



The Shari'a in context

People's quest for justice today and the role of courts in pre- and early-colonial northern Nigeria

Murray Last
University College London

Sociétés politiques comparées

42, mai-août 2017

ISSN 2429-1714

Article disponible en ligne à l'adresse : http://www.fasopo.org/sites/default/files/varia1_n42.pdf
Citer le document : Murray Last, « The Shari'a in context. People's quest for justice today and the role of courts in pre- and early-colonial northern Nigeria », *Sociétés politiques comparées*, 42, mai-août 2017.



The Shari'a in context

People's quest for justice today and the role of courts in pre- and early-colonial northern Nigeria

Murray Last

The text of this talk was originally composed within northern Nigeria at a time of crisis over the proper source of justice, ca. 1999/2000 (1420AH). As a draft paper it was presented two years later, at the International Conference on Muslim Family Law in Sub-Saharan Africa, at the Centre for Contemporary Islam, University of Cape Town, in March 2002. My purpose was to understand, even to explain, the extraordinary popular excitement over shari'a law that was truly palpable among ordinary people – even taxi drivers were offering free rides to Gusau where the very first implementation of “full shari'a” was taking place, something not seen since the advent of British/Christian colonialism exactly a hundred Islamic years before (in 1320AH/1903). It was, for the wider Muslim public, the start of a new era, the ultimate decolonisation, the final achievement – for northern Muslims – of genuine Independence. In a sense, the much-revered Sokoto Caliphate was being revived.

This talk, then, tried to capture, even justify, the various rationales for the enthusiasm – especially the deep-rooted longing for justice. For the excitement was not just founded on religious faith – an extra-pious practice of Islam had always been seen as the best way of persuading Allah to remove the invasive *Nasara* (Christians, in particular the British) from northern Nigeria. What was still missing was the reality of the justice that only Allah guarantees. This talk, I think, is therefore worth offering to a wider public, not only to remind readers of that rare enthusiasm but also to prompt researchers into the history of justice, and what it has meant to ordinary people, whether pre-colonially, colonially or today. For the introduction of “full shari'a” in the courts of twelve of Nigeria's states never fully met people's expectations: amputations, stonings never were instituted, the elite were never brought to justice. Even the severest threats against a Qadi (the judge in an Islamic country) who did not want to sentence a woman to stoning were circumvented by his knowing that on appeal any sentence of his would be overturned – and so it was. Another Qadi became notable for permitting evidence from women speaking as spirits in a *bori* possession trance. As ever, some Qadis proved better over time than others, whereas the higher judiciary has been hailed in 2017 as the nation's “new supermarket”: some high court judges, it seems, can be bought. An Islamic institution for enforcing good and forbidding wrong, the *hisba* system of Islamic policing, varied widely between states, with Kano's having for a while a *de facto* prison on its premises. Nonetheless, the demand for “proper justice” remains as strong as ever – only expectations of getting it are muted once more. Some Muslims, however, have become so angry that they despair of government and turn, as insurgents, to extreme violence; and in their anger they receive tacit support from a wider, grass-roots public that in subtle ways thereby enables the insurgency. For this wider public too longs for justice, whether from the judiciary or from government and its agents. In short, to be without justice brings serious trouble.

I owe the reader, however, a deep apology: the footnotes that underwrote this talk have long gone – they included theses to be read in northern Nigeria as well as individual men and women who, over the many years that I have been going to northern Nigeria, have been generously giving me information and ideas. Much the best work published on the subject of modern shari'a justice in northern Nigeria is the five-volume study by Professor Philip Ostien compiled when he was at the University of Jos: *Sharia*

Implementation in Northern Nigeria, 1999-2006: A Sourcebook, compiled and edited by Philip Ostien, Volumes I-V (Ibadan, Nigeria: Spectrum Books Limited, 2007). As a practising lawyer born in Jos, he has also written and edited a great many other works on the problems of shari'a legal practice in Nigeria; his insight is invaluable, but it wasn't (unfortunately) available to me when I started the talk that follows.

IMPLEMENTING THE FULL SHARI'A

The reintroduction of shari'a law - not just "Family Law" but the criminal and civil dimensions of shari'a too - in twelve out of Nigeria's thirty-six states during the last two years has caused people to realise what is in practice involved not only in running a full shari'a system of justice in a plural society today but doing so under close scrutiny from abroad and all the pressures that it puts upon the system as never before. A decision by the lowest-level court can have repercussions at both national and international level, repercussions made even more serious since the 11th September. For example, a case before a local Sokoto shari'a court has recently been the subject not only of BBC and other radio broadcasts but has been treated to full-page features in both the daily Guardian newspaper and the Sunday Observer in Britain; it has featured in American newspapers too, I am told, and Amnesty International has taken up the matter. The international media are following up local developments as they happen; the story is not just a single "flash in the pan". It is, of course, a serious case, in which a divorcee in her early thirties has been sentenced by the local Qadi to death by stoning as soon as her baby is weaned. I personally do not believe the sentence will ever be carried out (one possible way out might be to declare the child is a product of a "sleeping pregnancy" [kwantacce] by her original husband pre-divorce; in which case there is no evidence of 'fornication' outside marriage). But this case is only one of a series that have caught the media's eye; and whenever a shari'a story comes up, the BBC website has for months now routinely illustrated it with the same photo of a man holding up his amputated hand. Meanwhile awareness of this reporting abroad has reached back to Sokoto. Such publicity affects the attitudes and actions of all those involved in the case, pushing people into positions they might otherwise not have taken. Uncompromising public statements are made to the press, stances taken that are hard to retract: "Qur'anic penalties are non-negotiable", they repeat. Eventually, no doubt global interest will wane, just as local attitudes will change over time. In a somewhat similar situation in the Sudan, the rate of such shari'a sentencing dropped after some five years; people learn how to avoid those outcomes. But until that happens in the various northern Nigerian states, the actual processes of how to enforce (or not) the shari'a sentences are still being worked out, and they raise (as only crises can) acute questions of personal and public faith as well as political strategy.

The reintroduction of shari'a law raises more general questions too. For example, are the *hudud* (or Allah punishments, those specified in less than twenty verses of the Holy Qur'an) really the litmus-test of true shari'a practice (as some commentators suggest), or is the apparent emphasis misleading, partly a product of outsiders' scaremongering? Instead, is what people are seeking from the reform just the restoration of the straightforward legal procedures associated with the Qadi court system, with its old-style simplicity, its emphasis on oral evidence and, if necessary, the oath? Or should a good Muslim regard "Family Law" without the other dimensions of the shari'a as an unacceptable compromise? And if not, then why is it necessary for Muslims in northern Nigeria to have the full shari'a when it is apparently not necessary for pious Muslims in, say, Mali or Malaysia? Is there, in short, a distinct 'legal culture' in Nigeria? In this essay, in a sometimes tangential response to such questions, I will be exploring what seems to me a persistent if sometimes overlooked element in Muslim daily life in the Nigerian context: the "quest for justice". It is not that such a "quest" is unique to Nigeria - far from it - but from its exploration may come insights or challenges for the reader to follow up elsewhere.

Northern Nigeria certainly differs from the rest of Nigeria and from most other African states, in that practice of the shari'a has been intrinsic to the culture of its far-northern inhabitants for centuries with scarcely a break, even into modern times. The so-called Sokoto jihad (1804-8), the pre-colonial movement to re-instate proper observance of the shari'a by Muslim state authorities, is the pivotal point of the region's political identity and its history; it created what has become known as the Sokoto Caliphate. It thus figures in people's minds more powerfully than any "Liberation Movement" or anti-colonial struggle. Furthermore, alone of Britain's colonies, northern Nigeria continued during the short period of colonial rule (1903-1960) to implement the shari'a law to a remarkable degree. The administration of Islamic justice under colonial rule was in the hands of the local Muslim "Native Authority", with its own police, its courts, its judicial schools. Different emirates had slightly different procedures and rulings; but all were formally Maliki, some more traditionally so, others more open to minor modifications, being influenced either by local custom or by Islamic modernism. Admittedly, running alongside these courts, there was for non-Muslims British Common Law in magistrates' courts, though these handled even by the 1960s only some 6% of cases. There was, too, administrative interference (e.g. as "clemency") that stopped the carrying-out of certain shari'a punishments such as amputation of hands or feet, crucifixion and stoning. Though these are required by the Holy Qur'an and later fiqh (Islamic law), they were considered "repugnant" to the British. Nonetheless, executions by the sword continued until eventually replaced by hanging; and "banishment" was replaced by imprisonment. Flogging for appropriate offences was normal under both systems of law, though the actual methods differed. Just before independence came into effect in 1960, a new, centralised penal code was promulgated which formally tidied up the practice and procedures of shari'a in the northern region of the new Nigeria; it was modelled on contemporary experience with similar codes in Pakistan and the Sudan. "Family Law", therefore, is not, and has never been, in question. Today, it's certain key verses in the Holy Qur'an and the punishments they prescribe that are at issue – it is these latter that the twelve states have re-instated, forty years after the ending of Christian-colonial rule.

The subject of shari'a, then, is an intensely practical matter, much more than just a fascinating topic for conferences. It requires the training or re-training – and even the formal examining – of judges (up to Supreme Court level, for appeals), and now of lawyers too since the Nigerian Constitution permits lawyers in all courts. It also requires instituting and training an extra, new-style police system (the "hisba"), since the Native Authority police were disbanded along with the Native Authorities some 35 years ago; it requires, too, the appropriate personnel to carry out the punishments, in the proper manner (not just the ritual flogging but for example, how and exactly where will a stoning be done and by whom – will a willing public turn up to cast the stones, or will instead a special demonstration be mounted to prevent it; will the TV be there as it has been at "conventional" executions? Again, will a murderer be executed in exactly the same manner as he killed his victim – and if so, who will actually do, say, the multiple stabbings? Amputations of the hand may be done by surgeons, but who will remove an ear or an eye as required in carrying out the formal principle of an "eye for an eye", if it's demanded?) Furthermore there is a need to educate the public on the legal implications of committing certain acts and making statements of a certain kind. It involves, finally, politicians at the national as well as at the local level having to learn rapidly how to save people – judges, defendants, the public – from committing the kind of irretrievable wrongs that end up destroying not just the individual immediately concerned, but also the fragile unity of a community. Not surprisingly, the politicians in power were not in favour of re-introducing the full shari'a; it was a popular movement they were unable to resist without appearing to be publicly apostate.

Shari'a in this context, then, has also become much more than a practical issue. Ultimately, implementing the shari'a is a test of one's own faith: failure to judge a case rightly, failure to prescribe the correct punishment, results in your being destined to experiencing eternal hell-fire. So how seriously do you, as a judge, fear hell-fire; is it a reality for you? How far can you presume on Allah's mercy, on

His compassion, come Judgement day, if you fail or fudge carrying out a punishment clearly specified by Him in His Qur'an? These are real, not rhetorical, questions which some individuals are having to answer for themselves in northern Nigeria. And answer, as a good Muslim, in public, before the world. No longer is a local court so obscure a place. Furthermore, in the colonial period, a British administrator could take the rap on judgement day for not carrying out the proper shari'a punishments, for instance by "arbitrarily" disallowing the stoning of a convicted adulterous divorcee. But who'll come forward to take that rap today? Judges in the Supreme Court, or the President? Do they have the authority – or perhaps more relevant, the tough political will – to overturn decisions specifically made in a Shari'a court of appeal?

It is this new context, one in which shari'a law now really matters, that has made me write this paper. For it underlines how central is the question of law and justice to everyday life in northern Nigeria. I would suggest that in Britain, despite the clichés about "the rule of law" and "law and order", that 'justice' is taken for granted, and is not as central to the everyday thinking of ordinary people as it can be to Muslims in as ostensibly pious a society as northern Nigeria (and it is not just that modern Britain is not so litigious a place as, say, Germany, let alone the USA). As academics, we may repeat the commonplace that in Islam there is no distinction between religion and politics; but what is more important is that there's no distinction between religion and the law, between justice and religion. And justice affects daily lives there in northern Nigeria, in a way that politics does not. A comparison might help here: notions of justice in many ways run parallel with older notions about health and illness, in that the latter are traditionally reflections of a person's relations with spirits and the dead; in this context, healers are your lawyers, and illness is an "injury". Shari'a is good for the "health" of the Muslim community as a whole, ensuring morality and punishing the amoral, in the public domain. Having 'Family Law' alone doesn't do this.

I am suggesting that northern Nigeria is one of those Muslim cultures in which justice takes priority over other public symbols of Islamic faith. While sufism and the brotherhoods have long been strong there, Islam seems not so much a matter of personal spirituality or the crucial prop to an individual's career (which might be said of some Muslims in southern Nigeria), as primarily a communal religion that cements its members. In which case, the very publicness of criminal and civil dimensions of shari'a law has an extra importance; whereas prison sentences take convicts out of the community, flogging and amputation return them almost immediately, with the penalty swiftly and visibly paid. It might be argued that the current re-instatement of the full shari'a is a desperate attempt by Muslims who see that the old communal essence of "northern" Islam is slipping away; that the umma (the wider society of believers) as a close-knit jama'a (community) is under threat as never before. Again, just having shari'a-based "Family Law" has in recent years proved, they'd say, inadequate against this threat to the community as a whole. In short, is the full shari'a (and not just family law) of crucial importance to the self-identity and survival of this sort of Muslim community?

A BRIEF HISTORY OF "THE QUEST FOR JUSTICE"

In some senses shari'a is central to the social identity of all Muslim societies; shari'a is the defining order that sustains the Muslim umma world-wide. Yet each component of that umma also has its own social memory, whether it is anchored in the fine buildings of a great Moghul empire, or in the merchant quarters of coastal cities with their mansions, markets and spices, or in oral traditions that recount repeated struggles to sustain rural justice against urban oppression. There is a tendency among historians not to focus on legal history, but to leave it instead to interested lawyers; "social memory" is more often dressed up in political or material garb. This is more true of African history than, say, European or American history simply because there is not the long run of court records available in

archives or private libraries. But this conventional division of analytical labour may well lead us into a seriously distorted understanding of some communities' past.

I want therefore to explore here how far it makes sense to argue that justice, in its various manifestations, has historically been the primary dimension of Islam in northern Nigeria. The implication is that other dimensions, such as spiritual enlightenment through sufism or a rational preference for a set of beliefs linked to a much wider, more "civilised" community (or simply the apparently superior power of its prayers and its material technologies), played secondary roles in making Islam the religion of choice in so much of northern Nigeria. The data are not available to prove the argument, but this emphasis on justice will offer the reader, I hope, a somewhat different "way of reading" the past than is usual.

The Law of, and mainly for, expatriates

Islamic law came to the area we now know as northern Nigeria as the law governing the North African merchants who as early as the 15th century settled in or passed through ancient walled cities like Birnin Kano and Birnin Katsina. It was used to sort out trading disputes (for example, over caravan partnerships and debts), to deal with the proper disposing of dead traders' property and all the everyday conflicts of an expatriate community, whether in the market or in domestic life.

But the establishment of shari'a law in Kano and Katsina (and elsewhere) had far greater implications than merely local conflict-solving. The merchants' trade lay in exporting high-value items like gold, copper, ivory and fine tawed leather (the original "Moroccan leather"), as well as slaves, all of which, if they were to be saleable in dar al-Islam, had to be from ostensibly Muslim territories. In this case, either the merchants had to organise their own take-over of the state or, more feasibly, the local ruler had to be persuaded to convert to Islam. Either way, the territory became formally dar al-Islam. Pagans in that territory were re-labelled "majus", thus transforming them into ahl al-dhimma (alongside Jews and Christians in an Islamic state). Other non-Muslim groups beyond the borders might be under some temporary sort of amana or sulh (truce). In short, the overt presence of shari'a active daily in courts of law was more crucial to the city's identity and its international legitimacy than, say, the total absence of alcoholic drink or even the odd fetish.

In the big cities if not throughout its territories, disputes between Muslims and local dhimmis might involve a scholar-merchant acting as qadi applying the shari'a law. Given that the big cities were major market-places (for local produce as well as for disposing of merchants' luxury imports), there were inevitably people of different ethnic groups come to trade there – and disputes had to be settled in the market, usually by the market overseer or a qadi appointed to hold a court there. One can, I think, assume that local peasants became familiar with the notions of the shari'a as effectively "urban law".

Conversion as a shift of jurisdiction

How did "urban law" get accepted in the countryside too, not just amidst the "market gardens" that spread far out around the capital city but even in deeply rural milieux? Traditional dispute settlement in rural areas was (and in some parts still is) based on elders coming together to decide on a case and imposing a fine payable by the accused's kin. The fines do not usually indemnify the victim or his family, unless, as in the case of a murder, it may be necessary to replace the missing person with one of the accused's kin. Otherwise the fine is likely to take the form of livestock, some of which might be consumed ceremonially (meat of domesticated animals being rarely eaten); or in addition high-value mats or cloth. Such fines could be very burdensome on a lineage as a whole, with the culprit himself getting off lightly (assuming he was still in the vicinity). In this context, having a case heard by a qadi under Islamic law

might prove considerably cheaper as well as targeting the accused rather than his kin for punishment; its outcome might also be both more predictable and faster. Similarly, in a traditional setting oaths could be (and still can be) sworn at regional shrines, but again usually at a cost. Swearing on the Qur'an can be quicker and less expensive, as well as being more acceptable to the authorities; and in Nigeria no special Muslim shrines, I think, ever became the site of Islamic oathing. In short, a switch away from a judicial system based upon collective fines to one based on the physical punishment of an individual can appear to be an attractive alternative, if it offers real justice.

Rural markets were, of course, important sites for more activities than just trade. Here local disputes would be settled by the local village head, and it is possible that even for him a version of Islamic law was more acceptable as a "market law" and carrying higher status. Furthermore, in rural areas markets were not the only sites for disputes. Wherever pastoralists, such as the Fulani or the Tuareg who came into the region from outside, grazed their livestock among peasants, there was a likelihood of dispute, whether over crop damage, accusations of adultery or cases of violence. In such inherently "plural" settings, it may be that Islamic law, in some form, was a common denominator acceptable to both parties in a way that local mediation by (partisan) peasant elders was not. Certainly, it might have paid Fulani cattle Fulani cattle – or sheep-owners to claim to be Muslim, and so get the protection of Islamic law and the qadi vis à vis pagan peasants. Finally, by becoming a Muslim and converting before an imam or a noted shaikh, the convert could in theory minimise the risk of being kidnapped and sold into slavery by fellow Muslims [converting after enslavement, while expected, was of no legal help to re-gaining freedom]. At the peak of the slave trade, Islamic law thus offered a degree of protection given by no other legal system at the time.

My point is two-fold. First, that conversion to Islam may not be, as others have suggested, a matter of changing religious beliefs so much as changing the medium by which disputes will be settled. Since domestic religious practice tends to change with striking slowness, conventional analysts speak of converts' "syncretism" as mixing two systems of beliefs. I would suggest that it might be more accurate to say that syncretism would be better seen as being a Muslim for public, legal purposes, while being religiously (and often medically) still "traditional". In a region as increasingly "pluralist" as Hausaland, with its long-distance trade and growing numbers of "alien" herdsmen in peasant territory, the legal dimension of daily life was perhaps more developed than elsewhere. Furthermore, Hausaland was dotted with cities with their distinct Muslim mercantile quarters, and these cities gave rise to a political landscape that was increasingly dominated by formally Muslim, town-based authorities and their military élites. To these cities many rural young men moved in the dry season (the urban population might more than double seasonally), and so become familiar with Islamic legal practice there. In this context, a Muslim peasant, whether temporarily in the city or back home on the farm, would be better placed in any dispute with an exploitative townsman than his still pagan brother. At least the aggrieved Muslim peasant could appeal to the qadi in town – or, as increasingly happened in the 18th century, to indigenous Muslim scholars who, alienated from city life, chose to live communally with other scholars and students, teaching and preaching in rural areas. And what they preached included the shari'a law, if only as offering a defence against the "illegal" depredations from urban Muslim élites.

My second point is that justice has costs in both the traditional and the Muslim setting, but that the traditional mode of dispute settlement is usually more expensive for more people. The fines are no recompense for the injured party, but instead are enjoyed by others; indeed such fines formed a substantial part of elders' income or source of luxuries (like good meat). By contrast, the Muslim qadi or 'alim (Islamic scholar) acting as mediator is not expected to demand such payments but instead to make his judgement justly out of fear of Allah's wrath if he doesn't. If gifts were to be given voluntarily, they might be less in value majus – or dressed up as "alms". The punishments the qadi prescribed are mainly targeted at the perpetrator alone (except in cases of homicide where diya [monetary compensation] has to be paid). In a world of mobile individuals moving widely among a mixed population, good qadi justice was (and is)

seen to be efficient and “fair”; and the perpetrator might be seen to be punished, humiliatingly if lashed, disablingly if his hand was amputated. This was, in short, a totally new notion of justice, linked to a single almighty God and accepted far beyond the boundaries of Hausaland. Was this very idea of a “justice” (adalcı) separate from local power or wealth itself new? Was the notion also new that justice should be “low-cost”, because shari’a law was fenced off as sacred?

My argument is that the corruption of this new system of dispute settlement and mediation, and the way the system was being pushed aside in the 18th century by laxly Muslim political authorities using force, made the call for jihad very popular indeed in both rural and urban areas, with support for reform crossing ethnic and occupational lines. It is at the level of the law or justice that ordinary people encounter the perversion of religion at its most distressing; and by raising the cost of justice to exorbitant heights, it is put out of reach. In this case jihad is not against “pagans” or unbelievers but against “bad” Muslims and “venal” scholars. It is a quest for justice. As the jihad leader, ‘Uthman b. Fudi, specifically said in his *Bayan wujub al-hijra* [ch.53], quoting al-Tartushi: “A kingdom may last with unbelief (*kufır*); it cannot last with injustice (*zulm*)”.

Jihad as a movement for specifically legal reform

In the late 18th century, anger against law-breaking by Muslim states reached new heights in north-western Hausaland. The texts that date from that time catalogue the various illegal taxes and extortionate practices that characterise “oppression” (*zalunci*); bribes to judges are also specifically criticised, but so too is the way shari’a punishments are being commuted into “fines” (fines being seen as archetypal of “pagan” justice). In another text, the complaint is that Muslims are illegally enslaving fellow Muslims. At the time, wars between Muslim states and raiding for slaves by ostensibly Muslim states were affecting rural Muslim communities, and Muslim women, children and men were being sold off for export either at the Atlantic coast or across the Sahara. One Muslim state, Gobir, sought to prevent (especially in newly conquered zones) the conversion of young men to Islam, and banned the use of such distinctive symbols of Muslim dress as the turban. It is likely that youth were converting in larger numbers than before in order to escape threats to their safety. Either way, the ban made young Muslims easier targets for kidnapping and selling into slavery. These young men were from farming families in lands recently ravaged by years of war and abandoned by their former rulers; they would be too poor to buy themselves out of slavery. Others, already enslaved, ran away to scholar-run communities for Muslims and claimed their freedom – and they were not returned to their owners.

In these circumstances, maintaining the shari’a law vis à vis the Muslim authorities was essential to the personal status of converts, and hence to the preaching campaigns of young shaikhs who were touring the countryside and extending membership of the Qadiriyya brotherhood. Conversion was not just about the new sufism; it was about claims to coming under a new system of law which should guarantee them certain rights. The new centres of learning taught the perils of hell-fire and the rewards to come for the just Muslim. There is also clear evidence in the jihadi texts of the leaders’ acute knowledge of the shari’a in its wider ramifications affecting, for example, the conduct of war. Shaikhs were lawyers as well as sufis.

Once the jihad was successful, qadis were appointed and emirs (formally given regional office by the Caliph at Sokoto) took on cases that came before them. The jihad leaders wrote texts as guidebooks for the new emirs, who on occasions wrote to the Caliph for advice – one instance was over a land case in a dangerous area (the Caliph instructed the emir to over-rule the shari’a). In general qadis were appointed only for the major centres of administration, where emirs had their seat or where certain key office-holders were established in rural places. Qadi courts therefore were relatively few; in Kano emirate, only really major markets would have a court, so that in an emirate there might be two or three such courts outside

the capital city. Similarly, if there was a really important territorial headship, where the office-holder tended to be resident locally and not in the capital city, there might be a Qadi almost as a symbol of that town's historic status. Otherwise local disputes were resolved locally by the headman; and in these cases shari'a and local custom were no doubt intermingled.

In Sokoto, given the number of 'ulama in the relatively small area of countryside that was made secure after the jihad, no doubt many minor cases or matters such as inheritance disputes could be settled outside the formal qadi system. But we have no record of the numbers of cases brought to any court; if the distribution of qadis is anything to go by, the level of litigation must have been relatively low. If so, it remains still difficult to know how to interpret it. Was there a deliberate policy to discourage litigation?

The chief Qadi, based in the main city, in effect took off the Emir's shoulders some of the daily burden of cases and complaints. As there were not courts scattered all over the caliphate, cases had to come to the main centres, and defendants and witnesses summoned by special court bailiffs who were paid a fee (*jjara*) that varied with the distance covered. There was no initial "court fee" to start a case (one was later instituted by the British, amidst much complaint, since justice, people said, was meant to be free). The cases were heard in the Qadi's official residence by the main mosque and the emir's palace. He had an official (the *dan wanka*) who escorted the plaintiff, and organised the swearing of the oath at the mosque (by the *minbar* – pulpit within the mosque) if one was necessary.

The Caliph's and emirs' courts were not only courts of appeal but were the only courts to hear cases which entailed execution or amputation. They also, it seems, were final arbiters in land disputes. More importantly, perhaps, they (and the Caliph's vizier?) heard complaints of *mazalim* (injustices) against powerful officials. And these might include even an emir's chief Qadi. On one notorious occasion, the Emir of Kano executed his chief Qadi for apparently breaching the terms of his guardianship of a young girl.

The centralisation of justice in the Emir's court, of which there could only be one per Emirate, meant that fewer cases could be heard, or long delays awaited a would-be plaintiff; there were procedures for complaining, but they had their hazards. Apart from a *muhtasib* [supervisor of markets and trade] (whose jurisdiction may have been at the market), there were other officials associated with the courts; they were meant to intimidate, since the Emir's justice (like his power) was like a rope kept taut. There was a head of police (usually the retainers of the Emir, the *dogarai*), a gaoler or two (*Yari*; and his assistants), an executioner (*Hauni*; executions were carried out on Fridays in the main marketplace, at least in Sokoto), a hand-amputator (*Dan Lawal*, or *Birgiji* and his assistant *Nabunu*). Kano city had two gaols, the Emir's under the *Yari* and run by slaves, and the other near the market under the head of the market, the *Sankurmi*; the running costs of the latter's gaol was paid for by a monthly fee levied on the market. Such small prisons were part of the gaoler's official house; in Kano, however, the prison for serious 'criminals' was located in the palace and was visited in 1903 by Lugard who found it a truly terrible place, hugely overcrowded and a death trap. Such places were more like dungeons, notorious for their scorpions, and were meant to terrify. Prisoners there were usually awaiting a court hearing or the carrying out of their sentence; a few were "hostages". Such places were not designed for long stays, and the British early on in their administration insisted the Native Authority build new prisons of their own, to house those sentenced specifically to serve a term in prison in the new manner.

The hierarchy of courts was strictly maintained. Above all, the authority to impose the full shari'a punishments was tightly restricted as a key emblem of power. An execution or amputation by a subordinate might otherwise be seen as a claim to autonomy, a challenge to established authority. Thus it was thought that the Caliph in Sokoto might intervene and punish the Emir of Kano for over-stepping his powers when he had his chief Qadi executed; that the Caliph didn't intervene was taken as confirming the seriousness of the Qadi's crime as well as the judicial rightness of his execution by the Emir.

The rise of *mazalim* again

In the course of the 19th century (the 13th Islamic century), the pressure on the Caliphate's political system increased, but especially after ca. 1850. By that time, nearly all of the emirs who had personally participated in the original jihad had died, and the moral authority they had had in making judgements in court was not available to the new generation of rulers and officials who had taken their place. While the Emirs themselves might be beyond reproach, their officials and slaves were not. Injustice came primarily, it seems from such anecdotal evidence as we have, from the "princes" – that is, jobless junior brothers and sons from the palace and their friends from other "big" houses.

Injustice can be demographically driven. The first generation of jihad leaders had large numbers of sons: the Shaikh himself had 37 children, the son who succeeded him had 73, his son-in-law had 48. Access to wives was not a problem; the Shaikh had sequentially two sets of four wives, as well as a number of concubines. With the jihad won and the Caliphate established, there was, I think, a premium on building up the demographic strength of the jama'a and replacing those who had died in battle or from the diseases and famines that ravaged the jama'a at war. If the males of the first generation of 1810 each had, say, ten sons who survived into adulthood and those ten sons in turn had a further ten and so on, then by ca. 1890 a single royal lineage might have well over a thousand "princes". Multiply that figure by the number of other "top" lineages in an emirate, and the crowd of the would-be élite who had grown up in palaces and been cared for by slaves posed a real problem. What jobs could they do, what would be the source of the wealth they needed in order to live in style? First, they could take part in the annual military campaigns against the emirate's "pagan" neighbours, and from the booty obtain some wealth. In the longer term, they could be sent out as murabitun (fighters posted to the Islamic frontier) to man the ribats (frontier strongholds) on the frontier and raid for slaves; and, if they carved out a new emirate, they and their sons could then administer the newly conquered territory. Some might become scholars (had they been educated for it; palace slaves were not the best mentors to encourage this), but few careers were open to them outside "government". They could not, for example, engage directly in trade or become merchants.

If this demographic model is correct (and the genealogies we have do support it), then it is no wonder that the state needs a mujaddid (renewer of the faith) every century if only to help clear out a century's worth of oppressive scions of the original mujahidun. It may not necessarily be so much a case of Ibn Khaldun's cycle of degeneration as simply the economic dilemmas arising out of a culture where "wealth-in-people" is the goal. Oppression or exploitation, then, are the desperate attempts of young "royals" to secure an income. One further outcome of the over-crowding of the political field in the 1890s was a series of civil wars among the élite as rival lineages of "royals" fought to gain control of the profitable offices. If you died without an office, then your heirs would effectively drop out of élite status and never hold high office again. The long-term prize was therefore worth the risk, and the struggle was fierce; the resulting violence was disastrous for ordinary people who if they were on the losing side (and they could not help but be on one side or the other), could lose life and property. In short, by the 1890s the "injustice" against which the original jihad had been fought was back. There was talk that the end of world was nigh (being soon after the year 1300 AH; a Mahdi had already appeared in the Sudan) – or else what was nigh was an invasion by Christians, in this instance Britons commanding an army of hired Hausa (Muslim) soldiers in the name of King Edward VII.

Colonialism & the extension of shari'a

That there was a real sense of disillusion over the way politics within the Caliphate were developing is I think clear. It was not just the fond imaginings of the new British colonial officers, though they of course noted it as justifying their presence and as explaining the relative ease with which Caliphal resistance crumbled away. It also gave them a remarkable sense of security to find that, when one of them went out

on horseback on his own, riding for pleasure into the countryside, he was met with apparent smiles from farmers and others; he could have been ambushed, shot or just harassed, but wasn't.

Disillusion had disunited the jama'a. Not all the Sokoto army had fought in the crucial battle on March 15th, 1903; important sections stayed away. A village in Kano, for example, rescued a British-led detachment when it was in danger of being overwhelmed by the cavalry of the villagers' overlords. The dense alleyways of Kano city were not defended: indeed, certain quarters in Kano city were delighted to see their palace oppressors replaced. Again, the idiom of this disillusion was the injustice (zulm) that was rampant in the decades before the colonial invasion. In this view, Allah was using the Christians to punish this injustice (after all, colonial rule was only possible because Allah willed it); and He would remove them in His time. Muslims, then, had better start reforming themselves, so as to become pleasing to Him once again. Nonetheless, whatever the rationalisations of the disaster that had overtaken the caliphate, large numbers of ordinary Muslims, in the course of the next decade after the invasion, decided to leave home and family, and make the hijra (hegira) from northern Nigeria; though they ended up settling in Anglo-Egyptian Sudan, they considered themselves as still on the pilgrimage to Mecca, and so only temporarily outside dar al-Islam proper.

For those who stayed behind in Nigeria, the demand was again for justice; and the new administration was expected to provide it. The invading British had promised not to interfere with Muslims' religious practice and, in the context of shari'a law, that is largely what they did. District Officers and Residents, however, did keep an eye on what the Emir's court (or "judicial council") and the district courts were doing, and might over-rule decisions. Court case-records were kept (as never before) and registers were maintained for inspection. To some judges in the system and to some officials of the Native Administration whose job was to supervise the courts, this colonial interference was extremely troublesome: for them it called into question whether or not shari'a law was in fact being implemented.

The British administration, however, did indeed alter the justice system, in three major ways. First, paradoxically perhaps, they expanded the number of shari'a courts. The number of low-level qadi courts went up from some six in Kano emirate to over twenty-six. These courts dealt primarily with family law and with market disputes, and thus gave the impression of making the shari'a available to much larger numbers of rural people. Indeed the use people made of these courts in their first years was phenomenal, at least in certain places. Did this overt expansion of shari'a help to allay or appease local popular revulsion at having Christian rule over what had been dar al-Islam? Or did it further undermine the authority of local headmen and 'ulama who might otherwise have settled such disputes? It will have removed from the headmen and others the income they would have got from judicial 'gifts' for resolving disputes. The new qadis, by contrast, were salaried (for the first time). Perhaps never before outside the capital city had shari'a been so cheap and so accessible.

The second alteration affected the single higher court, namely the Emir's court or judicial council, whose powers were reduced or at least modified both by having the British Resident to consult and by the substitution of amputation and stoning by other forms of punishment. So different was judicial practice now that the Emir of Kano's court records for 1913-4 euphemistically refer on occasions to handing down judgements based on a new kind of law, hukm zamanna, "the law of our times". The third change was the institution of magistrates' courts for hearing cases involving non-Muslims. There weren't many of these courts which were, anyway, located in the barracks or the new settlements outside the old cities - that is, out of sight of most Muslims, and conducted in English instead of Hausa; furthermore, they heard very few cases compared with the workload of the shari'a courts. Nonetheless they did constitute instances of "legal syncretism", the more so once the accused could choose which system of law to be tried under. For a Muslim to choose a magistrate's court became tantamount, in public opinion, to an admission of guilt, and that an injustice, not justice, was about to be enacted. If the city under its Emir was still in some sense dar al-Islam, then the bariki (barracks; the label expanded to include not just army and

administrative quarters but bars, brothels, shops, stations and all that was alien and unsavoury) was dar al-kufr. As if to confirm the distinction between territories, the Emir of Kano formally did not allow Europeans to have a house or sleep within the old city, within his dar al-Islam. The close proximity of dar al-kufr was an incentive to ensure behaviour in dar al-Islam was all the more strictly Muslim, with large-scale adherence to reformed sufi brotherhoods and an apparent rise in the demand for Qur'anic education. While these were additional modes of personal religious practice, it was still the shari'a that defined communal religious identity vis à vis the newcomers.

But what use was being made of the new Qadi courts in the early colonial period? Though it is not at all clear what exactly, in social terms, is happening, what is certainly striking is that there is a huge volume of marriage cases almost as soon as the courts open in country towns; but the bulk of these cases occur in one or two towns only. For example, in the small town of Wudil in 1909 (when the court apparently opened), of all the 1,216 civil cases heard by a Qadi, 990 were 'matrimonial'; and Wudil, with about 0.1% of Kano's total population, was seeing 29% of all such matrimonial cases in Kano province. By 1913, the number of civil cases the Wudil courts were hearing was up to 4,684, of which 3,852 were "matrimonial"; by this time, this constituted only 21% of all the matrimonial cases heard in Kano. Although these are extremes, the pattern is replicated in Sokoto province where cases before qadi courts rose from 3,160 in 1908 to 16,692 in 1914. Divorce cases increased four-fold between 1907 and 1910 (in the same period, debt cases by contrast slightly more than doubled). The Wudil figures worry me, as a rate (in 1913) of fifteen 'matrimonial cases' heard on average every day of a court's working year, seems unrealistically high; Wudil was then an unremarkable settlement (located, however, at a key river-crossing) of under 5,000 residents, yet its court heard in 4 years (1909-10, 1912-3) a total of 8,263 matrimonial cases. By comparison the older and larger, neighbouring town of Gaya heard in the same period a total of 2,091 such cases. No historian has tried to make sense of these figures through local fieldwork and oral tradition, and it may be too late now. But just mapping the changing patterns, identifying places where divorce was very low, might offer interesting leads into the dynamics of disputes and their resolution, on how justice was sought and by whom.

At least one commentator has seen the sudden rise in litigation as a sign of the social pathology of colonialism. But what other explanations might there be? One set of explanations might be organisational: [1] that cases that formerly came before the local headman were now transferred to the qadi's court, and that the numbers do not imply an increase in cases but rather their concentration in one court. [2] that women chose to go to a court away from home, and they picked on whichever court was known to be favourable; once a court had such a reputation, would-be divorcees would cluster there. Another set of explanations would imply that there was an actual boom in divorces: for example, [3] that the end of slaving saw a large number of women seeking divorce formally, an act that can only be done in a qadi's court. [4] that women whose husbands were or had become, too poor to feed their families properly now took the opportunity of divorce. However the worst famines, in 1913 and 1914, occurred after the apparent "rush to divorce", but if farm slaves were leaving their masters in large numbers, had the domestic economies of many households failed? [5] that wives, finding their husbands had abandoned them in the new conditions (say, gone on pilgrimage without them or simply gone off to re-settle on newly opened "bush" elsewhere), now sought to start a new life themselves, with a new lover; or did they find now their husband's impotence or his violence now no longer tolerable in the new circumstances (we know it had been a cause for divorce pre-colonially)? Were old men losing their grip?

Whatever the case, the notion that an increase in shari'a cases was necessarily good "public relations" for British colonialism can be questioned. The fact that they were divorce cases could be interpreted, at least by men, as a sign of the moral collapse of Muslim society. What for men was a bane was for women a boon. We do not know the rates of divorce in any precolonial period. But in 20th century Hausaland, divorce was still comparatively common: a woman would expect to get through an average of four husbands in a lifetime. Indeed where a daughter was unwillingly married off by her parents to a man of their choice,

the bride after a year or so might well bring about a divorce and marry her sweetheart: in this case, first marriage for the girl is little more than a rite de passage into adulthood. Second marriage might be for love. So one might also ask, a little flippantly perhaps: was early colonialism, with its suddenly easier access to shari'a courts, also a time for a new romanticism, enabling girls and boys with "modern" passions to leap-frog conventional marriage? Tales of love, and now video films, are a current pre-occupation in local Hausa youth culture; and we know of love songs from the immediate past, and old stories of longing; there's even mention of a wife or concubine being executed for using a dildo. Could we speculate that the late 19th century had seen domestic tensions so rising as to produce a pent-up demand for divorce, a demand that fortuitously was met by the sudden creation of new Qadi courts?

One other alteration that the Christian British made needs to be noted: it was the outlawing of slave trading, and eventually slave-holding. Slavery as an institution is taken for granted in the Holy Qur'an; the injunctions are to temper it, not to abolish it altogether, and there are set out the legal rules governing slave status. The re-introduction of shari'a does not, of course, imply a re-introduction of slave status, if only because slave status can arise in just one of two ways: either a non-Muslim is legally taken in jihad, or he/she was born into slavery. Jihad has ceased in Nigeria; and with the last cases of slavery closing finally in the 1930s, no one can still be legally a born slave, though there are families who are classified socially as of "slave status". Similarly, concubinage exists but only informally, I think (and mainly in "royal" palaces); no case to my knowledge has come before the new Qadi courts so far. I cannot imagine that "slavery" would be countenanced in northern Nigerian courts today, even though it is clearly permissible in light of the relevant verses in the Holy Qur'an. Implementing the full shari'a does not mean trying to turn the clock back to conditions before the colonial invasion.

The party-politicisation of qadis [1950s, 1960s]

If the early colonial period saw a rise in the use of shari'a courts in rural areas, by the 1950s and early 1960s the judicial system had once again become notoriously "unjust". In the fierce contest between traditional and modernising factions of the northern Nigerian élite, the Native Authorities (NA) with their own police, prisons and courts were the prime asset to be controlled by politicians in the run-up to Independence. Control the NA, and you could imprison your opponents' supporters at any time, for any period; you could fine them into poverty, you could have them beaten up. Some opposition supporters in one village I know were simply driven off at night in lorries and "disappeared". Qadis who refused to play the dominant politicians' game were given a very hard time; many resigned from the service, others were sacked or intimidated. It was the wholesale collapse of the local judicial system that made the military coup in 1966 and the murder of government ministers at first less unpopular than it might have been even in the North. Indeed so central an issue was the abolition of these courts that it was one of the few orders given during the 4-day life of the coup leader's administration. Once again justice had, it seemed, to be restored through violence. In the revolution that eventually emerged under military rule, the Native Authorities, their police, prisons and courts were all abolished.

Judicial corruption in this instance, however, was not 'commercial' but political; and it may have been this fact that made people in the 1970s look back at the Qadi courts (which had by now become "area" courts, largely enforcing the same code) and, in answer to researchers' questionnaires, rate them as trustworthy. Nonetheless, the experience of party-political courts underlined just how crucial were popular notions of justice and oppression. The governing party (NPC) used religious symbol after religious symbol in its campaign for political legitimacy and religious mobilisation; it built up participation in the hajj and 'umra, it waged conversion campaigns against "pagans" and sought Qadiriyya legitimacy even from Baghdad. But all this political piety could not disperse the aura of hypocrisy that clung to the party, emanating as it did from grass-roots experience of injustice in the qadi courts. Justice is a crucial test, in people's eyes, of real religiousness. And the NPC failed that test.

What this brief history of the “quest for justice” suggests is how hidden a history it is, in part because most disputes are resolved at the local level. Justice as an issue only becomes visible at times of crisis, when people are forced into taking drastic political action. It is tempting to assume that, when no such action is being taken, all is well. My stay in a deeply rural northern-Nigerian farmstead for some two years ca. 1969-70 (and before that, much briefer stays in a village and a herdsman’s camp) showed clearly exactly the opposite. There was a steady drip, drip of extortion and corruption by local officials who were blatant in their demands whether I was there or not to record them. Even in the early 1960s when sharing houses in different old cities with “traditional” Muslim students, I heard them talk of who required less gifts and who demanded more. My late Professor, M.G. Smith, systematically analysed the corruption he encountered in the colonial 1950s, making his informants swear on the Holy Qur’an to the truth of their allegations (in the official colonial report which published his data, that chapter was excised). It is not in texts, then, but in fieldwork that this dimension of daily life (and the anger often associated with it) becomes clear. But can we infer the past from this kind of present, and assume that prior to every political outburst there has been an eventually insupportable amount of injustice? And are there indices or ways of assessing this injustice, ways that also reflect local people’s own experience and their idioms of interpreting injustice? So, as an analytical experiment broadly in this direction, I turn now to the costs of justice.

THE JUDICIAL PROCESS AS A FINANCIAL ENTERPRISE

I have suggested that the shari’a was novel, in the Nigerian context, for its way of “ring-fencing” justice as sacred, since its procedures for justice were outlined by Allah in his Holy Qur’an and developed by fiqh into the shari’a. Just as an Emir’s court was above charging costs to, and receiving bribes from, litigants, even more so should Allah’s justice be beyond price. At its best, shari’a then should be free or at least low-cost justice. And that is the ideal that people are taught to expect when as Muslims they come to accept its jurisdiction rather than the traditional jurisdiction of the elders or a local warlord. Thus a theme running through the brief history of justice I outlined above are the repeated struggles to keep justice “ring-fenced”. One crucial gauge of the success of this “ring-fencing” is the price of justice – just how much did it cost to obtain justice at any point of time or place, first at the lowly level of the qadi’s court and then at higher levels of court, where mazalim cases might be heard and oppressive, extra levies curbed.

But why the need for ring-fencing? It becomes necessary wherever the judicial process is habitually considered, in Nigeria or elsewhere, as at root a financial enterprise. From this perspective, dispute settlement and mediation are merely services like any other that have to be paid for; having elders or others resolve a dispute or punish a wrong-doing on your behalf can be cheaper in the long term than you or your lineage inflicting the punishment on your opponent and his lineage. Justice can be bought, and quick profits made or pleasures gained from supplying judgements (or not). The ring-fencing tries to isolate justice from the “market”, moving it away from the sphere of personal bargaining to the status of a communal good, to stop justice being “auctioned”. It is this very old-established notion (can it even be classed as “common sense”?) of “justice” as an enterprise, with its costs and its savings, that I think can still inform many Nigerians’ attitudes to law; it is also becoming central to modern US thought about law (e.g. in plea-bargaining) and to the modern sub-discipline of the “economics of law”. Renewed interest, in Europe and elsewhere, in the use of fines as punishments in lieu of short prison sentences points the same way.

If justice is seen entrepreneurially, then I’d suggest that shari’a at certain points in its history offered little profits (at least, in this world) to its “owners” and its users; at other points it was highly profitable, and judicial offices were well worth buying. The judicial processes in force before shari’a was introduced were relatively expensive by comparison, with fines and sacrifices. But even with shari’a, there was

“competition” for the work of dispute settlement: the Emir’s court claimed for itself the really serious cases (and the ones where most was at stake, such as land), while the village headmen and local ‘ulama competed with the local qadi for the many lesser cases. The qadi might charge less for his services, but he had no force at his command by which to enforce his decision. The village head, by contrast, could call upon physical help to back his judgements; in addition he had access to sanctions as well as to other forms of income such as tax-collecting and issuing licenses for the use of various “common” resources, access which neither the qadi nor the ‘ulama had. Seen in this light, can we infer that popular demand for qadi courts is a demand for cheaper justice?

One of the consequences of the ideal of “ring-fencing” justice and keeping court work out of reach of market forces is that there is very little direct evidence, either in the Middle East or elsewhere, for the size of court fees and other costs of litigation, including presents. In theory the funding of qadis was from the common treasury; and in North Africa, there were awqaf – or charitable endowments – to finance ‘ulama in their various services to the community. But in Nigeria, there are no awqaf; and ‘ulama had to find their own incomes from teaching, copying texts and providing religious services; they might also receive alms from a number of individuals once a year after the harvest.

The chief Qadi, by contrast, was properly funded: his office traditionally had attached to it farmland (presumably worked by slaves) and some territory from which came taxes to supplement his income. Under the British colonial administration this changed, and fixed salaries were allocated to the much larger number of Qadis appointed by the British; similarly, salaries were paid to other officials of the Native Administration. This effectively transformed the new-style Qadi into a servant of the centralised state, alongside its other servants; he could be sacked and have his judgements over-ruled. Though his words carried a new kind of authority, was he open to new kinds of gifts too? Pragmatic British officials were concerned that, if there were to be judicial corruption, it should be “quarantined” within the Qadi system and not have it thoroughly “infect” the British system through the clerks and messengers they employed.

Higher up the scale, Emirs no doubt were as ready to receive gifts from their equals or superiors as anyone, but gifts from those of plainly lower rank were usually indirect; generous presents “to him” would in fact be given to his servants, who should then tell the Emir personally of the gift. In this way a high court was overtly “above” the kind of entrepreneurship that was commonplace at lower level courts. Given how frequently British officials used the charge of “corruption” to get rid of an Emir they found unco-operative, such indirectness was prudent. But it makes almost impossible the historian’s task of assessing the costs of justice with any accuracy.

If we treat justice as an enterprise, then we also need to consider how entrepreneurially did litigants use the courts. Litigation is cost-sensitive, whether in 16th century England or 20th century Nigeria. The extent of litigiousness in a community reflects costs and how predictable these costs are. But legal costs can also become a social weapon to inflict harm on an enemy. A classic use of the courts, in Europe as elsewhere, has long been to make false accusations so as to make your opponent pay up, not through indemnifying you but in fines paid to the court. In this way, in contemporary Sierra Leone, elders were able to strip young men of their savings, in order to maintain the status quo and their own dominance (so Paul Richards reports). The high costs of courts may thus be skewed to affect the defendant, not the plaintiff.

“High-cost” does not refer simply to the fees required by advocates, though these can be an important factor in systems that allow advocates and lawyers. Payments to the court come in different forms: charges for summoning the defendant and witnesses, a tax (often 10%) of a debt recovered, “stamp duty”, as well as “gifts” of various kinds to judges, their family and kin, their servants and associates. In a qadi court handling a divorce, the “gift” expected of a woman seeking divorce was, it was commonly said, that she would sleep with the qadi first. In one court I know of, you could pay the clerks to allocate you the incomplete copy of the Qur’an which they kept in case you needed to swear falsely. In another court, payments might be made, not to obtain a judgement in your favour, but rather to bring forward a case or to postpone it;

such an “auction” could leave the judge never having to give a false judgement since the defendant usually made the last postponing payment – which was the plaintiff’s intended outcome. I have known cases be taken in this way up to the High Court, to maximise the cost to the defendant.

My argument here is [1] that the shari’a was considered as a relatively low-cost source of justice as compared to more traditional processes of conflict-mediation which relied heavily on fines. [2] that one of the motives of communal conversion to Islam was to have access to this cheaper system of justice; and [3] that Muslim reform movements had as one of the key planks the restoration of a low-cost shari’a. “Injustice”, in short, is as much about costs; high-cost law makes access to justice impossible for many people, and a state without access to justice is “oppressive” and ripe for overthrow.

My second argument is that we can look at the costs of justice (including “gifts” to judges) as part of a much wider system of “fines” and “taxes”, which put a price on certain acts and types of behaviour. Paid into the court (albeit to court officials), “fines” pay for the expenses a community incurs in having a system for conflict management. Where judicial salaries are low by comparison with other occupations, the litigants’ payments are an essential supplement. In effect, judges are offering a service like any other tradesmen, and the customer pays the judges, not the community. But judges can also be seen as acting like any other state official who can come and impose a charge for the permit to use otherwise common resources – cutting timber, crossing a river, grazing bush-land, opening up new farmland, carrying out a dry-season craft. Such visiting officials expect “gifts”: a visiting Inspector of Schools in the 1950s would expect a schoolgirl for the night, an important guest of a village head even in the 1970s could expect village girls to dance for him in the evening and one or more to stay the night. A judge’s expectations from the divorcees before him were no different. People hated these forced gifts. In consequence, a judge that refused all gifts, lived out of sight of potential “callers” and was fearless of authority in his judgements was widely known and respected (and now remembered). They showed, to the poor especially, how costless justice could be.

IN CONCLUSION

In today’s Nigeria the “commercialisation” of the judiciary and the police has so permeated the magistrates’ and higher courts that no one trusts them to provide justice; the only people in prison – and the vast majority of these are awaiting trial (the Minister of the Interior in 2017 said the figure was now 72%) – are those who can’t afford to get out. Even Christian traders find the shari’a a cheaper, faster way of recovering debts. In such a context, the re-introduction of the full shari’a can be seen as a revolutionary act to reduce the costs of justice. Only the full shari’a, with its dramatic public punishments and the close media scrutiny of the courts, could elicit the kind of popular fervour and attentiveness that might force the judicial process to become less costly and more “just”, if only for a while. By being so “extreme”, so uncompromising, it once again ring-fences justice; anything less than the full shari’a, and that ring-fence would quickly be breached again by corrosive compromises.

At the grass roots the scenario, I suggest, is something like this: shari’a has become “our” form of justice, not the government’s. And if it embarrasses the government, so much the better: it shows up the government for what it truly is – irreligious and unjust. Implementing the full shari’a, with courts of the lowest level handing down sentences that only a high court would normally give, reveals quite how distant people are from the government. No doubt the government will in time re-assert its control over the courts and sentencing. But meanwhile, people have seized justice from their rulers. The “quest for justice” has been partially, temporarily achieved.

La charia en contexte

La demande de justice de la population aujourd'hui et les tribunaux avant et au début de la période coloniale dans le nord du Nigeria

Résumé

Cet article, écrit à l'origine dans le nord du Nigeria lors de la « crise de la charia », à la fin des années 1990, montre combien la « quête de justice » a persisté dans cette région durant les siècles les plus récents, qu'il s'agisse de justice « traditionnelle », de justice islamique ou de justice moderne « séculière ». La justice est une priorité profondément enracinée dans la culture hausa islamique : Allah est « juste », le jour du Jugement dernier est « réel » et, pour chacun, proche. Le système colonial, à partir des années 1910, a étendu la justice de qadi, faisant passer la résolution des différends des mains des autorités traditionnelles et locales à celles d'une bureaucratie de qadis professionnalisés. Le nombre des procès (notamment dans le domaine matrimonial) a explosé avec la fin de l'esclavage. Vers la fin des années 1950 et au début des années 1960, le système judiciaire s'est politisé, selon les clivages du jeune système de partis. Aujourd'hui, les décisions de justice sont devenues plus « commerciales » que jamais, et largement soumises au règne de l'argent. C'est dans ce contexte que la réintroduction initiale de la « charia pleine » a été considérée comme réalisable (et politiquement astucieuse), du fait des espoirs populaires qui l'investissaient, et de l'immense enthousiasme qu'elle a généré dans les profondeurs de la société du nord du Nigeria.

The Shari'a in context

People's quest for justice today and the role of courts in pre- and early-colonial northern Nigeria

Abstract

The essay, written originally in northern Nigeria during the “shari'a crisis” ca. 2000, focuses on how persistent has been the “quest for justice” there over recent centuries – whether it is ‘traditional’ justice or Muslim justice or modern ‘secular’ systems of justice. Justice has a deeply rooted priority in Hausa Islamic culture: Allah is ‘just’, Judgment Day is ‘real’ and coming soon to us all. Colonial rule ca. 1910 extended the Qadi-court system, moving the handling of disputes from local rulers to a wider, bureaucratic profession of qadis; the number of cases (especially over marriage) shot up with the end of slavery. By the late 1950s and early 1960s the judicial system was becoming party-political, while today (2000 – 2015) it is widely recognised that judicial decisions have become more commercialised than ever before. In this context, then, the initial re-introduction of ‘full shari'a’ was considered feasible (and politically astute) because of the popular hopes invested in it and the enormous enthusiasm generated for it at the grass-roots of northern society.

Mots clés

Charia ; démographie de l'injustice ; marché judiciaire ; « quête de justice » ; nord du Nigeria ; transformation des juridictions.

Keywords

Changing jurisdictions; northern Nigeria; “quest for justice”; shari'a law; the demographics of injustice; the judicial market.