of installing them at the centre of the political and the decolonization process; (ii) through the state-induced alliance with the educated elements of the Protectorate petty bourgeoisie; [and] (iii) through periodic battles with the coastal petty bourgeoisie.<sup>127</sup>

Mokonoweshuro believes these state-induced and politically-motivated institutions were created to neutralize the potential for radicalism that might have undermined the power of the chiefs involved.<sup>128</sup> While the district councils, in general, were expected to represent the interests of the indigenous or Native peoples,<sup>129</sup> "the semblance of representation [the councils afforded native peoples] was a thinly veiled attempt to inculcate or perpetuate the presence of community consciousness overriding the development of class consciousness among ordinary people."<sup>130</sup> If the district councils' purpose was to put on a façade of interest in the rights of the ordinary people in order to maintain the colonial status quo of British rule, then their implicit objective, as Mukonoweshuro suggests, was to sustain British colonial rule for as long as possible.<sup>131</sup>

The Western perspective, in reviewing British policy among Natives and factions of the bourgeoisie, tends to portray the laws of Sierra Leone in relation to what legal systems are similar to Western nations'. Under the African perspective, Natives tend to defer to the leader or ruling chief; British colonial law dictates that such policy

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did not increasingly gain governmental representation, as factions of coastal petty bourgeoisie had been focused on attaining political power. *Id.* But the working class lacked a unified means of mobilization to protest their economic and living conditions and predictably failed to acquire political representation to the same extent as the educated chiefs. *Id.*

127. *Id.*

128. *Id.* at 143.

129. *Id.*

130. *Id.*

131. *Id.*

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occurs to distract the Natives from “class consciousness.”<sup>132</sup> From the Western perspective, Non-Natives have privileges under the English law.<sup>133</sup> Yet, the African perspective suggests that the “indigenous petty bourgeoisie” were less privileged when attempting to garner status and importance in colonial government hierarchy.<sup>134</sup> The two perspectives draw different pictures of the position of non-Natives in Sierra Leone, although the status of the Natives seemed similar.

Furthermore, the application of the Socio-Legal Positivist theory suggests that for the non-Natives, English law allows some privileges, but also positions them to attain greater privileges. For the Natives and other largely indigenous people of Sierra Leone, English law is an opportunity to maintain customary practices among their ethnic groups, but it may also be a debilitating restraint on their economic status compared to their non-Native counterparts.<sup>135</sup> In essence, the law is a divisive (in that it separates one category of people from the struggles of the other) yet empowering mechanism for non-Natives, while at the same time, a partially empowering yet crushingly debilitating mechanism for indigenous peoples. The duality of law in the categorization of peoples is a contributing factor of the governmental corruption created by those who attain political power and of the criminal actions committed by a largely youthful, Lumpen culture prior to and during the civil war, which is discussed in Part V.

## V. THE CIVIL WAR AND THE MILITARIAT

The Revolutionary United Front (RUF), along with the National Patriotic Front of Liberia (NPFL) led by Charles Taylor, were the catalyst for the civil war that began in 1991.<sup>136</sup> The RUF mainly consisted of displaced youths of low status: school drop-outs and young girls who were used as sex slaves or for combat.<sup>137</sup> The RUF

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132. *Id.*

133. Harrell-Bond, *Native and Non-Native*, *supra* note 20, at 3.

134. MUKONOWESHURO, *supra* note 114, at 95-97.

135. *See generally id.*

136. Bjorn Moller, *The Role of Militias and Other Paramilitaries in African (Un)Civil Wars* 15 (Danish Inst. for Int'l Studies, Working Paper No. 2006/23, 2006), available at [http://www.diis.dk/graphics/Publications/WP2006/WP2006-23\\_web.pdf](http://www.diis.dk/graphics/Publications/WP2006/WP2006-23_web.pdf).

137. *Id.* at 16.

went on to commit a “systematic terrorisation” that consisted of amputations, rapes, and looting against civilians.<sup>138</sup> The concept of neutralization, the rationalization or justification of violence, could explain the dangerous rampage perpetuated by young members of the RUF.<sup>139</sup> Without any sort of responsible guidance or defined societal status, RUF members were more susceptible to a culture of violence. This aimlessness likely made the RUF a somewhat organized but undisciplined youth group indifferent in their violent campaign against civilians.

It is important to note the role of Foday Sankoh and his influence over the RUF. The Sierra Leonean-born RUF leader started out as a corporal and cameraman for the army of Sierra Leone, but he was sentenced to a Libyan guerilla camp soon after, serving seven years in prison for an attempted 1971 coup during Stevens’ governance.<sup>140</sup> At the camp, Sankoh was able to receive guerrilla warfare training and connect with Charles Taylor.<sup>141</sup> Sankoh led the targeted attack in Sierra Leone’s Eastern Province and took over a region that was rich in diamond mining.<sup>142</sup> These attacks and takeovers served as the breeding ground that allowed the RUF to perpetuate their culture of violence through attacks on the people of Sierra Leone.

Outside of the RUF, government soldiers and military forces such as the Kamajores played a role in the civil war. Moller notes that a distinction should be made between the old and new guards that made up government soldiers.<sup>143</sup> The old guard was allegiant, at least outwardly, to Joseph Momoh’s corrupt government, before Valentine Strasser of the National Provisional Revolutionary Council (NPRC) took over and recruited the new guard of urban youths to combat the

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138. *Id.* at 15.

139. Gresham Sykes & David Matza, *Techniques of Neutralization: A Theory of Delinquency*, <http://www.criminology.fsu.edu/crimtheory/matza.htm>.

140. Trial Watch: Foday Sankoh, [http://www.trial-ch.org/en/trial-watch/profile/db/facts/foday\\_sankoh\\_99.html](http://www.trial-ch.org/en/trial-watch/profile/db/facts/foday_sankoh_99.html) [hereinafter Trial Watch] (last visited Jan. 9, 2010); Military: Revolutionary United Front (RUF), <http://www.globalsecurity.org/military/world/para/ruf.htm> [hereinafter Military] (last visited Jan. 9, 2010).

141. Trial Watch, *supra* note 140.

142. Military, *supra* note 140.

143. Moller, *supra* note 136, at 15.

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RUF.<sup>144</sup> New government soldiers inexperienced in militant training were set up to combat an extremely radical and dangerous set of youths that had aligned themselves with NPFL.<sup>145</sup> According to Moller, “[t]he ranks were thus swelled with new recruits with very rudimentary training—in its turn paving the way for the military coup in (*sic*) by the AFRC (Armed Forces Revolutionary Council) of Johnny Paul Koroma which almost immediately aligned itself with the former enemy, the RUF.”<sup>146</sup>

The Kamajores, on the other hand, were hunters of the Mende tribe.<sup>147</sup> Their purpose, unlike the RUF which consisted of youth who seemingly lacked purpose, was to provide food and protection for the members of their tribe.<sup>148</sup> They were recruited as a part of the militia—probably as a part of an arrangement with tribal chiefs.<sup>149</sup> Moller explains:

Most accounts agree that the *Kamajores* behaved far better than both the regular troops and the RUF, perhaps because of their ethos of protection which “happened to be” quite in line with the humanitarian laws of war—and especially so when they were deployed in their home areas. Gradually, however, the original core of fighters seems to have been diluted, e.g. by the *Kamajores*’ incorporation into the more amorphous CDF [Civil Defense Force], by the defection of RUF combatants to join their ranks, and by their deployment further afield, i.e. beyond the control of their tribal authorities.<sup>150</sup>

Moller notes that after peace came to Sierra Leone, the Kamajores joined the troops that were turned into rebel forces under Charles Taylor’s government.<sup>151</sup> As they were integrated with soldiers of other modern militia origins, the Kamajores may have gradually moved away from the core values that made them humanitarian,

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144. *Id.*; U.S. Dept. of State, *supra* note 1.

145. Moller, *supra* note 136, at 15.

146. *Id.*

147. *Id.* at 16.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

demonstrating yet another way traditional tribal customs were lost to corruptive power.

What helped make the RUF's hold in the eastern region of Sierra Leone so powerful was its control over the Kono District diamond mines.<sup>152</sup> Once the RUF took hold, the government soldiers were forced back into Freetown, giving Strasser's NPRC the opportunity to overthrow what appeared to be a weakened government.<sup>153</sup> By the year 2000, the RUF still maintained a hold of the diamonds despite the 1999 Lome Peace Agreement,<sup>154</sup> which gave power to Sankoh to head a commission on diamond trade once the RUF released their hold.<sup>155</sup> As a result, control over the diamond mines of the eastern region allowed the RUF to continue funding their forces.

The intricacies of government militaries and rebel forces are presented in Jimmy Kandeh's *Coups from Below: Armed Subalterns and State Power in West Africa* in contrast to Moller's account.<sup>156</sup> Kandeh traces corruptive culture not only within the government, but also within divisions of competitive allegiances of the government's army that are largely rooted in ethnicity.<sup>157</sup> Kandeh begins with Prime Minister Albert Margai, who was in office from 1964 to 1967; he found loyalty in Brigadier David Lansana, who favored officers of the Mende tribe.<sup>158</sup> This favoritism is a reflection of the divisions—economical, political, and ethnic—that plagued Sierra Leone both under colonialism and soon after independence in 1961.<sup>159</sup> Ethnic

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152. *Id.*; *Diamonds: A Rebel's Best Friend*, BBC NEWS, May 15, 2000, available at <http://news.bbc.co.uk/2/hi/africa/745194.stm>; U.S. Dept. of State, *supra* note 1.

153. U.S. Dept. of State, *supra* note 1.

154. *Diamonds: A Rebel's Best Friend*, *supra* note 152.

155. *Id.* ("Part of the deal was that Mr. Sankoh became chairman of the Strategic Resources commission, giving him responsibility for management of the diamond trade. Anyone wishing to mine diamonds had to go through his Commission to obtain a license.").

156. JIMMY D. KANDEH, *COUPS FROM BELOW: ARMED SUBALTERNES AND STATE POWER IN WEST AFRICA* (Palgrave MacMillan 2004).

157. *See generally id.* at 143-53. Kandeh points out that ethnoregional dimensions and failed anti-corruption efforts contributed to Sierra Leone's instability. *Id.* at 146, 154.

158. *Id.* at 144 ("The force commander of the army, Brigadier David Lansana, was the prime minister's protégé and ethnic compatriot.").

159. *See generally id.* at 143-53.

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differences drove Lansana to demote Lieutenant Colonel John Bangura, a senior northern officer, from the post of battalion commander in favor of Captain Sandi Jumi, an ethnic Mende.<sup>160</sup> The resulting rivalry between Lansana and Bangura exposed the ethnic tensions between the Mende, who supported Lansana, and the northerners, who supported Bangura through the All People's Congress (APC), an opposition camp.<sup>161</sup>

The corruptive culture and ethnic rivalries within the Sierra Leone government have hindered the country's stability for decades. In 1967, Margai lost the election to the APC, which motivated Lansana to attempt an unsuccessful preemptive coup prior to the change in power.<sup>162</sup> Majors Sandi Jumu, Bokarie Kaisamba, and Charles Blake formed a junta known as the National Reformation Council (NRC),<sup>163</sup> which successfully held government power for thirteen months before being overthrown by the army's subaltern coup in April of 1968 by warrant officers Patrick Conteh and Emadu Rogers.<sup>164</sup> Conteh and Rogers formed the Anti-Corruption Revolutionary Movement (ACRM), which consisted of northern ethnic members who were largely sympathetic to the APC.<sup>165</sup> The APC eventually came to power and removed as many Mende officers as possible.<sup>166</sup> After a failed coup led by Bangura against the APC government, Siaka Stevens took the reins as president until he retired in 1985.<sup>167</sup> In that

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"Sierra Leone has experienced five successful coups since the country gained independence in 1961. Two of these takeovers occurred within forty-eight hours of each other in 1967, followed by yet another coup a year later in 1968. The 1967 interventions took place against a background of growing factionalism within the army." *Id.* at 143-44.

160. *Id.* at 144.

161. *Id.*

162. *Id.* at 144-45. Lansana rallied the Margai group to stage a coup that was meant to bring about martial law and create a Mende majority in parliament. *Id.* at 145.

163. *Id.* at 145.

164. *Id.* at 146 ("NRC neglect of the other ranks was the primary reason given for the coup.").

165. *Id.*

166. *Id.*

167. *Id.*

time, Stevens first declared Sierra Leone a republic and later, in the late 1970s, a one-party state.<sup>168</sup>

Since independence, the government and its militia have had a sustained series of coups that perpetuated corruption, instability, and ethnic divisions. In the year of his retirement, Stevens transferred power to General Joseph Momoh, an army commander, who would inherit a “failed political system.”<sup>169</sup> Kandeh describes the circumstances in which the RUF was able to mobilize and launch their 1991 insurgent attack against the government:

Public protest in the late 1980s and early 1990s focused on problems of declining living standards, leadership corruption, and the need to democratize the political system. Leading the struggle for democracy were university students, teachers, the labor movement, the Sierra Leone Bar Association, independent newspapers, and representatives of the external estate. Faced with growing internal and external pressures to dismantle the one-party system, the incumbent APC government reluctantly agreed to do so in 1991 and promised to hold multi-party elections. Uncertainty over whether these elections would be held, and public fears that the APC would rig them, mirrored doubts about the party’s deathbed conversion to multi-party democracy.<sup>170</sup>

Stevens’ campaign to leave the Sierra Leone Army under-equipped was carried out, allowing the RUF to take advantage of the weakened government.<sup>171</sup> Momoh at one point had to increase the army size from 3000 to 6000 and recruit from the minor criminal population of Freetown.<sup>172</sup> These were some of the same people that made up the RUF even though, ironically, Stevens had intended to prevent future coups by demobilizing the army.<sup>173</sup> The united public reacted with distrust of the government, while the ethnic and political divisiveness grew within the government and army.<sup>174</sup> In the end, divisiveness

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168. *Id.*

169. *Id.* at 147.

170. *Id.* at 148.

171. *Id.*

172. Military, *supra* note 140.

173. *Id.*

174. See generally KANDEH, *supra* note 156.



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inhibited the development of Sierra Leone and continues to undermine growth within the country.

Like Moller, Kandeh also details the youthful yet displaced culture of the RUF.<sup>175</sup> But Kandeh goes further by presenting the RUF in contrast with the youthful and corruptive nature of the NPRC.<sup>176</sup> During the course of Strasser's reign, which followed a 1992 coup that forced Momoh out of office, the NPRC used public funds for personal gain and extravagant lifestyles.<sup>177</sup> To contrast, the RUF not only consisted of displaced youth dropouts as mentioned by Moller, but also incorporated members of a Lumpen culture that "glamorizes violence and is the product of chronic deprivation and alienation."<sup>178</sup>

By glamorizing violence, members of the RUF may have adopted subterranean values, including factors such as the "rush" from committing illegal or non-conventional acts, obtaining monetary gain, and a display of aggressiveness primarily due to their alienation from society.<sup>179</sup> Interestingly enough, the NPRC could have engaged in the above-mentioned factors, but under the façade of legitimate governance. From the early to late 1990s, there were two unethical but youth driven cultures in juxtaposition with one another that held the country in limbo, neither of which infused any sort of confidence in the people.<sup>180</sup>

In assessing the Western and African perspectives, no real law can be identified, nor need it be, under the Socio-Legal Positivist theory, but the governance (or perhaps lack thereof) can be identified as corrupt and abusive from not only the perspective of the civilians, but also from the perspective of the subaltern soldiers of the Sierra Leone army. The soldiers' continuous series of coups upon the government indicates dissatisfaction with the way the current political party was governing the state. Yet, when coming to power, they continued to perpetuate the very corruption they sought to end. And in response, the civilian public viewed the governing power as leaving them defenseless against the RUF and became mistrustful of any

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175. *Id.* at 148.

176. *Id.* at 149, 154-56.

177. *Id.* at 154.

178. *Id.* at 31.

179. Sykes & Matza, *supra* note 139.

180. KANDEH, *supra* note 156, at 148-49.

governance.<sup>181</sup> The ensuing society was displaced by the violent RUF, and the chaotic coups that resulted seemed to eliminate any possibility of organized law and governance.

## VI. THE END OF THE CIVIL WAR

In July 1999, the Lome Peace Accords were signed between RUF leader Foday Sankoh and President Joseph Kabba's government after an international intervention.<sup>182</sup> That intervention involved "mercenary outfits such as the Gurkha Security Guards ((GSG) (whose Canadian Commander Colonel Robert Mackenzie was killed following an ambush by rebel units), Executive Outcomes, Sandline International, and later the West African Peacekeeping Force, the Economic Community of West African States Cease-Fire Monitoring Group, (ECOMOG)."<sup>183</sup> Apparently, the RUF agreed to the Lome Agreement under false pretenses.<sup>184</sup> Soon after, Sankoh led the RUF on a campaign to overthrow the Kabba government.<sup>185</sup> Collaborative international intervention was unsuccessful even though the effort would open the door for future intervention.

After a successful demobilization effort led by the British that resulted in forcing the RUF and their allies out of Freetown and into areas north and east of the capital, the RUF settled for peace in 2002.<sup>186</sup> The true end of the civil war is attributed to the British and is further supported by the establishment of the Special Court of Sierra Leone.<sup>187</sup> The Court is a retributive effort designed to try those "who bear the greatest responsibility for serious violations of international

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181. *See id.* at 150-53.

182. QUEST FOR SUSTAINABLE DEVELOPMENT, *supra* note 7, at 5, 11.

183. *Id.* at 11.

184. *See generally* A.B. Zack-Williams & Osman Gbla, *The Conduct of the Elections: Challenges of Peacebuilding and Democratisation*, in THE QUEST FOR SUSTAINABLE DEVELOPMENT AND PEACE: THE 2007 SIERRA LEONE ELECTIONS 64, 69 (Nordic African Inst. 2008), available at <http://www.nai.uu.se/publications/download.html/978-91-7106-619-0.pdf?id=25265> ("The nature and content of the agreement reflected the weak position of the government, as at the time some two-thirds of the country was in rebel hands.").

185. QUEST FOR SUSTAINABLE DEVELOPMENT, *supra* note 7, at 11.

186. *Id.* at 11-12.

187. *Id.* at 12.

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humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.”<sup>188</sup> This institution was set in place to provide Sierra Leoneans with the opportunity to remedy past atrocities committed against them.<sup>189</sup>

The Sierra Leonean government, now run by President Ernest Koroma of the APC party, is on the road toward recovery, given that a recent election motivated 75.8% of registered voters to vote and led to a run-off vote between the APC and Sierra Leone’s People Parties (SLPP).<sup>190</sup> The SLPP lost to Koroma, who led his opponent with 54.6% of the vote in the run-off.<sup>191</sup> With established ministries of government in place, including a Ministry of Tourism and Cultural Affairs, there can be an infusion of traditional and cultural practices that garner the support of the people. The 2007 election presented an opportunity to restore economic, political, and cultural stability in the country.

## VI. RECOMMENDATIONS

As mentioned previously, the Socio-Legal Positivist theory consists of two prongs: 1) the Separation Thesis, which asserts that there need not be a connection between law and morality or any particular purpose,<sup>192</sup> and 2) the Social Sources Thesis, which recognizes law as a social fact in that it exists as people practice it.<sup>193</sup> In Sierra Leone’s pre-colonial history, a series of cultural practices such as chiefdoms and secret societies constituted governance. These cultural institutions and practices were acknowledged from the Western perspective, but were explored more thoroughly through the African perspective. When colonialism was instituted in Sierra Leone,

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188. A.B. Zack-Williams, *International Intervention and the Struggle for Democracy*, in *THE QUEST FOR SUSTAINABLE DEVELOPMENT AND PEACE: THE 2007 SIERRA LEONE ELECTIONS* 14, 24-25 (Nordic African Inst. 2008), available at <http://www.nai.uu.se/publications/download.html/978-91-7106-619-0.pdf?id=25265>; Special Court for Sierra Leone, <http://www.sc-sl.org/> (last visited on Jan. 9, 2010).

189. *See id.* at 26.

190. *Id.* at 34-35.

191. *Id.* at 35.

192. TAMANAHA, *supra* note 9, at 185; *see also* discussion *supra* Part II.

193. TAMANAHA, *supra* note 9, at 189; *see also* discussion *supra* Part II.

different types of law were designated and categories of people were created—Native (indigenous Sierra Leoneans) and non-Native (British-influenced Africans).<sup>194</sup> From an African perspective, economic class divisions were created as a result.<sup>195</sup> With such disruption, law existed but was dictated by the British and not in accordance with the Social Sources Thesis.<sup>196</sup>

The shift that came after independence in 1961 appeared to be characterized by ethnic and political divides within the military and displaced youths associated with Lumpen culture. In part, this combination led to a decade-long civil war. As a result, there was displacement of cultural, economic, and political stability that rendered law and governance either unenforceable due to corrupt leadership, or simply non-existent due to illegitimacy. As Sierra Leone now seeks recovery, the country should return to establishing the cultural practices of the people in order to ensure permanence of law and to restore society's trust in the government.

With Sierra Leonean people voting President Koroma into power, the people utilized methods that could be considered Western to restore some sense of leadership and governance established under historical figures such as Farma Tami and Mansa Kama.<sup>197</sup> But clearly, colonialism has made an impact in creating a model governmental institution (a republic) that cannot be simply removed. Thus, a combination of both Western and African practices is necessary to restore stability. As noted before, the question to ask is, "how does the current society see the law?" If the Western influence is perceived as too ingrained to be removed (considering the perspective of the non-Native) and cultural practices must be honored (in consideration of the Native perspective), then the solution may be as follows: Western methods of institutionalizing law and government should simultaneously be coordinated with the incorporation and maintenance of cultural practices.

What must be established in the country are institutions, created by elected Sierra Leone representatives, which cultivate traditional

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194. Harrell-Bond, *Native and Non-Native*, *supra* note 20, at 1.

195. See MUKONOWESHURO, *supra* note 114. The author of this article notes that ethnic divisions would be more prominent with military governance in place.

196. See TAMANAHA, *supra* note 9, at 159.

197. See discussion *supra* Part II.B.ii.

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African practices that were either lost or inhibited by colonialism. From the mid-1970s to the late 1970s, an effort began to revitalize the culture of Sierra Leone, but the National Development Plan “set unattainable targets especially as the level of investment remained low.”<sup>198</sup> Other than tourism as a means for revenue in the country and the National Dance Troop, there was no other mention or focus on culture.<sup>199</sup> In addition, the Programme for Rehabilitation and Economic Recovery continued to perpetuate the notion of economic recovery through tourism at the expense of excluding culture.<sup>200</sup>

Abraham indicates that ignoring cultural elements stifles any possible development that can be characterized as either economic or human.<sup>201</sup> These structural adjustment programs only served to exacerbate instead of alleviate the problem.<sup>202</sup> In essence, development should not only be economic, but also human. The developments should occur concurrently. With that stated, perhaps legislation or acts coming out of an African-run government should incorporate law that recognizes the ethnicity and traditions of all cultures. Abraham suggests, “culture should be made an integral part of planning and be incorporated into the curriculum at all levels of the formal and non-formal educational system”; in this way, culture becomes an integral tool for achieving national objectives.<sup>203</sup> Further, traditional Sierra Leonean practices should be nationally incorporated in educational, economic, and legal institutions.

Without any concentrated effort to recognize or acknowledge the cultural or customary traditions of the people who naturally inhabit Sierra Leone while recognizing the Western influence on government, there can be no true development in Sierra Leone. What is clear is that whatever law or policy is initiated, it should originate internally. While a judicial institution like the Special Court of Sierra Leone is needed to address past criminal ills, it is the people—both Native and non-Native—that ought to create law through their practices and

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198. ARTHUR ABRAHAM, DEVELOPMENT ISSUES IN SIERRA LEONE: SELECTED ESSAYS 125 (Freetown, Sierra Leone: Inst. of African Studies 1994) [hereinafter ABRAHAM, DEVELOPMENT ISSUES] (on file with author).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*; QUEST FOR SUSTAINABLE DEVELOPMENT, *supra* note 7.

203. ABRAHAM, DEVELOPMENT ISSUES, *supra* note 198, at 129.

traditions instead of international or foreign authorities creating institutions for Sierra Leoneans to govern. Thus, whatever law is created must spur the natural progression that was lost with colonialism from this point on.

#### VIII. CONCLUSION

In applying Tamanaha's theory to the dual perspectives—Western and African—the overriding pattern seems to be that customary practices, traditions, and behaviors are dependent on how governance is perceived and shaped by the people. As law and governance changed from pre-colonial to colonial, through a civil war period and up to the present day, there was an undercurrent of political and ethnic divisiveness that exacerbated the growing instability of Sierra Leone as corruption and economic underdevelopment also paralyzed progression. With such instability, the impact on society appeared disastrous—culturally, economically, and politically. But with the end of the war and a strong backing of the current president and government by the people, there is hope for Sierra Leone. A concurrent focus on the implementation of cultural practices and a Western model of governance can create legitimacy when that society plays a significantly active part in influencing what law or legal institutions are as they perceive them to be.