



## Revisiting the Cause of Death in a Student-Police Violent Face-Off

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**Abstract.** Student activism is a common feature of higher education systems worldwide. However, in Nigeria, as in many other countries, student activism is commonly met with stiff resistance from the police and other law enforcement agencies and fatalities are not uncommon. The problem is that responsibility for the consequences of student-police standoffs is characteristically controversial. This paper discusses this controversy with specific reference to deaths of Nigerian students in clashes with the police during demonstrations and related activist efforts. Starting with a brief examination of student activities in Nigeria that involved student deaths, the paper discusses medical and legal concepts related to death and responsibility for the same. This is with the conclusion that a medical-legal approach to the definition of death and apportionment of responsibility for the same is a more functional way of solving some of the riddles and mysteries of criminal prosecution for homicidal offences posed by unnatural deaths.

**Keywords:** Student activism, Student management, Nigeria

### 1 Introduction

There has been a catalogue of student-police confrontations on the campuses of many educational institutions in Nigeria. Some of these avoidable incidents resulted in very bloody clashes. Unfortunately, the students have always suffered heavy casualties. The first of such incidents happened in the premier University of Ibadan in 1971. The Ibadan “aluta” crisis of 1971 claimed the life of Adekunle Adepeju, an undergraduate in the university. Then the University of Lagos crisis led to the death of Akintunde Ojo another promising undergraduate 1978. The University of Ife, Ahmadu Bello University, University of Jos, University of Maiduguri and several other tertiary institutions of learning had their fair share of violent crises in the next two decades that followed. One notable feature of these crises is the tragic deaths that have

trailed the frequent clashes between students of higher institutions and law-enforcement agents in Nigeria.

## 2 The Problem

One of the most tragic of such incidents happened on Sunday the 7<sup>th</sup> of June 1981. About 10,000 - strong students of the University of Ife (now Obafemi Awolowo University), embarked on a mass protest march from the university campus towards the centre of the ancient city of Ile-Ife. They carried placards protesting the death of an undergraduate student of the institution. They alleged Bukola Arogundade was a victim of ritual murder which they believed is a pastime of the culture-rich immediate community. The Students' Union leaders of the university in an earlier address had issued an ultimatum to the local police authority to produce the body of slain Bukola Arogundade and offer an explanation on the circumstances surrounding the death of the young man who was suspected to have been a victim of ritual murder.<sup>1</sup> After covering about 5-kilometre stretch in the mass protest march from the university main campus towards the city centre, the students ran into the barricade of a detachment of anti-riot (mobile) policemen at a Mayfair Bus Stop on the main road into the city where they were forcefully dispersed.

The police allegedly dispatched canisters of tear-gas (or perhaps some live ammunition) to confront and violently resist the students and their “mass onslaught” on the city. In the stampede that followed, four undergraduates (three ladies and a male student) were killed on the spot. Their bodies were picked up among the rubbles that littered the roadside after the clashes. The cloud of controversies surrounding the incident however remained unclear several months thereafter. While the students claimed they were victims of police brutality on innocent and harmless peaceful protesters, the police authorities on the other hand, claimed to have acted professionally with least resistance. The students alleged that live ammunition was released on defenceless peaceful undergraduates. The police insisted that mere methods of crowd control were employed without any live ammunition and that the victims suffered from unnecessary panic. The actual cause of death of the victims became a most hotly debated controversy. The mysteries surrounding the casualties became a knotty medico-legal problem.

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<sup>1</sup> The headless body of Bukola Arogundade, who had earlier been declared missing, was found abandoned in the city centre

A Panel of Inquiry was set up to unravel the mystery behind the tragic deaths. At its sitting, opinions were divided on the actual cause of death. While the police insisted that the casualties were victims of unnecessary panic and accidental electric shock resulting from their body contact with a nearby electric-wired signpost, most members of the public were not convinced that the students were not victims of police naked brutality. Medical report became necessary to establish the actual cause of death. As it turned out, the panel in its report leaned heavily on forensic evidence placed before it, which outcome was widely condemned by the general public.

### **3 Riddle of Mysterious Deaths**

In the absence of a widely acceptable definition, death prima facie raises a conceptual problem. More complex problems are likely to surface when the death is unnatural. Generally, unnatural death refers to such deaths, which are not clearly explicable or attributable to natural causes, and it includes a death occurring in such circumstances as to raise a suspicion of criminality. While a natural death is one which is attributable to natural causes.

One of the most tasking aspects of criminal prosecution has to do with unravelling the mysteries of unnatural death. Often, the complexity of the multi-dimensional problem is traceable to the conceptual confusion about the meaning and cause of death, hi as much as it is desirable to have a concise definition of death in law, and identify its precise cause in particular cases, judges have thoughtfully refrained from adopting a straight-jacket phraseology that is capable of inhibiting medical men in their quest for improved scientific methods.

### **4 When is a Person Dead in Law?**

For many years, doctors have defined death in terms of cessation of the heartbeat. It is now generally accepted in the medical profession that the ascertainment of "brain death", and not the cessation of heartbeat, constitutes the right diagnosis of death. This proposal is based on the "test of irreversibility".

The courts, while trying to frame legal standards for the determination of death, have tried to keep in line with current medical practice. The result of course is unpredictability. It seems regrettable that the law is inclined in the same direction of changeable medical diagnosis despite the obvious far-reaching legal implications in cases of succession, insurance policies and

homicide (areas in which precision and predictability are highly valued). Though judges have actually lagged behind in keeping pace with frequent scientific changes, it is quite understandable in view of the fact that legal standards are usually expected to be stable, certain and relatively time-tested.

As at now, there is yet to be a statutory definition of death in most common law jurisdictions. In fact the English Criminal Law Revision Committee, while considering the adoption of a statutory phraseology observed as follows:

We must be extremely hesitant about embodying in a statute (which is not always susceptible to speedy amendment) an expression of present medical opinion and knowledge derived from a field of science, which is continually progressing and inevitably altering its opinions in the light of new information.<sup>1a</sup>

This caution explains why the brain death proposal has not crystallized in most common law countries.

#### **4.1 Brain Death**

One of the interesting aspects of the "brain death" proposal is that it is the most scientific so far. It concentrates on the brain. Medical men are now agreed that it is logical to use the brain, which controls the heart and lungs, as a measure of death. This practice led to the concept of brain death.

The brain is undoubtedly one of the most complex organs, but its condition may be taken in isolation of the heart. Take the example of a patient who suffers from cerebral anoxia (deprivation of oxygen or hypoxic damage). In such a case, though the heart may be sustained in a state of animation, the brain cannot recover<sup>2</sup>. This is obviously an irreversible state and forms the right diagnosis of death.

The brain death proposal calls for an understanding of the brain in its separate compartments. It should be noted that there are different functional regions within the brain, viz: (i) the cortex; (ii) the thalamic region; and (iii) the brain-stem. Each of these compartments of the brain varies in their resistance to oxygen deprivation. The cortex is the most sensitive and is responsible for the intellect or humanizing function of the brain. The next is the thalamic region which is responsible for our animal behaviour. The last is brain-stem which regulates the basic functions of the body, including respiration. Varying degrees

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<sup>1a</sup> CLRCL Fourteenth Report, Offences Against the Person, Comnd. 7844 (19800. HMSO para.

<sup>2</sup> See *Lin Choro V Camden and Islington Area health Authority* (1979) 2 All E.r. 910; Skegg P.D.G. (1974) *Irreversible Comatosed Individuals: Alive or Dead?* Cambridge Law Journal, 130:

of oxygen deprivation leads to varying degrees of brain death. The condition regresses from intellectual deterioration to the suppression of all functions, save the capacity to remain alive (otherwise known as the "Persistent Vegetative States" or PVS). Opinions are divided on whether a hopelessly comatose patient in PVS is alive or dead.

If death must be an absolute concept, then the body is not dead unless the whole brain is dead. The part of the brain which is most resistant to oxygen deprivation is the brain-stem, so the attending physician will usually give an oxygen therapy. The condition of a patient will not degenerate once oxygen is provided. But since the effect of cerebral anoxia can only be measured in degrees, not in stages, the brain cannot recover from such damage. Thus "brain-stem death" merely but sufficiently completes the process in the irreversibility of the brain. Doctors now insist that a simple diagnosis of the brain-stem (not the heartbeat) will show whether the patient is dead or alive.

It seems that until the law evolves a definition of its own, one may have to rely on current medical opinion on the cessation of life.

What is however certain is that death must be a process, and it is better not to adopt a legal definition, which will be inimical to the ordinary standards of medical practice.

#### **4.2 Death on the Ventilator**

The ventilation machine, by which the doctor maintains a percussion of the heart, is a welcomed innovation for treating hypoxic damage. But it is also a source of worries. Though translation of the victim's organs is thereby greatly enhanced so that the doctor may get the "best possible" organ, yet serious legal problems are generated. Of course:

Since there are different indications of ventilator withdrawal, British judges have perhaps been ingenious, rather than evasive, in failing to define death in legal terms.

In the U.S., a Kansas statute provides that:

A person will be considered medically and legally dead if, in the opinion of a physician, based on ordinary standards of medical practice, there is the absence of spontaneous brain function...<sup>3</sup>

Ironically, though this is a relatively bold attempt, yet it goes no further than the common law inclination of trailing medical standards *ad infinitum*

#### **4.3 Ascertaining Death in Homicide Proceedings**

In proceedings for a crime of homicide, it is usually necessary to establish *inter alia* some of the following facts, i.e. (i) the death of a deceased which is the subject of the criminal prosecution; (ii) the identity of the deceased; (iii) the

cause of death; and (iv) that the cause of death is referable to the accused. Medical evidence is desirable, though not essential to prove beyond reasonable doubt that the death of the deceased was caused by the act of the accused.

In establishing the occurrence of death, the court will most usually depend on medical report or testimony. Where the deceased had been admitted in hospital prior to his death, ordinarily, a death certificate will reveal some medical facts. This will be useful evidence, but always subject to further scrutiny. For instance medical records, which show that the deceased suffered "anoxia", call for further explanation. It is common knowledge among medical men that deficiency of oxygen occasioning death may be traced to a number of factors, some of which are: (i) lack of oxygen in the inspired air within the lungs—anoxic anoxia or asphyxia; (ii) failure of the blood to absorb oxygen—anaemic anoxia; and (iii) inability of the tissues to take oxygen e.g. due to cyanide poisoning—histotoxic anoxia.

These are medical facts which fall short of disclosing the cause of death in terms of criminal liability. Thus the death certificate merely goes to establish the fact of death, not the real cause of it. Further evidence may therefore be sought to establish the cause of death. For example, the doctor who attended the deceased may be summoned to testify in court. On most occasions, preliminary inquiries about the cause of death would have been conducted before the murder trial.

#### **4.4 Primitive Investigation**

In primitive societies, due to the absence of techniques of medical research, criminal investigations especially for the most serious offences, were based on a "trial by ordeal".<sup>6</sup> Niki Tobi noted that the ordeals took different forms and dimensions, most of them uncouth and indecent, also no less barbaric. Elias, writing on the different types of ordeals said:

The ordeal might take the form of the juice of a tree (e.g. sasswood) mixed with water, or a burnt powder made from it and dissolved in water; a knife or other piece of iron might be heated in a fire; the culprit might be taken to a nearby pond or stream. The guilty one is he who drinks the water and becomes sick, handles the red-hot knife and gets burnt, or sinks when immersed in the water.

Penwill<sup>8</sup> observed in respect of the Kamba that "these ordeals are mostly used, in what English Law could classify as criminal cases, often theft or murder when the culprit is unknown". In a particular community, suspects were taken to the shrines of the local gods where evidence is taken on oath. Each suspect was taken through the rigour of muttering curses on himself, and the gods are thereby invoked. It was believed that the curses would take their effect on the culprit within seven days. Any form of misfortune befalling any of the suspects

directly or indirectly within a short while thereafter was easily taken as vindictive of the gods and a retribution for the crime committed. In some other places, the suspects were forced to swallow prepared concoctions, banished from society or detained and kept incommunicado until the oracles have been consulted and the gods appeased. Thus, the detection of crimes and criminals in traditional societies were rather metaphysical and religious, not scientific.

The harrowing experiences which most suspects went through by the "ordeal" were not only crude but at best repulsive to the sense of justice of the civilized man. The evolution of modern techniques of investigation is however a positive development in our contemporary age of civilization. Recent breakthroughs in the fields of forensic medicine, pathology, psychiatry and so on lend credence to this view. Human tissues can now be refrigerated and preserved for future laboratory use. Where the corpse had earlier been interred, it may be exhumed and sent for forensic tests.

#### **4.5 Coroner's Inquest**

A coroner's inquest<sup>9</sup> is a judicial inquiry into the circumstances surrounding sudden, violent or unnatural deaths. The coroner is an officer (usually a magistrate) appointed by the Governor, and assisted by police or administrative officers, to inquire into the circumstances surrounding the death of a deceased person.

Since every death is expected to be certified by a registered medical practitioner, medical records will indicate whether the death is related to a natural or unnatural cause.

A natural death should be recorded for the deceased where upon examination, the medical practitioner is satisfied that the cause of death is due to diseases that are known to medical science. Such diseases include hypertension, diabetes, pneumonia, cancer, stroke, cholera, and so on. In any case of a natural death, a further investigation is unnecessary unless it is called for or insisted upon by a dissatisfied person.

Usually, the following classes of death call for and must be investigated by a Coroner's inquest:

sudden, unexpected deaths, e.g. sudden death where death certificate is not available from attending physician; also all deaths occurring in hospitals within twenty-four hours of the deceased's admission;

1. all deaths associated with road traffic accidents;
2. all deaths associated with domestic and industrial accidents;
3. all deaths associated with violence;
4. deaths arising from poisons or privation, even where the cause of death seems to be known;
5. deaths in prisons or detentions e.g. police custody;

6. deaths from industrial diseases;
7. any death in any way associated with homicide;
8. any death where the relatives of the deceased or the public request for an inquest.

#### **4.6 Post mortem Examination**

A mysterious death, or one under inquest, will require a post mortem examination of the person of the deceased to ascertain relevant facts. This is actually the province of forensic pathology. The first step is external examination of the physical features. Anything that can lead to a proper identification of the deceased is relevant.

Clothing marked by blood stains or showing tears, cuts and perforations are preserved as vital and real evidence. A further systematic observation of the body may reveal other abnormalities like body wounds or marks in the form of lacerations (body tear), abrasions (wearing away of skin), bruises, contusions, burns and incisions. Orifices (e.g. the mouth and genitalia) are to be specifically examined and observations are useful evidence in substantiating inferences of assault, resistance, rape, strangulation and so on

Post mortem examination will include internal examination. A morbid anatomist starts by dissecting the body in a careful mid-line incision commencing from the chest. The incision is carried longitudinally upwards and downwards until the internals are freed. Specimens of the stomach contents and other relevant pathological organs or tissues are collected for further forensic examination.

The relevance of autopsy in the administration of criminal justice cannot be over-emphasized, especially as regards crimes of homicide. An autopsy report is vital to the coroner's inquest and is useful in preventing a miscarriage of justice. This is particularly so in some murder trials and even where the circumstances surrounding death can be deduced from a casual observation of the corpse, yet autopsy may reveal that there are more than meets the eye. Resolving complex legal problems have depended on the availability of medical finding, as it is often the case that delays in criminal trial is due to the delayed results of forensic tests.

Proceedings in the coroner's court are designed to establish the facts surrounding the death. The identity of the deceased is ascertained in case this remains unsettled. The place, date and time are likely to constitute a hindrance to the smooth administration of justice.

Developments in medical technology and forensic medicine have had their impact on our once familiar terminologies and the vocabulary of the law of crime our criminal justice system should be adaptable to embrace new techniques which are tended towards its enhancement. It is our proven

conviction' that a medico-legal approach is a more functional and acceptable way of solving some of the riddles of unnatural deaths and unravelling the mysteries of criminal prosecution for homicidal offences. This is the position being explained in this paper.