

THE CLASH BETWEEN INDIGENOUS, ISLAMIC, COLONIAL AND
POST-COLONIAL LAW IN NIGERIA

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I. INTRODUCTION

Theoretical Issues in the Anthropology of Law

Recent developments in the anthropology of law demonstrate the predominance of Malinowski's perspectives over those of Radcliffe-Brown. Malinowski's influence is direct and is ascertainable from the emphases of studies, where process has apparently triumphed over structure.

Malinowski did not oppose the two categories of process and structure as antithetical (Malinowski 1926). Equally surely, however, he accorded at least methodological predominance to process. His work gives greater regard to choice and manipulation than would a more purely "structural" approach, and the individual looms large. Furthermore, he spends little time on defining institutions, such as law, and more on discovering how people get on with solving the problems of their lives. There is a bridge between Malinowski and modern students of process, including those who specialize in "legal anthropology". Those often unwitting disciples are connected with Malinowski's ideas through the seminal work of Raymond Firth, especially his distinction between social organisation and social structure (Firth 1954).

For Radcliffe-Brown "structure" refers to the actual observable arrangements of personnel, meanings, and activities that constitute a phenomenon under study (Radcliffe-Brown 1957). Structure is absolutely real, not an abstraction from reality. It is distinguishable from but "reducible" to an underlying structural form. That form is a set of underlying rules extractable from the structure, or actual phenomenological appearance, of a given institution. Thus legal activities more or less conform to an underlying legal structural form. The actual activities are determined and explained by the form. What the anthropologist sees in the field and writes down in his notebook is the structure of particular events. Thus, it is Jack who kills Tom or it is Frank who marries Virginia. What the anthropologist abstracts to is the structural form. For a pure structuralist, then, actions quite patently are part of the observable structure.

For Firth structure is an unduly static abstraction. He ignores, or neglects, Radcliffe-Brown's significant distinction between struc-

ture and structural form. Firth redefines the concept of "social organization", using it to refer to the concrete activities of strategizing individuals. According to Firth, individuals seek to circumvent the system whenever and wherever it blocks them, always aiming at achieving the best possible deal in given circumstances. Since structure for even a modified functionalist like Firth is an epiphenomenon, a statistical emergent from specific actions, structure changes with individuals' choices. What is observed is definitely not structure. Rather, it is the individual engaged in specific activities, making specific choices. Law, then, becomes at best an abstract category. What is vital to the anthropologist to note are substantive legal activities, defined through process and in specific situations. Little, if any, time is wasted on formal definitions of the law.

Firth's perspective has been widely influential and is the direct source for modern work in political, economic and legal anthropology. Barth (1969), Dyson-Hudson (1970), Bailey (1969, 1970), Vincent (1977), Nader (1969) *et al.* owe a great debt to his early and continuing work. It indeed forms a counterpoise to theoretical positions that neglect the individual. Its emphasis on the individual's role in group activities does, however, prompt the major theoretical question of whether it gives too much weight to the particular. Additionally its leaning toward a logical positivist position, seeing the general as at best only an empirical summary of the particular, retards cross-cultural comparison and the ultimate discovery of social rather than psychological laws.

Nader, herself deeply committed to a functionally-derived processual approach, bewails the current lack of theory in legal anthropology. But many of the obstacles to the development of the sound comparative theory that she calls for follow logically from an overly processual position. Although such a perspective quite properly focuses on the decision-making process, it tends to obscure social and cultural constraints on actors. Nader and Yngvesson show that some sort of approach parallel to that of the "ethnography of speaking" is necessary to a focusing on the manner in which the individual copes with social and cultural restraints limiting his freedom to manipulate (Nader and Yngvesson 1973).

Some movements in that direction have occurred. (See for example Vincent 1977.) Most notably, in my opinion, they have come from studies informed by a network approach. Network analyses, however else they may differ, share a common concern with dyadic relationships as the key to an understanding of social life. The individual is traced in interactions and transactions with a number of partners. The structure of those relationships is the focus of analysis. The tracing of various networks of relationships and their overlapping has continued the processualist's concern with decision-making and powerbrokering, with the lived-in world of human activity. The approach requires a return to problem orientation. At the same time it offers a solid empirical basis for the study of recurring social and cultural "type" situations, including those involved with power relationships and social control.

Such work has emphasized that network and decision models are not incompatible with a realization that there is a social structure and reality outside the individual's choices, which are neither blindly determined nor infinitely free. Choices are made within limits. It is part of the researcher's task to discover the range of those limits as well as the extent to which individual choices can make a difference and at what level or levels. The orientation is always sociological, for the minimum unit studied is the dyad, never the individual in isolation.

Most network analysis is informed by an often-hidden theoretical position based on an economizing model of human behavior. Its methodological concepts, however, do not necessitate that perspective.

Network approaches carry the benefit of enabling a focus on process and structure, or, as I would rather state it, on process and structural form, for process is structure in action. In the study of change in African law they enable one to attempt the combination of synchronic and diachronic concerns, for the two are, after all, separable only for analytic purposes.

Conflict in African Law

The combination of structural and processual approaches is relevant in considering Coser's basic premise--that periods of conflict both shape and manifest underlying values (Coser 1956). Nowhere is that premise truer than in considering African law. Coser cites Weber on the sociology of law:

[The new element in customary law] is caused by changes in the external conditions of life which carry in their wake modifications of the empirically prevailing 'consensual understanding.' But the mere change of external conditions is neither sufficient nor necessary to explain the changes in the 'consensual understandings.' The really decisive element has always been a new line of conduct which then results either in a change of the meaning of the existing rules of law or in the creation of new rules of law. Several types of persons participate in these transformations. First...those individuals who are interested in some concrete communal action. Such an individual may change his behavior...either to protect his interests under new external conditions or simply to promote them more effectively under existing conditions. As a result there arise new 'consensual understandings' and sometimes new forms of rational association with substantially new meanings; these, in turn, generate the rise of new customary behavior.

Coser goes on to point out that

conflicts may be said to be 'productive' in two related ways: (1) they lead to the modification and the creation of law (2) the application of new rules leads to the growth of new institutional structures centering on the enforcement of these new rules and laws...

Conflict brings into the conscious awareness of the contenders and of the community at large, norms and rules that were dormant before the particular conflict. (Coser *ibid.* 125-127)

The recent history of Africa has been marked by the conflict of numerous interests, the understanding of which requires consideration of choices and their constraints. In many parts of Africa the past 100 years or so have seen not only the conflict of traditional law, itself never static, with colonial law, but also the spread of Islamic law, and post-colonial law. The matrix of potential and actual conflicts is often bewildering. Through it all, real people have endeavored to settle problems of social control daily.

Thus it is in the study of conflict that the real meaning of changes in African law, and the real values of African societies, will reveal themselves. The study of conflict must proceed in a manner that takes into account the lessons of network analysis. Such a study will go beyond mere morphologies of law and consider "informal" arrangements as well as formal; it will encompass people's legal attitudes and strategies so far as possible. It will remember that, as Vengroff observes,

If the formal structures of a state are incapable of undertaking the necessary local allocations and/or are not regarded as legitimate, then tradition or informal arrangements will prevail. (Vengroff 1975:39)

Moreover, progress toward a social anthropological theory of law requires consideration of the context in which legal transactions transpire. Conflicts take place within structural parameters which are socially negotiated. The negotiation is a form of communication which demonstrates that there is no single structure within any society. There are, however, structural principles. It is the analyst's job both to elucidate those principles and to discover their rules of combination. Only thereby can one identify and gauge the significance of the underlying values revealed in the process of conflict.

Conflict participants seek to "economize". However, the advantages they seek to gain and the losses they seek to minimize are not solely economic, and include status, power, prestige and a host of other items perceived as "good" or desirable. To gain their advantages participants manipulate whatever they perceive as likely to affect the outcomes of conflicts--norms, meanings, perceptions, in short, structure. It is from that perspective that the word "strategizing" takes on explanatory rather than incantatory power.

Since conflict can be resolved in a number of ways, ranging from warfare to quiet mediation, the anthropologist must ascertain how a given conflict is in fact resolved. One aspect of resolution that has not been accorded adequate attention is "reinterpretation", which has been of great importance in the recent history of African law. (See Gluckman 1967, 1969)

Object of the Study

Despite pioneering work by Gluckman (1967), Schapera (1943), Epstein (1954), and others, Kuper and Kuper's statement remains largely true: there have been very few theoretical studies of African law (Kuper and Kuper 1965).

A major cause of that deficiency, in addition to the specific theoretical issues discussed above, is that too many studies are either "macroscopic" or "microscopic". Consequently, the major relationships tend to be either overlooked or distorted. An approach that is both theoretically based and carefully delimited in context can aid in the advancement of the field.

In attempting to adopt such an approach, I shall compare changes in law in four distinct African societies in two separate areas of Northern Nigeria. Laws pertaining to family and marriage and to land tenure will be traced through four distinct categories--traditional, Islamic, colonial and post-colonial. Such an approach makes controlled comparison possible both diachronically and synchronically. Comparison, therefore, enables long-range goals of governing agents and indigenous responses to be evaluated in a processual and structural framework. For convenience of reference the principal contrasts are set out in tabular form in Figures 3-7, and the following discussion will refer only to those matters which provide particularly apt illustration, or which require further comment.

The theoretical perspective is one of conflict theory coupled, in so far as data are available, with a network approach. Actors are seen to be strategizing, seeking to gain advantages and avoid losses. Limits on their freedom will be investigated. Since through conflict underlying values are revealed and shaped, attitudes as well as actions will be treated analytically. Those on whom law is imposed will not be viewed as passive puppets, but rather the concepts of reinterpretation and of shaping the perspectives of overlords, will be used.

The Setting

The Dukawa (Hune) and Kamperi inhabit an area of northwestern Nigeria best described as a tropical savanna. Each group is found currently in more than one state, and in colonial times occupied more than one province. They belong to the same language family, the Niger-Congo, and to the same branch of that family, the Benue-Congo. Moreover, they belong to the same division of that branch, the Plateau Division. Quite interestingly, the center of that division is 10° North Latitude and 10° East Longitude, or in the middle of Bauchi State, which borders Plateau State.

The Dukawa, with a population of about 30,000, are concentrated mainly in the adjoining districts of Rijau, Kontagora Division, and Shanga, Yauri Division, Sokoto State. The Kamperi number about 100,000 today and are found in an area extending from 4°30' to 5°40'

Eastern Longitude and 10^0 to 10^{055} Northern Latitude; that is, from Kontagora in the East to the Niger in the West, from Argida in the Northeast to Garafini in the Southwest (Hoffman 1963:166). The area encompasses the states of Kwara, Niger and Sokoto.

Both Dukawa and Kamberi are found in Yauri Division of Sokoto State. Reference will be made especially to this area because of the special characteristics of its population. Although small--Yauri Emirate, which is coterminous with Yauri Division, was one of the smallest in Northern Nigeria--it is noted for its ethnic heterogeneity. In addition to the Dukawa and Kamberi, Shangawa, Gungawa and Lopawa consider themselves native to the area. The ruling Hausa and the Cattle Fulani are not considered indigenous. The ruling class is Hausa, not Hausa-Fulani, and there are few, if any, Town Fulani there. British occupation brought other ethnic groups to the emirate. (See further Salamone 1974.)

The Gbagyi (Gwari) are found in four states: Plateau, Niger, Kwara and Kaduna. Yusuf gives their population as about 250,000 (1976:93). Their language is classified as belonging to the Kwa branch of the Niger-Congo family (Greenberg 1963). They are divided into two major groups--the Gwari Yamma (Western Gwari) and the Gwari Ngege (True Gwari). It is on the Gwari Ngege of the area near Abirja that we shall concentrate.

The Jerawa are centered in the hills in the Jos Plateau around Jos. They number about 30,000 (Gunn 1953:67-68) and speak a language classified as belonging to the Benue-Congo branch of the Niger-Congo language family (Greenberg 1963). The climate of this area, unlike that of the areas inhabited by the Kamberi, Dukawa and Gbagyi, is considered pleasant. Temperatures range from 10.6°C to 35°C and the average rainfall is between 40 and 70 inches (University of Jos 1978:3).

The groups are four separate societies. They do, however, share related languages, and one can, therefore, surmise at least a core of common customs. The manner in which each has developed its legal system in a separate cultural ecological niche, therefore, holds implications for change theory as well as for legal theory.

II. TRADITIONAL LAWS OF THE FOUR GROUPS

By tradition I mean an attitude of mind rather than a chronological period. A practice may have developed relatively recently in a people's history, but if they have accepted it as part of their customary way of life then for them it is "traditional". This approach obviates the need for argument regarding how old a practice must be before it can be accepted as traditional. In so far as chronology is a guide, I have accepted the period immediately preceding the colonial period as the "traditional period".

The Dukawa

Marriage and Family Law. The Dukawa are acephalous and value equalitarianism. They live in compounds of the extended family (dengi), which remind a long-time observer of a "group of brothers" (Father Ottilio, Personal Communication). Property is freely shared, even personal property, and each member of the dengi is entitled to enough farm land to feed his nuclear family.

The equalitarianism of Dukawa society is carried over into relationships between the sexes. Both men and women agree on the following details. Although there is a sexual division of labor, women keep their earnings from women's crops like shea nuts and from the indigenous alcoholic brews such as giya and barukatu which they make and sell to their husbands and their husbands' friends. The universally preferred method of marriage includes the performance of bride service (gormu). This entails inter alia the man working for seven years on his future father-in-law's farm. A work team of age-mates accompanies him in his labor. They constitute his closest friends, and remain so throughout his life. To perform gormu the man must first obtain the woman's consent. Thereafter and up until the final ritual each person says he or she has a spouse but is not married yet, and either party is free to end the service. It is not uncommon for a woman to "divorce" her husband before the final marriage ceremonies on the grounds that he is not man enough to satisfy her sexual needs. Since sexual rights are part of the gormu complex she is in a perfect position to evaluate his capabilities. However, no reason need be given, and even the presence of children presents no problem. Children born before the completion of gormu belong to a woman's patrilineage, and continue to belong even if subsequently gormu is completed. Children born after gormu belong to the husband's patrilineage. If weaned, they stay with his family in the event of a divorce. In short, gormu obtains rights in geneticum from women, but not sexual rights.

After the completion of gormu divorce is rare, but can be obtained by either partner. The most common cause is adultery. Adultery is forbidden for both men and women, but is differentially defined for each. For women it consists of any extra-marital liaison. For a man it consists of any liaison with a married woman. Although polygyny in general is permissible for the Dukawa, it is most frequently encountered in leviratic marriage. Specifically, it occurs in the junior levirate in which a man inherits his older brother's widow on the condition that she is agreeable to the marriage. Among numerous other benefits, such a marriage guarantees the continuance of the family alliance and ensures that children are raised for a brother who died childless. Additionally, an old man who has amassed sufficient money may sometimes take a second wife, usually through paying a combination bride price and hiring someone to perform his gormu for him.

Adultery is even more serious than murder, for it strikes at the cornerstone of Dukawa social structure and cultural identity,

the family. The action taken by a man who discovers that his wife is committing adultery varies with the situation. If the adulterous couple are found in the midst of the act, the husband is free to kill the lover immediately without any fear of retaliation from the lover's family. He may not, however, kill his wife violently, but he is within his rights to cut her ear, for it is said that if she will "act like a bitch" he may mark her like one for all to know her shame. No one will come to her defense just as no one defended her lover. Those whose actions attack the sanctity of the family are not defended by their families.

If the husband does not catch the couple in the act, or if the man escapes, other action must be undertaken. The husband and his brothers enter the adulterer's village and proceed directly to his home armed with large sticks. They attack his property, destroying much of it, but without attacking his person, all the while demanding payment in compensation for his offense. The compensation is usually forthcoming, for the adulterer is abandoned by his family and shamed by his actions. In 1976 the standard fine was seven goats, ten chickens and five dogs. No one offers the adulterer any aid. Usually he is afterwards driven away from his village, for no one trusts him. Indeed, his own dengi can cut his ear like a dog and parade him naked for all to mock and as a lesson to those who may lust in their hearts.

Although traditional law clearly specified the treatment of a male adulterer, it gave the husband some leeway in his treatment of the woman. If she admitted her guilt and promised to reform, he usually said nothing more. The community would take its lead from the husband. Women from his group would watch the offending wife to see if her repentance were sincere, but no other punishment would be forthcoming.

If, however, a woman denied the adultery, or refused to repent (which was taken to amount to a denial), other steps would follow. She would be taken to the house of the chief priest, called in Dukanci Kugom Njir, the superior to all the other priests, each of whom was called Bakin Dodo. Here she would be required to swear an oath saying, "if I have committed adultery let kugom njir kill me!" The use of kugom njir in the phrase stressed the gravity of the issue. No ordinary priest could be consulted, but only the overall head of the cult.¹ The solemnity of the oath was reinforced by being sworn on the stick used to kill goats in religious sacrifices.

If her husband knew she was lying, he would begin to add to her drink a slow-acting poison that would first weaken her and then give her diarrhea. At that point she would usually ask for forgiveness and admit that she had sworn falsely, for while she might suspect that medicine had been used she could not be positive. If her husband refused to forgive her, he would answer her with a formula stating, "It's between you and kugom njir. You swore falsely when you could have been forgiven. It's not us who are harming you. It is the power of kugom njir." If, however, he was still in love with her, although he would still blame supernatural forces, partic-

ularly the Dukawa high God, he would offer to placate them. He would bring four goats, two dogs, and four white and four black chickens to the kugom njir, where she would confess her sin while the animals were sacrificed. Then the priest would bring her from inside his hut some medicine, which she would be supposed to drink without seeing it.

In either case, whether she was left to die or cured, she served as a lesson to other women just as her lover did to men. Even if ultimately forgiven, she might undergo harassment from others. The priest might hide in the bush, for example, and play an instrument fashioned from a guinea corn reed. That and voices he could make usually caused her to flee. The woman, of course, would know the source of the voices, but would go along with the cultural charade which said women were ignorant of men's roles in such matters. Others would chide her for not listening to her husband, and even small children would mock her. Her life, in short, would be made quite unpleasant by everyone's disagreeing with her on every item large and small.

Incest is a topic informants are reluctant to discuss. The usual response is a nervous giggle, followed by a denial that it could ever happen. When asked, however, for examples of its happening, all informants could recite histories of the offense. It is defined as sexual intercourse with anyone within the dengi. The dengi consists of all descendants, whether in the male, female or mixed line, from the great-grandparents of the propositus. Like adultery, incest strikes at the core of Dukawa life. For them we may assert the truth of the proposition of Lévi-Strauss, that the incest taboo is at the root of culture itself. Therefore it is one of the few offenses that no one but God can punish. No one will have anything to do with the offenders, for fear that the stigma be shared with them. Their parents and kindred shun them. If they are married, their spouses will abandon them.

Informants say that those who commit incest will surely die, and that they will die in horrible ways. They may even become blind or leprous first. But the punishment is automatic, and is reserved to God. No matter how much others may be revolted by incest, no direct physical action may be taken against the offenders. This is because by definition the offense is against the dengi by members of the dengi. While death is the punishment for such an offense, no dengi member can kill another member, for by so doing he would also be committing a sin against nature, which would call for his own death.

The Dukawa perceive the family as the institution that best defines themselves and protects their cultural identity. Any attack on the family is a danger to Dukawa culture itself. No one can defend the offenders for the offense is literally beyond defense. Indeed, it attacks the very concept of culture itself.

Land Law. Anyone who needs land for farming will receive it. Land is typically farmed by brothers who live in patrilineal groups within the dengi, the eldest brother having become household head on the father's death. The group works as a communal cooperative unit.

The inheritance system has been summarised thus:

A patrilineal bias is suggested by rules of inheritance. Older sons of a deceased male receive fields under cultivation; younger, fallow; in default of sons, deceased's father...inherits, then full brothers, half-brothers, 'intimate friends'. Widows, if they concur, are inherited according to the seniority of the full brothers of the deceased. (Gunn and Conant 1960:52).

The passage demands some exegesis. First, all full brothers, and sometimes even all dengi members, work their farms together. No Dukawa easily tolerates being alone. Work, male or female, is conducted in teams. Second, the inheritance, in default of sons, goes to the dengi. Third, the "intimate friends" who inherit in the event of there being no sons are a man's gormu mates. Fourth, widows, with their consent, are inherited only by one of the deceased's junior brothers, never by a senior brother, since sexual relations with the latter would be equivalent to those with the woman's father-in-law, with whom she has a shame avoidance relationship: in short, they would be incestuous.

The inheritance system shows that the eldest brother inherits his father's familial authority. It further emphasizes the role of alliances in Dukawa life. (See Salamone 1979.) The entire complex of inheritance rules stresses the unity of the family, its cooperative nature, and the need to maintain alliances with other families. It also hints at the danger of centrifugal forces in equalitarian societies and seeks to counteract them.

In sum, the Dukawa are indeed a group of brothers whose strength lies in their maintenance of family ties and whose weaknesses lie in the forces working against those ties.

The Kamberi

Marriage and Family Law. Kamberi women are famed among both men and women in Yauri for their chastity and faithfulness, at least in interethnic marriages. For that reason, and for their reputed gentleness in raising children, they are prized as wives by members of Yauri's other ethnic groups. As a sign of their status, and of the respect paid to it, virgins are allowed to walk about the compound totally naked. Needless to say, premarital intercourse as well as extra-marital liaisons are forbidden. Old informants aver that there was never any sanctioned premarital sex, and that chastity has long been a virtue. It may be true, and I think it is, that informants protest too much on the issue of female chastity. As among the Southern Italians among whom I was raised, male conquests are highly valued, and there is no male conquest without a female's being involved. Wrestling matches serve as a means for

young men and women to size each other up. At those matches, they initiate alliances which, with their parents' approval, may lead to marriage. In common with related groups, moreover, they have a bride-service (gormu) complex which requires that a young man and his companions work on his father-in-law's land for seven years. During that time he gains increasing rights in his wife, including that of sexual visitation. Kamberi regard children born before marriage as a good sign, a blessing on the coming marriage.

Initially informants deny that there is any Kamberi adultery. When pressed for "exceptions", they manage to give concrete examples. In general the picture that emerges is as follows.

Married men gather at public occasions, such as parties or markets, and begin dancing and singing, dressed in their best finery, their faces carefully made up with powder and antimony. Drums and wind instruments support the display, which is all to the end of "stealing a second wife". A man bent on such activity will send a friend to "call a lady"; the implication is that prior contact and arrangement have been made. Even if no prior contact was made, the music and dancing attract women. After some conversation and flirting, women will ask the men to dance so that they can see their "power". If a woman is sufficiently impressed, then she will agree to a sexual liaison, knowing that there is little chance in the face-to-face Kamberi society of such a liaison long remaining secret.

When her husband discovers the liaison, he will take public notice only if he catches the couple in the act. Then he will try to kill his wife's lover with an ax, spear, stick, or bow and arrow. If the lover escapes, the husband will send his wife to him and divorce her. Male elders in their position as Bakin Dodo lodge members send representatives to the woman.² These inform her that the marriage is over, and that all her property is forfeit to them. Furthermore, they warn her not to have any contact with her husband's children.

Such action emphasizes the sharp distinction between male and female which is a prominent part of Kamberi life. It is illustrated also by the manner of carrying loads. Male Kamberi carry loads on their heads, as do all other people in Yauri, but the women carry them on their backs. The reason is explained in the Kamberi origin myth. In this Woman tries to equate herself with Man. As a sign of her inferiority, and punishment for her presumption, she is made to carry loads on her back. It was summed up in a statement of a Kamberi Christian, "Listen, don't you know that men have penises and women have vaginas? That's why men carry loads on their heads and women on their backs."

The divorced woman may lose not only her property, but also her second husband. If he ever finds himself in the same place as the man he cuckolded, even at a feast, he must leave before the ex-husband sees him. Otherwise, the ex-husband will gather his friends and attack him. One further punishment is levied against the woman.

she is not allowed to go to any market in which any people from her former husband's group will be found, for they will taunt her unmercifully.

Secondary marriage is practised among the Kamberi (Gunn and Conant 1960:27). A woman can run away from her husband, and if she successfully establishes a dwelling in another village, the marriage is sanctioned. Additionally, her new husband must pay a bride price to her guardian, usually her father. She is not divorced from her first husband and can move from one village to the other to see her children. If either husband dies she must perform widow's rituals for him.

Land Law. Kamberi originally ruled Yauri.³ In the civil wars of the nineteenth century, however, they suffered great losses, and were forced to retreat to the bush areas of Yauri. For all intents and purposes, each Kamberi compound is independent of all other settlements, as MacBride noted in his Rijau Report (1935).

Gunn and Conant adequately describe the prevailing principle whereby the internal affairs of each Kamberi settlement are perceived as being their own to settle (1960:25-26). External affairs are the concern of the emirate in which the Kamberi unit is settled. Within the compound there is a strong patrilineal bias. Problems are regarded as the concern of the men involved, either alone or in unison as members of the secret society (Mai-giro in Hausa).

All property, in conformity with the patrilineal principle, belongs to men. A man's property follows inheritance rules basically similar to those of the Dukawa. A woman only has the use of property, including any she brought to the marriage. She is given sufficient land on which to raise "women's crops". However, unlike the land on which men grow their crops, hers does not pass to her heirs, but goes to her husband.

Gbagyi

The Gbagyi are related to the Bassa, Kamuku, and Kamberi people. Like the Kamberi, their women carry loads on their shoulders and not their heads. Like the Kamberi, whose language and customs are closely related to theirs, they claim a Bornu origin.⁴

Marriage and Family Law. The Gbagyi attitude towards chastity and their punishment of adultery were similar to those of the Kamberi. Traditionally marriages were arranged among male friends for their children. Girls were about four years old when they were betrothed. Males performed bride service for the nine years' waiting period until the wedding. In addition they gave their future mothers-in-law presents each year of ucha and guinea corn. On the wedding day final presents were given to them.

A wife was allowed to divorce her husband after returning her bride price. Her usual reason was to marry another man with whom she was in love. Her husband, however, could freely kill her lover if he were foolish enough to enter his compound. A man was free to divorce his wife. His usual reason was infertility. In that case, however, the woman would subsequently sleep with men in other villages only. Children always belonged to the husband.

The levirate existed with the woman having refusal rights as among the Dukawa.

Land Law. All land is communal, being held by the lineage. The village head has the responsibility of allocating land. Once granted to an individual, however, land cannot be taken back unless the yearly gift due from the grantee is no longer made. The user, nevertheless, cannot alienate the land. Fulani also need permission to graze on any land. They must pay for any damage, and the head and council of elders settle disputes.

Trees in open lands are communal and the head manages them for everyone's benefit. Shade and economic trees on a person's land belong to him. Water belongs to everyone although streams and their fish are the property of those who occupy the land. Strangers must obtain the head's permission to fish in communal streams.

Land occupancy is inherited patrilineally in the following order of precedence: eldest son, eldest brother, father. If all are dead, the land reverts to the lineage head for disposal, while the value of the crops goes, depending on the group, to a man's mother or his eldest widow. Minors' mothers hold property in trust for them.

Unreal property is divided amongst the sons and daughters in the proportion of two to one...where there is no issue the estate is administered by the Alkali (formerly by the Sarki), who pays an eighth of its value to the widow, and something to the Mallams for their help. (Temple 1965:127)

Again there are minor variations from locality to locality. Personal property can be given as gifts during one's life. Women cannot inherit as women. Usually their brothers care for them. (Based on Temple *ibid*:126-128.)

Jerawa (Afusare)

The Afusare group around Jos forms a small section of the larger Jerawa. Temple gave their number as 760 in a 42 square mile area (1965:171). My chief informant verified Temple's statement that they originated in the Fobir area, he said around Chawai, in the nineteenth century. The Afusare group is strongly conscious of its pride and independence.

Marriage and Family Law. There is a great deal of suspicion and hostility evident in Afusare male/female relationships, and these permeate the marriage relationship.⁵ Men do not, for example,

entrust secrets to their wives but only to their eldest sons, or, if those "do not have sense", to sons with sense. Women confide in their children, rather than their husbands.

Parents expect boys to be sexually adventurous. Girls, on the other hand, they presume to be sexually innocent, saying "a wise girl will never know." Generally, however, many girls do cavort with boys and swim naked, play games in the bush, and learn, in passing, of sex. It seems that the only real crime is being too blatant, so that a girl's parents are forced to take notice of her actions. In such cases she brings great shame on her household, and her parents will cast her out to become a prostitute or to marry an old man or a stranger.

There is thus a constant contradiction in Afusare male/female relationships between the virginal, passive woman and the active man of the ideal, and the obvious reality. Adultery is common, as the practice of secondary marriage underscores, for in order for secondary marriage to occur there must be extramarital contacts initially. It is evident that males are aware of the contradiction between real and ideal, belief and practice. Male prowess is turned against women, who, men know, are not so passive as they "should" be, nor so inexperienced as the ideal.

Bridewealth was traditionally paid over the period of the marriage whenever a mother-in-law visited. Such payments were in addition to those a man made between the betrothal and the marriage--a period of about 20 years in arranged marriages--and to the bride-service performed on his fiancée's father's farm (Temple 1965:166-167). Not all marriages were arranged. A great element of choice entered into marriages if the partners were otherwise suitable and fell into the appropriate marriage categories.

The need for women to return their bride price on divorce diminished with the number of children they had. On the other hand, "going home to mother" was a common syndrome in the early stages of marriage, elder relatives seeking to smooth matters over. Divorce does not appear to have been frequent. When it occurred, children stayed with their fathers.

On a husband's death his widow was inherited by his brother, but was free to marry anyone else. In the latter case she was required to repay her bridewealth, unless she had a sufficient number of children to obviate the requirement. Children remained with their father's family (Temple 1965:169-170).

Land Law. Land is communally owned. There is no right to alienate land, but so long as a family farms land it remains theirs through the generations. The eldest son normally inherits his father's rights. Brothers farm an area together and take care of their mothers after their father's death.

Non-real property is also passed on in the patriline. If it is

familial in nature, such as the right to perform a ritual, or a family recipe for a family medicine, then a father trains a "son with sense" to care for it. That son inherits his father's authority and responsibility. As a man's family increases, however, his wife or wives encourage him to strike out on his own. Since no one is refused available land, he is usually given land adjoining his brothers' but under his own control.

III. ISLAMIC LAW

The Character of Islamic Law in Northern Nigeria

No attempt will be made to discuss for each traditional group point by point its acceptance or rejection of Islamic law. Rather an overall assessment of the effects of Islamic teachings in the various areas under discussion will be made. General studies by Schacht (1964) and Anderson (1970) provide a general picture of Islamic law. Except for occasional references and comparisons, Islamic law elsewhere will not be mentioned. However, the general point should be made that Islamic law is not a monolithic system.

The Shari'a (Islamic law) both is and is not another customary law in Northern Nigeria. The colonial authorities treated it as the customary law of the Hausa-Fulani, Kanuri and other Islamic groups. The major concern in this section is with the Hausa-Fulani version of the Maliki School. It is imperative to stress that although Northern Nigeria is a stronghold of Islamic law, that law is there strongly tempered by local custom (Yusuf 1976:10, 51, 68-69). Put more explicitly, "pure" Islamic law is not and was not in the past practised in Northern Nigeria (nor, perhaps, anywhere else in the world), although equally there is no extant "pure" version of Hausa or Fulani pre-Islamic law. (See Greenberg 1946.) In addition Islamic law has also been affected by the process of its application to subject peoples conquered in the Fulani jihad of Usman dan Fodio. Its interaction with colonial law, discussed in the next section, is yet another factor to be considered.

Like "traditional" law, Islamic law is not static, but changes in interaction with its sociocultural environment, and must be viewed in strategizing transactional terms. Yusuf calls it "flexible" (1976:10). Certainly it has been adaptive in its struggle for survival in the ethnically heterogeneous situation that constitutes Northern Nigerian sociocultural life.

No matter how "traditional" or "customary" the Shari'a may be, it has been imposed from outside Nigeria, and its current widespread application is of relatively recent origin. For centuries Islam was the religion of the ruling elite and traders only. They practised such a modified version of Islam that the Fulani religious leader, Usman dan Fodio, proclaimed a successful jihad against them in the late 18th and early 19th centuries. Even then, it was only with the coming of the British in the early 20th century that Islam became

the predominant religion in Northern Nigeria. In the pre-colonial period the actual practice of the Shari'a was often quite arbitrary (Yusuf 1976:52). British codification and application did much to organize, regulate and spread it. This section, however, attempts to reconstruct the "traditional" period before British influence.

According to Yusuf the Shari'a is composed of fiqh plus kalam (1976:33). Fiqh is divided into rules specifying those things which are required (wajib), forbidden (mahzur), or recommended (mandub). Kalam refers to the word, or interpretation (Yusuf 1976:32). There are three categories of offenses. Minor offenses, such as drinking alcohol, are termed hululu or haddi. Offenses dealing with bodily harm of any type are termed jasadi. Political offenses, which are the gravest crimes, are termed tahazibi (Yusuf 1976:52).

The Administration of Islamic Law in Northern Nigeria

Alkalis heard most cases. Emirs, however, could hear homicides and other important cases. That largely undefined criminal jurisdiction of emirs is termed syasa (Keay and Richardson 1966:20). Some of the larger emirates, such as Kano or Sokoto, had several alkalis. In those cases the chief alkali remained at court.

The legal foundations of Islamic law are:

- (1) the Holy Quran containing the direct injunctions of God.
- (2) the Sunna. The facts of the life of the Prophet and his sayings.
- (3) Ijma. The consensus of scholars, which supplemented the words of the Quran and the traditions of the Prophet, and which, according to a reported saying of the Prophet, was infallible.
- (4) Qujas. Analogical reasoning ex consimili casu from the Quran and Sunna. (Keay and Richardson: loc. cit.)

The Shari'a results from the mixture of those elements, supplemented, especially in matters of non-personal law, by custom (urf). In Northern Nigeria custom has extended to supplement even personal law extensively (Keay and Richardson 1966:231). The alkalis applied customary law, even before Lugard, to subject populations, but that application inevitably introduced elements of Islamic law into traditional law. Even more significant in the extension of the Shari'a was its application to cases involving Muslims and non-Muslims.⁶

At the time of the British conquest of Hausa-Fulani Northern Nigeria, then, the Shari'a was mixed with various customary laws and applied to the subject peoples in modified form. The majority of the common people (talakawa) were not Muslims although they had patently been influenced by Islam. The elite, except in Abuja and Yauri where they were Hausa, were Hausaized Fulani. This Fulani elite attempted to purify the Shari'a and had, especially in their first flush of military success, done so. They had, however, by the twentieth century lost much of their revolutionary zeal.

The following two subsections describe Islamic practices, in so far as ascertainable, at the time of Lugard's takeover in 1900 from the Royal African Company.

Marriage and Family Law

Yusuf states:

The greatest discrepancy [between the prescriptions of the Shari'a and actual practice] is perhaps in the domain of marriage and family law where the force and antiquity of local customs appear to have compelled the shari'a to allow for some concessions. (1976:68-69)

However, he only hints at those concessions, giving two examples. The first is the father's right to remove a child from a divorced woman after two years, when it is weaned, instead of at puberty. The second example is that of a wife's right to divorce her husband without his permission on return of the bridewealth.

Muhammad penetrates more deeply into the area, especially regarding the proper treatment of women (1967). Although his article is written in the present tense, careful reading enables one to reconstruct a reasonable picture of precolonial Hausa-Fulani practice, especially since he is eager to distinguish between practices which are "customary" and those which are in accord with the Shari'a. The picture is one in which women were not educated at seven in accord with Maliki precepts. Contrary to clear Maliki teachings a marriage choice was given a girl, although it was limited. In the Maliki school an unmarried girl's guardian can force her to marry anyone of his choice except a eunuch unless he has declared otherwise before two witnesses. In Northern Nigeria, a girl could tell one or two old women whom her father had chosen the names of three men who were acceptable to her. However, the choice was limited, since the father could then either choose one of the three or refuse all of them. Muhammad states that usually the father found no one acceptable and chose another (1967:3). If the girl had no suitors, he could make a gift (sadaka) of her, usually to an influential man.

Northern Nigerian practice further deviated from the Shari'a in its general neglect of betrothal. Furthermore, brideprice, contrary to Maliki law, was levied against the husband and went to the bride's parents. That brideprice was in addition to the dower which Maliki law required to be given to the bride.

According to the Shari'a the responsibility of furnishing and equipping the matrimonial home rests with the husband but it is customary in the North for parents to furnish their daughter's new home, no matter how poor they may be. Apart from furnishing the matrimonial home and equipping their daughter with household utensils, the bride's parents bring a large quantity of food and a certain amount of money to the husband. This practice is praiseworthy because the bride-price which the parents receive from the husband is unjustifiable and utterly without either legal or moral support. (Muhammad 1967:4.)

Muhammad details a number of other deviations too numerous to discuss in detail. Those include: carrying the doctrine of the equality of status between husband and wife (Kafa'a) too far, failing to grant a wife the right to repudiate a marriage made when she was a minor by other than her father or her paternal grandfather, allowing a husband to appropriate his wife's property so long as no injury is done her interests, allowing a husband's relatives the right to move about his wife's apartment, failing to give a wife a separate apartment and not simply a separate bedroom, and allowing a husband to take children from his wife before puberty in divorce cases.

Muhammad continues his indictment of Islamic practices by stating that in Northern Nigeria the general conditions required to contract a polygamous marriage are not met. Indeed, the generally poor treatment of women, manifested in the widespread failure to maintain divorced women as required in the Quran, is in clear violation of the Prophet's intentions. There is a failure to observe the conditions of revokable divorce. Instead of simply resuming the marriage, the Hausa require a new contract. Funeral observances do not meet the required Shari'a standards, and instead they follow Hausa practices.

In property law women are not classified as children, as required by Maliki law. Rather they are considered mental defectives in the administration of property. Consequently they are allowed to dispose of only 1/3 of their property without their husband's consent.

In the Northern States of Nigeria a wife does not engage in any serious business without her husband's permission, nor does she give away anything substantial without his approval. The husband can also use their property as a man of ordinary prudence will do with his own property. In actual fact this is much stricter than the Maliki law. (Muhammad 1967:17.)

Land Law

A major area of difficulty between Islamic law and native or customary law is that of land tenure. It of course has familial as well as broader societal implications. Under Maliki law, occupation is more than usufructuary. The chief loses rights for all time over conferred land (Meek 1968:150). This principle is in direct conflict with that of general Northern Nigerian traditional land tenure.

In the Northern Provinces the general principle governing the tenure of native lands is that title is based on a communal usufructuary right, and whatever radical right the chief may have. In legal theory it does not amount in practice to anything more than an administrative control of vacant lands in the interest of the whole community. (Meek 1968:149.)

Land was inalienable under traditional tenure, although certain improvements might be alienable. Rights to land were usufructuary and so long as it was improved no one could take it from its tillers. The chief could only lease out land; he could never sell it.

The Sokoto Empire recognized traditional law in regard to subject peoples. The Iman could therefore assign only deserted lands,

and cultivated lands could not be taken away from the cultivators (Meek 1968:146). There were, however, indications that the general thrust of Maliki law in favour of the individual family would come into conflict with the traditional law of subject peoples. Anderson and Coulson argue:

Socially, Islam emphasized the more immediate family tie existing between a husband, his wife and their children, and aimed at elevating the status of a female with this group. And it is this transition from a tribal society to one in which the basic unity is the individual family that is reflected in Qu'ranic laws of inheritance. (Anderson and Coulson 1967:16.)

Again, as Meek points out, "Prior to the British occupation of Kano in 1903, the Fulani government imposed a farm tax which was additional to the Muhammadan tithe on harvested grain and on cattle." (Meek 1968:156.) Such a tax asserted the right of the central government to ultimate ownership of land. It also asserted the rights of conquerors over the conquered in respect to land tenure.

Relationship of Islamic and Traditional Law

The ethnic factors coming into play in the "Hausaization" of Islamic law have been detailed elsewhere. (Salamone 1974a, 1975, 1976a and b, 1977, 1978.) The salient point for the present purpose is that the imposition of Islamic rule had ethnic, i.e. political, features as well as religious. Indeed, the religious features are basically political relationships, i.e. power relationships (Salamone 1977).

The discussion of marriage shows that Hausa practices are a complex amalgam of Islamic and pre-Islamic practices. Out of the contact between Islamic and non-Islamic practices new cultural and behavioral features emerge. It is those new cultural and behavioral features, carried, of course, by individual Hausa, that come into contact with entirely non-Muslim legal beliefs and practices. The contact situation is best seen as one in which a power struggle takes place.

The Hausaized Islamic law, even purified by the Fulani jihad, was an ethnic law. It was used as a weapon, a means of establishing hegemony over subject peoples and assuring their cooperation. (See Mahdi 1968, Balogun 1970.) Consequently resistance to Islamic law among the Afusare was perceived by them as resistance to the Hausa-Fulani, while among the conquered Dukawa, Kamberi and Gbagyi their conquest was perfectly signified in their accountability under the Shari'a.

That law was made generally applicable in "mixed cases", or cases involving a Hausa and a non-Hausa, in itself a violation of the Shari'a. Moreover, the non-Hausa could expect to lose such a case if he were the accused, while if the Hausa were accused of a serious crime such as homicide, the expectation was that little, if any, effort would be made to apprehend or convict him. In brief, the application of Islamic law became both a symbol of the Hausa's super-

ior power and a means for consolidating and spreading that power through conflict resolution.

IV. THE COLONIAL PERIOD

The Centralization of Political Power

The transactional drama of the colonial period can only be appreciated within the overall context of indirect rule.⁷ Within that frame the complex and often convoluted interrelationships among traditional, Islamic (Hausa) and colonial law take on an inevitable and wonderful logic.

Basically indirect rule sought to govern a large area with minimal expatriate personnel. In theory there was to be minimal interference with indigenous practices. In fact constraints placed on the "minimal" interference guaranteed great changes in the system. In the legal area, for example, there were general requirements that justice reach a level appropriate for a British Protectorate and that no law be repugnant to natural justice, equity and good conscience. Additionally, there were problems regarding justice in non-traditional areas of life (corporations, etc.) and in those affecting the existence of British rule (smuggling, firearms, treason, etc.). Keay and Richardson succinctly sum up the situation facing Lugard:

On the judicial side Lugard's aim was to establish a superimposed court organization consisting of the Supreme and Provincial Courts to enforce the Protectorate's penal laws and make available a standard of justice appropriate to a British Protectorate, but at the same time to utilize existing indigenous court systems which would, under supervision and control by the Government, continue to dispense justice to the masses in a form understood by them. (Keay and Richardson 1966:19-20.)

Beyond dispute, Lugard strengthened the Shari'a system by rationalizing and extending it.⁸ He found a very loosely organized system which was generally understaffed. In its place, he left a centralized judicial network in which a chief alkali, responsible for the Islamic civil code and some criminal offenses, supervised district alkali. He secured a specific delineation of the emir's hitherto largely undefined criminal jurisdiction.

Supporting the so-called "traditional" systems was the might of the colonial government. That might supported the claims of the emirs to dominion over their subject peoples. In case after case the colonial army "pacified" subjects whom the Hausa-Fulani had been unable to govern. The Dukawa were one such people. Their resistance to pacification the colonial authorities termed "truculence" (Harris NANK 3703:110). It is no wonder that the emirs welcomed the British and that decentralized groups resisted their legal reforms. The extent of centralization is seen in an examination of the total framework. Any aspect of that framework may appear decentralized. It is only in context that any doubt regarding ultimate control is

resolved.

The stated policy throughout the colonial period was that the bulk of civil and criminal cases should be heard by the native courts. Every codification of laws, beginning with the Native Courts Proclamation of 1900, embraced that principle. However, the fact is that a close watch was kept over "native courts". Under Lugard's reforms each province had a Provincial Court which was a superior court of record. Each court of any rank had a Resident or other administrative officer of the province in supervision. The Resident had unlimited power in criminal matters. Commissioners had lesser powers. In civil matters the Resident had unlimited jurisdiction in landlord and tenant suits, habeas corpus applications, personal contract suits, etc. All civil cases could, furthermore, be appealed to the Supreme Court. That court was essentially an appeals court except in cantonment areas.

The Native Courts Proclamation of 1906, possible because of the relative acceptance of British suzerainty and the pacification of the North, added significant elements to the 1900 codification. The Resident's power to establish and control courts was clearly spelled out. Residents could extend jurisdiction over African non-natives and native Government servants. New principles were introduced. The Native Court of Appeals, for example, may have been meant to reestablish the traditional right of Muslim subjects to petition the emir, but it went far beyond what had existed. Courts were empowered to make rules. Native courts could no longer enforce death sentences. They could, if of the proper grade, pass them, but such sentences were reviewed. No distinction was made between legislative, judicial and executive functions of the colonial authorities.

The colonial reform of court finances (1910-1911) further strengthened the centralization process. Its goals were to end corruption, and to raise the prestige of native courts through establishing fixed salaries. It made the judges independent of their constituencies and did not end corruption.

Keay and Richardson quote Lugard's general rationale for his policy:

The policy which I am endeavouring to carry out as regards the natives of the Protectorate may, perhaps, be usefully summarised here. The Government utilizes and works through the native chiefs, and avails itself of the intelligence and powers of governing of the Fulani caste in particular, but insists upon their observance of the fundamental laws of humanity and justice. Residents are appointed whose primary duty it is to promote this policy by the establishment of native courts, in which bribery and extortion and inhuman punishments shall be gradually abolished. Provincial Courts are instituted to deal with the non-natives, and to enforce these laws of the Protectorate, more especially which deal with slave raiding and slave trading, the import of liquor and firearms, and extortions from villagers by terrorism and personation. If an Emir proves unamenable to persuasion or to threats, and will not desist from such actions

(as in the case of Kontagora and Bida) he is deposed, and in each case a Fulani or other successor recognised by the people has been installed in his place. (Keay and Richardson 1966:32-33.) As in other instances of the Dual Mandate, the neat separation into two spheres of law did not quite work out in practice.

Sir Donald Cameron, Governor of Nigeria, effected a series of changes in 1933 in an attempt to bring Northern Nigeria's laws into closer conformity to Southern practices. In general even greater governmental control of the system resulted. Rather than examining each of the changes--the Protectorate Courts Ordinance, the West African Court of Appeal Ordinance, the Native Courts Ordinance, and the Supreme Court (Amendment) Ordinance--we may see the basic underlying principle in the Native Courts Ordinance, 1933.

That ordinance replaced earlier ones. It extended the appeal system and powers of administrative officers. It established a complicated system of appeals which could take cases from the native to the colonial system. Patently, it had a profound effect on the administration of justice.

There were two further extensions of the basic principle of increasing centralization of power prior to independence. The Brooke Commission of 1948 made a number of recommendations, and the Native Court Law, 1956, and the Moslem Court of Appeal were two results. The Native Court Law attempted to stop people from jumping from one system to another. Anyone who had ever instituted a case in a native court was to remain subject to its jurisdiction. Five, instead of four, grades of courts were recognized. Land jurisdiction was given specific provision. Some of the powers of administrative officers were curbed.

Grade A Limited, and Grade B courts no longer had their decisions subject to review. Decisions of lower courts continued to be subject to automatic review. Residents could, however, review any decisions, but could not reverse them. Their reviews could only lead to transfer. No longer could district officers sit as presidents or advisers to native courts.

Appeals were simplified. They went either to the High Court or to the Moslem Court of Appeals as appropriate. All Grade A courts were Moslem. Because of the provision for "substantial" justice, however, a case of murder could go to the High Court instead of the Moslem Court of Appeal.

All these reforms tended towards increased centralization and uniformity of law. The trends did not proceed without criticisms and opposition, which were perhaps expressed in the clearest and most public manner before the Minorities Commission of November, 1957 to April, 1958. The Commission grew out of Northern desires to assure the rest of the world, especially investors, that there was a modern legal and court system in the North. That system had to remain Muslim while still being modern. Studies were made,

therefore, of legal systems in other Islamic countries.

A number of fears were aired before the commission. Basically minorities were afraid of being compelled to stand trial in Muslim courts with their patent biases against women and non-Muslims, especially regarding permissible evidence and homicide. They objected to the power of emirs to appoint alkalis and other obvious devices to control Islamic courts.

The Commission made a series of recommendations to assure minority rights. (See Keay and Richardson 1966:62ff for a clear discussion of all the recommendations.) Chief among them was the right to "opt out", explained below. Others called for improvements in training and procedure, and the principle of "guidance". This principle was related to the concept of indirect rule. Under it British colonial officials were to tutor indigenous officials along the evolutionary path of development. In legal cases, it meant that British colonial law was to serve as a model toward which local law was to evolve. Local judges were to be gently "guided" along that path. As will be seen below, the proposals did not long survive independence.

Conflict Situations in the Colonial Period

Even given the sketchy outline provided, the general frame existing in the colonial period is apparent. Some glimmer of the manner in which the system operated is provided by court decisions and personal observations. A salient hypothesis is that the indigenous people were not passive participants in the colonial process. They actively reinterpreted and shaped colonial policy. Given the frame that limited and bounded their activities, they were still able to manipulate the rules and organize their activities in efforts to get the best possible deal given the operant context. Indeed, their actions often gave definition to the situation. A transactional viewpoint, in fact, in which sociocultural negotiations take place, and strategy and tactics are planned, goes far to explain the unfolding of the colonial legal system.

There are a number of areas of conflict between Muslims and non-Muslims. Anderson listed them as: child marriage, compulsory marriage, exclusion of converts from inheritance, procedure and evidence, restitution of conjugal rights by force, and polygynous marriage (Anderson 1960:441). Additionally, English law would conflict with traditional law most strongly in areas of land rights and marriage. I would add the areas of homicide and theft.

Conflicts provide key observation points in perceiving the emergence of what Malinowski cogently referred to as third cultures, tertium quids. Those new forms arise, as do all sociocultural forms, from real struggles and attempts to control the environment. The colonial milieu provided the conditions in which those new forms could develop. The basic issue at stake was that of power, of centralization as opposed to decentralization. Intermediate issues clouded the basic theme, but that theme was always present and emer-

ged clearly in the post-colonial era.

Land Law

As we have seen, under all four indigenous systems the land is communally owned. Any individual who lives on and improves land can pass it on to his descendants. Anyone who neglects land, loses it. We have seen also that Islam opposed to that traditional, communal system the conjugal family tie. The colonial situation added a new dimension to the problem, and exacerbated the Islamic trend toward individualism. Land became scarce, a new condition in the North, and one in conformity with classic conflict theory (Prothero 1957:559). Prothero further notes the marked tendency for non-farmers to own the best farmland. Farmers, then, become a rural proletariat. The possibilities for abuse are obvious and become pronounced in the post-colonial period.

The development of that tendency was in clear violation of the colonial land law of Northern Nigeria contained in the Land and Native Rights Ordinance (Cap. 105, Laws of Nigeria, 1948 rev.) That law stated that all lands were native lands and were to be administered in conformity with native law and custom. However, the ordinance introduced Certificates of Occupancy, and a principle that, as Lord Hailey noted, endangered the law's intent (Meek 1968:148). He said: "...it is clear that in the northern emirates an exclusive right of user, which has now lost most of the aspects of communal right, is being built up beneath the ultimate right of the Crown." Meek cites Lugard to refute Hailey's claim, but all he proves is that the Government never intended this result (Meek 1968:149-150).

As Prothero demonstrates, whatever the Government's intent, the result was to establish a principle in conflict with indigenous systems (1957). Indeed, Meek gives a personal example from 1921 supporting the assertion that chiefs under the guise of distributing scarce land began to accept payments that represented more than the traditional modest presents that acknowledged their political authority (Meek 1968:149-150). Those gifts became regarded by the giver as entitling him to "alienate the property".

Meek additionally cites the 1939 and 1940 Conference of Chiefs to prove "elasticity" in the manner of native rules for land transactions (Meek 1968:151). What he nevertheless proves is that the Islamic practices were overriding the traditional, and that colonialism was creating circumstances favoring individual control of land. Another major factor favoring that change was the introduction of commercial crops and of mixed farming.

It is clear, denial notwithstanding, that the colonial government did change the traditional land tenure system by making individual ownership of land profitable and easy. The Hausa were "pre-adapted" toward individual ownership through the Maliki law. When conditions were favorable, therefore, it was not a difficult cognitive step for them. Nevertheless, the social consequences were great.

Suffice it here to state that the most apt summary phrase is the creation of a "rural proletariat". Meek in fact admits that land policy has undergone a profound revolution (Meek 1968:300). The abolition of slave labor alone had far-reaching results. He makes a further observation:

The pax Britannica has enabled pagan tribes, particularly in Northern Nigeria, to descend from the hills and distribute themselves widely over plains which were formerly unoccupied. A direct result of this has been the disruption of thousands of village communities (Meek 1968:301).

Such has been the case with each of the four indigenous groups under study. (See Salamone 1974 for a detailed study of the situation in Yauri.)

Laws, of course, have not been the only factor impinging on traditional land tenure systems. Far more influential has been the force of social and economic pressures. Ajayi makes the point that only those laws relating to "public domain" have directly influenced land tenure (1956:59-60). The concept of individual ownership, however, has been indirectly influential and, given the economic pressures of modernization, has led to the selling of land. Furthermore, the establishment of new towns, such as Jos, and "mixed courts" to handle problems in cantonments, has also influenced the land tenure (Keay and Richardson 1966:112-114).

Marriage and Family Law

Domestic Relations in Customary Law also provide evidence of the same general trend of the individual emerging gradually as an entity distinct from the group (Ajayi 1956:60).

That trend is seen in the attempt to punish the apostasy of those who had opted out of Islamic courts by granting divorces to their wives and refusing them custody of children born in Muslim marriages. Other changes made by colonial law in family law were in conflict with Muslim Hausa practices. Thus, no girls under eleven were allowed to be married or "defiled". Women's rights were protected in a number of ways. No woman could be forcibly returned, for example, to her husband (Anderson 1965:79-80) (a practice, incidentally, which was in contrast to that subsequently followed in post-colonial Yauri). Economic and social changes upgraded the position of women. Educational opportunities, as well as new jobs, became available. Public health measures entailed conflicts with practices of keeping women in seclusion when they were taken to isolation centers to stop the spread of communicable diseases.

The area of family law clearly demonstrates the ambiguity of colonial practices regarding the legal status of people as well as the options open in manipulating the law. Unlike Portuguese, French or Belgian colonial laws, there was in Northern Nigeria no provision through which an individual could totally and irrevocably exempt himself from customary law. There was merely a making available of

optional transactions, including marriage, of the Western type. Each transaction was judged in its own context as being customary or not (Phillips 1956:94-95). An individual could, therefore, change his legal status from transaction to transaction, seeking to discover wherein lay his best advantage. Such a system makes it possible to change identity through changing style of living from time to time--choosing which laws promote one's interest best. They therefore encourage entrepreneurial manipulation.

That manipulation was also available to native rulers. Muslims sought to have civil wrongs, such as adultery, raised to criminal status. There were a number of problems, moreover, regarding mixed marriage. In every case, Muslims were favored regarding custody of children and ability to sue for divorce (see Salamone 1974 for a fuller discussion).

Relationship of Colonial Law to Traditional and Islamic Laws

Colonialism produced a tertium quid, or, better, a number of them in Northern Nigeria. In spite of its claim not to produce anything new and to protect that which existed, from the very beginning colonialism began to change the structure of relationships. Here we are basically concerned with the structure of legal relationships. Colonial treatment, for example, of Hausa Islamic law as a customary native law enabled that law's deviations from the Shari'a to proceed along their natural course. Moreover, contrary to Yusuf's assertion, the colonial government facilitated the spread of Hausa legal hegemony by its military support of Hausa claims and the codifications and rationalization of the system (Yusuf 1976).

The social and economic milieu of colonialism favored the spread of individual land holding. The end of slavery, spread of commercial crops, opening of Nigeria to international markets, growth of new towns, establishment of the colonial civil service and numerous other changes brought with them their consequent legal corollaries.

The new colonial legal system gave wider range for legal manipulation. People were allowed to "opt out" long before the Minorities Commission in July 1958 made further proposals for opting out to safeguard the rights of individuals. Specifically it proposed that individuals should not be tried in courts under laws to which they were not subject. In September 1958 the Panel of Jurists established to recommend modernization measures for Nigerian laws issued its report to the Government of the Northern Region, in which a major proposal was that a uniform Penal Code and Criminal Procedure Code should replace all the native codes. A period of guidance would precede the full implementation of the Code. During that period opting out would be allowed.

That there were problems and confusion regarding opting out is not surprising. There were more than 700 native courts in the North. Furthermore, there were inevitable problems of interpretation regar-

ding what constituted a Muslim court. After all, many Muslim courts had been administering non-Muslim law for some time. Additionally, many Muslims opted out of Muslim courts because they had changed their lifestyles. In those cases, such people were technically guilty of apostasy. However, the Muslim courts could not try them for apostasy, and therefore tried to penalise them through decisions in civil actions in regard to marriage or child custody, further complicating matters (Richardson 1964:24).

The political opponents of opting out in the North eventually killed the experiment. In the Native Courts (Amendment) Law, 1960, residents were given the right to refuse transfer from one court to another. In 1961, one year after independence, the experiment ended with new legislation and provision for modern training for Islamic judges (Richardson 1964). Although the experiment was short-lived, it was obvious during its subsistence that the principle of manipulating the rules in order to receive the best available deal was in operation. It is also clear that the best deal was not available in Muslim courts. Yusuf admits that the operation of the Shari'a was often arbitrary (1976:52). Individuals chose the more predictable and just magistrates' courts when given the opportunity. Certainly, members of the "modern" sector were fearful of their chances in traditional courts.

The marriage law and mixed courts were new institutions, but they led to changes in existing laws, even in so-called traditional spheres. The rapid increase in bride price, for example, is a direct result of colonialism. Thus the Afusare now give a one-time payment of bride price as opposed to their former installment payments. That payment is based on the educational level of the women.

In sum, colonial rule produced a new legal system in Northern Nigeria. It led to immense changes in traditional legal systems. At the same time, it spread the Hausa system.

V. THE POST-COLONIAL PERIOD

The general movement in Northern Nigeria has been to rationalize and modernize the Islamic system in order to suppress non-Islamic traditional systems in the North while opposing westernized ones in the rest of Nigeria. The movement is obviously part of a dialectic in which the southern areas of Nigeria have suppressed native courts while centralizing the administration of justice. It is a logical part of the post-colonial period, a period marked by ethnic struggles, civil war, coups, and conflict over the status of the Shari'a in the new constitution.

The argument has never been over centralization, only over who would control any centralized organs. To that end the Northern Muslims have attempted to consolidate their power before risking it on a national level. They have attempted to do so in a number of ways--political, social, cultural and economic. The Kainji Dam and

proposed Abuja resettlements starkly illustrate their methodology and will serve as case studies. Changes in laws and court organization will be noted but no detailed discussion will be presented.

The Kainji Dam Resettlement

This project has affected two of the four groups under consideration, namely the Dukawa and the Kamberi. Specific details of the resettlement are readily available (see for example Salamone 1973, 1975, 1977; Roder 1970; Jeness 1970). The meaning of those details is far more important, for the fears expressed by people before the Minorities Commission have come terrifyingly true. A type of cultural genocide has taken place.

The ostensible reason for resettling 50,000 people was to provide them and other Nigerians with a better life through cheap hydroelectric power, better dwellings and more efficient irrigation. Not one of those objectives has been reached (Salamone 1977). There is no cheap power, dwellings are worse, health has deteriorated, social and cultural confusion has increased, irrigation is more expensive and less efficient. The real goal of the resettlement has, however, been achieved. Irresistible political and economic power over resettlement people has been exerted and many have converted to Islam (Salamone 1975). The purpose of that conversion is to assure electoral cooperation in the future, a process already demonstrated in the 1977 Constituent Assembly elections and the subsequent 1979 general elections.

Pressure on Dukawa and Kamberi within the region has not yet succeeded in gaining large numbers of converts. This is primarily because they are "bush" people who can escape Hausa pressure. Mission influence has also shielded them somewhat from Hausa pressure. By way of contrast we may observe the Gungawa, the so-called "island-dwellers". They have been forcibly resettled from their riverine settings and "encouraged" to convert to Islam. Their example is a vivid one in Yauri and other parts of the North that know of the Kainji resettlement.

There have long been Muslims among those Kamberi who live in towns. Those people, however, usually use their Islamic membership to help preserve and upgrade the Kamberi ethnic identity. Kamberi women also intermarry with Hausa. In recent years, however, the Hausa have begun to exert pressure in a number of ways to obtain conformity.

A major means of exerting pressure has been control of the legal mechanisms. Although traditional indigenous law is still administered, where possible, within a group, problems between ethnic groups or within a town are handled through the formal courts. In Yauri that means, for all practical purposes, Islamic courts. That further means that any problem between Muslims and non-Muslims is perceived as being settled inevitably in favor of Muslims.

I have attempted to explain the situation in the following terms:

In an ethnically stratified society, ethnic affiliation and identity are associated with access to political power. Thus, those best able to avoid governmental pressure to change are most able to preserve their own ethnic identities and values. Those least likely to avoid governmental pressure for change will be most likely to change their behavior in ways the government desires...In areas where society is basically organized on principles of ethnic pluralism, ethnic groups are political groups. (Salamone 1974a:258-259)

The conclusion is inevitable. In order to control the Kamberi and Dukawa the Hausa must find means to countervene their strategy of avoidance. That is what has happened in Yauri. Although it is impossible to exert the type of pressure exercised via resettlement on the Gungawa, the Hausa are applying lessons they learned in that resettlement.

Figure 1

YAURI LOCAL AUTHORITY--PRE-REFORM
(after M. Yusuf)

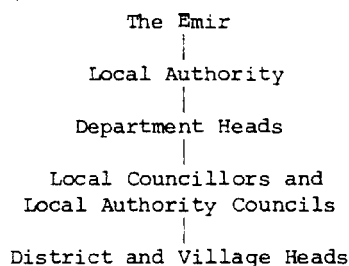
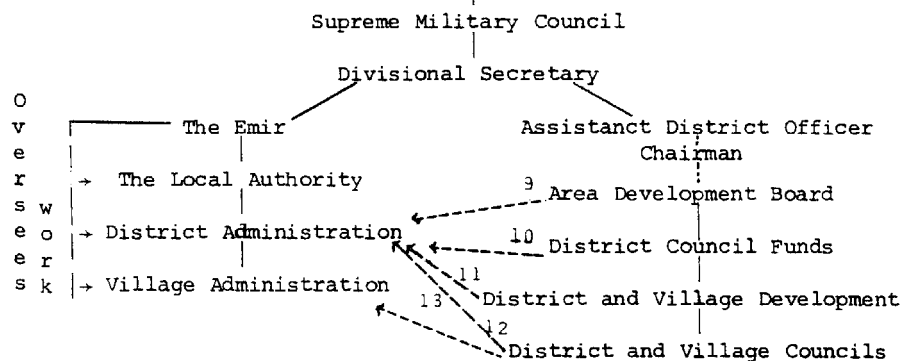


Figure 2

YAURI LOCAL AUTHORITY--POST-REFORM
(after M. Yusuf)



First, it is necessary to go beyond mere centralization of the court system. People can plan to avoid the courts by melting into the bush. Police, most of whom are strangers, are notoriously hesitant to go to bush areas. More important than the centralization of the legal system is the statutory declaration that all land is government land. The Dukawa and Kamberi have the ever present lesson of resettled Gungawa before them. The government has had no compunction about quartering troops in resettlement houses or taking land away from people who move. The Gungawa, furthermore, have provided examples of how converts receive preferential treatment in courts and in economic matters. Conversely, non-converts or Catholic converts have been openly punished through overtaxation or overcharging for use of government irrigation pumps.

The Dukawa rightly perceive the construction of roads to the bush and the drilling of water wells as government attempts to control their options. There is little they can do about these. They have turned to armed resistance, but with tragic results. Meanwhile, they have the example of one errant Dukawa to ponder. A man who had been convicted numerous times of adultery and who was rejected by his people was converted to Islam, moved to another area, and was made district head.

Finally, the individualization of property goes on unabashed. I witnessed a near riot at the opening of the Operation Feed the Nation program in 1976 in Yauri when rich merchants were allowed to purchase government-supplied grain. No secret is made of the large farms owned by wealthy people in Yauri.

Mohammad Yusuf, himself a member of Yauri's royal family, has argued strongly against the post-colonial reforms (1973). He sees the continued centralization of power as detrimental to the administration of justice, pointing out that the ending of traditional courts and Local Authority police has impeded justice. The charts he offers of the pre- and post-reform structure are instructive (1973:66-67. See Figures 1 and 2 above.)

It is clear that governmental and economic activities down to the minutest details are centrally controlled. In Yauri that means that Muslim Hausa have effective control of power. That power has increased since the creation of new states in 1976 and the zoning of Nupe areas out of Sokoto State.

The Abuja Resettlement

This scheme is affecting the Gbagyi. The manner of the Abuja resettlement is reminiscent of Kainji, except that in Abuja everything is on a grander scale as befits the proposed new capital. The size alone is startling, 365,000 square miles. Significantly, the Hausa city of Abuja is not part of the resettlement. Significant, also, is the fact that the Gbagyi and related ethnic groups, long enemies of the Hausa-Fulani, are to be resettled.

I worked with the Plateau State Resettlement Board's researchers and discovered their fears and repugnances toward the resettlement. They were well aware that the ecological and economic changes would alter current indigenous structures. There would be new laws regarding property holding, essentially taking away communal ownership of land and vesting it in the state. Markets would be controlled centrally, not locally. Ethnic leadership bases would be disrupted, just as they were at Kainji. New, and artificial, political units would be established which would nullify indigenous political leadership.

Predictably Gbagyi and other ethnic associations have been vocal in expressing their suspicions regarding the resettlement. Gbagyi students and intellectuals have become involved in planning the resettlement in order to monitor it as carefully as possible. Interestingly, while opposition and problems mount, there are no plans to halt the resettlement.

Post-Colonial Laws

Since independence, on October 1, 1960, all criminal trials have followed the Penal Code. Further legislation has reformed the native courts, established a Shari'a Court of Appeal, limited Class D courts to civil jurisdiction, set up an inspectorate, and established the principle of "guidance" referred to earlier. Furthermore, the inexorable movement to strip local groups of their power of resistance to Islamic pressures has continued.

One reason that the establishment of the Shari'a Court of Appeal at a national level has been vehemently opposed is that after independence the court would in practice have had no curbs on it. Shari'a law extends in Nigeria to personal and land law. The Islamic courts employed their jurisdiction to establish the principle that individual ownership of land, and therefore its alienation, was in accord with Muslim principles, and "Islamic law does not give way to custom when that custom is contrary to Islamic law" (quoted in Keay and Richardson 1966:267).

The detailed legal history of the various military governments is beyond the scope of this work. Smith, however, clearly outlines their general goals (David N. Smith 1968:49). Highest priority was given to the integration of locally administered native courts in the regional governmental court structure. Over 750 native courts in Northern Nigeria were moved from the Ministry of Justice to the Judiicial Department, thereby making them independent of native authorities, and the judicial powers of the emirs' courts were withdrawn. (See also Salamone 1974a.) Smith points out that in non-Muslim areas traditional courts still function unofficially. The "reforms" fail to recognize the quasi-judicial/quasi-arbitral nature of Gbagyi, Dukawa, Afusare and Kamberi courts (David N. Smith 1968:53-55). The general thrust, therefore, has been toward a Western structure of law with its consequent emphasis on "uniformity".

Vengroff persuasively argues that the conflict between the

power inherent in chiefly roles and that required by a colonial regime undercut the traditional bases of chiefly power and compelled chiefs to rely increasingly on central power to enforce their decisions. That posture has carried over into the post-colonial period where chiefs customarily look to central power for legitimacy (Vengroff 1975:40-41 and 48). The explanation perfectly fits the Northern Nigerian situation.

The spread of Islamic power into the remotest areas is documented in a number of places. My study of the powers of the Social Welfare worker makes the overriding point that Islamic power has spread to the minutest areas of personal life, including rules for pagan marriages and bride-price or -service (Salamone 1974b).

Conclusions

The post-colonial period has been marked by an increase in the power of the central, national government. Whoever controls the organs of that government clearly controls Nigeria. Any discrepancy in the North's attitude toward centralization is easily explained in terms of its basic strategy of seeking to control those organs while also consolidating its power bases.

The increase of centralized powers has meant a concomitant decrease in the power of local groups. The Hausa have moved to reduce local resistance in a number of ways. They have controlled all the essential political and economic positions, resorting to forced resettlement in order to exert pressure for compliance with their desires. Conversion to Islam has a significant part in their overall plans, for it enables them to claim that the Shari'a is the native and customary law of the North and that any opposition to it is strictly based on religious grounds. Religion, for the power elite in the North, is an ethnic boundary marker.

VI. THEORETICAL PERSPECTIVES AND CONCLUSIONS

The Value of Theory

The theoretical perspective that treats culture as a system of rules allows a logical ordering and comparison of structural similarities and differences. Such an ordering easily locates stress points in the meetings of people of different cultures. Alone, however, such an approach often leaves out the flesh and blood interactions of life itself.

A strategizing perspective examines the ways in which people make decisions using the rules available to them. It focuses on individuals seeking to maximize gains and minimize losses. It concentrates on conflict situations in which power is exerted to gain specific ends. In itself, however, such an approach may neglect cultural limitations on choice.

Figure 3

MARRIAGE

Group	Traditional	Muslim	Colonial	Postcolonial
Dukawa -Hune-	Priest settles problems. Equalitarian nature. Bride service-marriage and child custody. Divorce--rare, for adultery. Lover killed if "in act". Levirate.	Little influence	Little influence.	Limits on bridewealth.
Kamberi	Priest settles problems. Bride service. Secondary marriage. Adultery frequent. Lover killed "in act". Levirate.	Hausa men marry Kamberi women and Muslim law prevails.	Any apostasy punished in civil courts. Hausa gets child.	Little change.
Gbagyi	Bride service & price. Divorce on repayment of bride price. Father keeps child. Levirate.	" "	" " Marriage Code.	" " Marriage Code.
Afusare	Bride service & price. Levirate. Men keep children.	No influence except in rare cases of out-caste Afusare women marrying Hausa.	Mixed courts, favoring Hausa party. Limit on bridewealth. Marriage Code.	" " Marriage Code.
Hausa	Father "owned" all children. Wife could divorce on return of bridewealth. Women had no choice in marriage partner.	Shari'a modified by Hausa practices. Bridewealth & dowry req'd & other deviations. Women dispose of only 1/3 property	Hausa practices spread & supported. Emphasized more immediate family ties. Marriage Code.	Hausa practices spread & supported. Marriage Code.

Figure 4

WITCHCRAFT				
Group	Traditional	Muslim	Colonial	Postcolonial
Dukawa -Hune-	Worst crime. Witches are family members who eat viral organs or poison meat. Beat, but not kill witch. Most = men.	Use of malla-mai to obtain charms.	Forbade and punished witchcraft.	Basically, ignore witchcraft.
Kamberi	Worst crime. Witches = men. Killed or ostracized. Priests can reconcile them.	" "	" "	" "
Gbagyi	Worst crime. Witches=women. Witches form societies. Anti-witches combat them. Mother is the source of witchcraft. Strangers but reconcilable.	" "	" "	" "
Afusare	No distinction between witch & wizard. Control of POWER. Priest=witch. Witchcraft is neutral. Chiefs, good men protect.	Use of wandering mallamai for charms.	" "	Punishes witchcraft.
Hausa	Witches eat souls. Mostly women. No malice to victims. <u>Bori</u> cult. Witches not punished but must cure victims.	Efficacious but evil. Evil spirits exist. Witches allied with "black" spirits. Pagan gods are the evil spirits.	" "	" "

Figure 5

LAND TENURE AND INHERITANCE

Group	Traditional	Muslim	Colonial	Postcolonial
Dukawa -Hune-	Rights of usufruct pass patrilineally. Widow inheritance.	Warfare with Muslims. Conflict over ultimate ownership.	Spread out from fortified areas under <u>pax Britannica</u> . Land values raised.	Threats to communal lands via government "developments".
Kamberi	Patrilineal bias. Use of land passes patrilineally. A man inherits his wife's property. Woman loses property via adultery.	Warfare with Muslims. Conflict over ultimate ownership.	" "	Resettlement after Kainji Dam and government alienation of land.
Gbagyi	Patrilineal bias. Rights of usufruct. Widow inheritance. Mother protects rights of minor.	Warfare with Muslims. Conflict over ultimate ownership.	" "	Resettlement for new capital at Abuja.
Afusare	Patrilineal bias. Rights of usufruct. Widow inheritance.	Successful warfare vs. Fulani <u>ji</u> had.	" "	Eminent domain and developments threatening communal property.
Hausa	Patrilineal bias. Communal ownership.	Women inherit. Tendency toward individual ownership and alienation of land. Converts to Christianity excluded from inheritance.	Strengthened <u>Shari'a</u> . Trend toward alienation of land. Certificates of occupancy. Made land scarce, thus raised value.	Spread of Hausa hegemony over subject peoples via "legal" means.

Figure 6

HOMICIDE				
Group	Traditional	Muslim	Colonial	Postcolonial
Dukawa -Hune-	Murder of a brother, must seek reconciliation through a priest. Unjustifiable homicide leads to vengeance, no action for accidental killing.	Local people can only tie & beat murderer, no death sentence. Murder=tort, bodily harm. Accidental killing not justified. No vengeance. Muslims favored.	Category of manslaughter. No distinction between murder within and without a family.	In Yauri, basically Muslim law. Local courts stripped of formal power.
Kamberi	All deaths=results of homicide. Reconciliation via priest. Dead person reveals murderer. Property confiscated and all but one enslaved.	" "	" "	" "
Gbagyi	Most murder through poison & witchcraft. If murderer was a stranger, then vengeance killing of any family member. If a Gbagyi, property seized. Males reintegrated.	" " No blood vengeance permitted.	" "	Combination of Islamic & modern law. Local courts stripped of formal power.
Afusare	Murder w/i family is punished by God, with priest's help. Murder outside=trial by ordeal w/ priest presiding.	Only contact is in "mixed cases" outside their area in Hausa towns.	" " Unlike traditional cases, accused imprisoned before trial.	Modern law. Local courts stripped of formal power.
	Cont.			

Figure 6, cont.

HOMICIDE

Group	Traditional	Muslim	Colonial	Postcolonial
Hausa	Murder within family distinguished from those outside.	Modified Shari'a with traditional law. Family of deceased no right to kill but can grant or withhold mercy. Blood money possible.	Conflict between Shari'a and criminal code definition of homicide. Shari'a overruled.	Criminal code definition of homicide still in force.

It is necessary to combine the two approaches in order to ascertain the rules of the systems under study and to discover how those rules are manipulated. This combination enables the researcher to note what choices are in fact open to acting individuals in terms of both the rules and the meanings of situations to actors.

Obviously this study has not always been able to cite concrete cases of rule manipulation, and to the extent that it has not, it has been weakened. Conversely, however, where it was able to do so the greater clarity thereby provided attests to the power of the theoretical perspectives and the methodology consequent on it.

It is clear from the colonial and post-colonial periods that rules emerge from internal and external conflicts. The study of such conflict demonstrates in bold relief rules that otherwise remain implicit. The summaries in charts 3-7 locate stress points in the contact of the systems of law under discussion.

Similarities and Differences Between the Systems of Laws

Examination of the figures set out above and below is revealing. It is clear that indigenous, traditional systems had much in common. Their laws emphasized corporate groups and alliances. Offenses within the family were clearly distinguished from those between families. Offenses between strangers took on the nature of those between independent nations.

Islamic, colonial and post-colonial law were based on different principles. At one and the same time individuating and centralizing tendencies are clearly at work. According to these principles, for example, land is not inalienable nor communally owned. The ruler is not merely a custodian of the land, and there is a right of eminent domain. The same trend is clear in every case examined. The pulling

Figure 7

THEFT

Group	Traditional	Muslim	Colonial	Postcolonial
Dukawa -Hune-	Ethos of sharing. Thief=stranger Kill thief "in act". Property destroyed.	Shari'a rules regarding evidence and procedure. Favor Hausa in "mixed cases".	Rules of evidence and procedure in criminal code.	Criminal code replaced native courts.
Kamberi	Physical property, wives & souls stolen by thieves. Thieves killed "in act". Family thieves beaten.	" "	" "	" "
Gbagyi	Foreigner=en-slaved or killed. Gbagyi=fines and restitution. Distinction between robbery & theft. If death in robbery execution.	" "	" "	" "
Afusare	Theft w/i family punished by God. Equal in gravity to assault or giving away secrets. Sold into slavery. Killed "in act"	No influence in non-Hausa areas.	" " Mixed courts.	" " Mixed courts.
Hausa	Thieves usually killed "in act" Theft w/i family distinguished from theft outside family.	Mutilation of thieves. No witnesses or testimony from thieves.	Great clash regarding evidence and procedure.	" " Struggle to introduce Shari'a on federal level. Public execution of thieves.

of the individual from his familial group is but a step toward tying him to the larger society, for it is clear that ethnic rivalries are waged on a larger stage. Those rivalries have been waged in the legal area as well as others. The Hausa, for instance, have used their control of the Shari'a system to attain ethnic goals.

One other fact emerges from the comparison. Legal developments in Northern Nigeria have forced indigenous people to redefine traditional law. Many of the principles enunciated here were never explicitly formulated before the advent of outside pressure. Furthermore, while informants distinguish between traditional law and other law they also differentiate between "older" and "newer" traditional law. Matrimonial law, as a major example, has changed significantly in every group under discussion.

Greater concentration of power, then, has had clear consequences. Indigenous people have been subjected to incomprehensible laws. There is a lack of justice on the local level. The use of laws for attaining ethnic goals has exacerbated conflict. The achievement of any real unity in Nigeria has been retarded.

The principle cited from Weber in the introduction can now be seen in appropriate perspective. When a new line of conduct is open, new meaning is given to old rules and new rules devised for new meanings. I would add that new rules are often devised to preserve old values.

Suggestions for Future Research

To test the conclusions of the paper and the usefulness of the theoretical perspectives it is necessary to examine other areas of Northern Nigeria law. Such examination should include other minority groups in the North as well as other Islamic groups, such as the Nupe and Kanuri. Additionally, "pure" Hausa successor states such as Abuja should be contrasted with Hausa-Fulani states. Other areas of the law should also be included in order to permit a more carefully controlled comparative study. Furthermore, a more consistent combination of cultural and social methodology must be effected. Specifically, individuals using cultural rules to gain their own ends demand more systematic attention than I have been able to achieve in this paper. Such a goal may be unobtainable for the more ancient periods, but it is certainly worth striving for.

Finally, the synchronic-diachronic methodology must be followed if we are to ascertain the logical working out of principle in conflict situations. The persistence of certain strategies in similar situations can only be seen over time. The relationship of the principles in a coherent and meaningful structure is a task for diachronic analysis. The two methodologies are not antithetical but complementary.

It is suggested that the predictive value of such an approach has not only theoretical and methodological significance. It has

policy value as well. Conflicts can be noted before they occur, and measures can be taken to avoid them while safeguarding minority human rights.

NOTES

¹The practice is that of the so-called Shanga Dukawa, residing in Yauri near the Shangawa, reputed descendants of the Songhai people. MacBride (1935) stresses that the cult at Giro, the center of the Shanga Dukawa, had not come under Shangawa influence.

²Males in both Dukawa and Kamberi society form male lodges whose main job is to "keep women in line". An informant stated that no male believes in the religion of the Bakin Dodo lodge. Its use, he said, was to keep women and children frightened. Women, of course, know this and openly admit that they only pretend to be frightened. In both societies they manipulate the system as much as men do.

³Kamberi claims to be the original rulers of Yauri are recognized in the special relationship that prevails between the Emir of Yauri and Kamberi from Ngaski. Furthermore, the only Hausa with tribal marks in Yauri are members of the royal family. Their marks are Kamberi ones, which in turn are those of the Katsinawa. It is important to note that Yauri was once much larger than it is today and extended to the Nupe border.

⁴The ties between Kamberi and Gbagyi have never been adequately explored. Gbagyi readily admit their relationship with Kamberi, institutionalized in a relationship of privileged familiarity.

⁵Those relationships are the subject of a paper I prepared for the Annual Meeting of the American Anthropological Association in 1979, "Afusare Male/Female Relationships" (Salamone 1981). They will, therefore, be treated quite briefly here. I wish to thank Joseph Rin, an Afusare, who gave so tirelessly of his time and continues to do so.

⁶Although non-Muslims are not subject to the Shari'a in theory, they in fact are. I personally witnessed such a case in 1972.

⁷For discussions of "indirect" in the sense of this statement, see Dorward 1974, Salamone 1978 and 1981.

⁸Much of this section is based on Keay and Richardson 1966.

⁹Chairs all committees.

¹⁰Approves financing.

¹¹Approves planning.

¹²Advises.

¹³Advises.

DEDICATION

To my wife, Virginia Ann Catherine, who taught me that love provides a law and order perfectly compatible with freedom, I dedicate this study. To our son Frank Charles, who taught us to appreciate our parents' law, I give thanks. Both of us extend our thanks to all those who helped us in our work in Nigeria.

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