

## CHAPTER FOUR

### THE POLITICS OF RELIGION IN NORTHERN NIGERIA DURING DECOLONIZATION

The constitutional conferences that were convened from 1946 to 1959 to prepare Nigeria for self-rule—and subsequently independence—during decolonization focused principally on the structural imbalances between Nigeria's Northern and Southern Provinces. As constitutional deliberations focused on this problem, representatives of the colonial government at the conferences were anxious to build viable political institutions necessary for sustained governance among Nigeria's three emerging regional government authorities (Eastern, Western, and Northern administrative regions). Within the three emergent regions, British colonial authorities also had to tailor these constitutional conferences to confront agitations from ethnic and religious minorities for political autonomy.<sup>1</sup>

As a central question in the governance of the Northern Region, Islamic law also came under close scrutiny. Many emirs and Muslim clerics had consistently expressed misgivings about the subordination of sharia to English common law<sup>2</sup> and questioned the colonial policy that subjected Islamic law to the criminal code of common law.<sup>3</sup> Thus, the 1951 Nigerian Constitution Conference (later named after Governor John Stuart Macpherson) charted new legal

grounds to accommodate sharia. But the overall focus was to define the process of self-rule. The Macpherson Constitution ultimately granted greater autonomy to the three regions vis-à-vis a weak federal center and recommended the establishment of a professional civil service. This constitutional reform would set the stage for Nigeria's first experiment with constitutional democracy (1951–1966).<sup>4</sup> Following the 1951 Constitution,<sup>5</sup> two successive constitutions in 1954 and 1960<sup>6</sup> provided for the implementation of regional autonomy, federalism, and revenue allocation. More relevant to our immediate concern, the growing fear among non-Muslims in the Northern Region about marginalization never received adequate constitutional treatment—Hausa-Fulani Muslim rulers' domination of politics in the region continued apace and without mitigation by the federal center on behalf of religious and ethnic minorities.<sup>7</sup>

It was also apparent during the constitutional deliberations that the Northern Region faced stiff developmental challenge because of the lack of indigenous Western-educated personnel to manage the bureaucracy that was needed to anchor a modern regional government. The magnitude of the problem comes through in Governor Macpherson's assessment that the Northern Region had started on the road to Western education at least five decades behind its Southern counterparts. The cause of the problem was straightforward enough: in seeking to contain the spread of Christianity in the Northern Provinces under colonial rule, Hausa-Fulani Muslim rulers, in alliance with British administrators, had stiffly rejected not only Christian proselytizing but also its sociocultural underpinnings of Western education. To address this shortfall in professional manpower, Western-educated Christian Southerners were recruited to serve as civil servants, teachers, health officers, and technical experts in the Northern Region following the amalgamation of the Northern and Southern Protectorates in 1914. But this measure soon generated Northern Muslim resentment. With a growing sense of micronationalism in the form of a northernization strategy, the region's dominant political party, the Northern Peoples Congress (NPC), formulated policies to boost the training of Northerners for professional office in the region.<sup>8</sup> Thus, when the NPC took control of the regional government in 1951, it established a "fighting fund" to train promising Northerners in the modern professions, especially as lawyers, engineers, accountants, health workers, and so on.<sup>9</sup> But as is well known, the wheel of reform grinds slowly: attempts to raise the Northern Region's human resource capabilities would require considerable time and patience.

The scale of the problem regarding shortfalls in trained manpower was magnified when the government of the Northern Region tried to establish a fully functioning modern legal system. First, while the Eastern and Western Regions

by the 1950s already possessed a large pool of indigenous lawyers trained in the English common-law tradition, the Northern Region had only a handful to serve a population of more than 20 million people. Indeed, by the early 1950s, all of the Northern magistrate courts were staffed by one English judge stationed in the region's capital city, Kaduna. It was customary to transfer cases to adjacent jurisdictions in the Western and Eastern Regions,<sup>10</sup> and reports suggest that the administrative logistics must have bordered on crisis.<sup>11</sup> In the short term, British judges, magistrates, barristers, and solicitors were appointed to serve in the region's legal institutions, including the ministry of justice, high courts, and magistrate courts.<sup>12</sup>

### Political Leadership and Decolonization

It is widely accepted from the onset of the decolonization process that the momentum of political change in the Northern Provinces was profoundly shaped by the towering leadership of the charismatic potentate of the Sokoto Caliphate, Ahmadu Bello, the sardauna of Sokoto, a great-great-grandson of Usman dan Fodio.<sup>13</sup> The sardauna's popular appeal was based not only on his charisma but also on his place in the Sokoto Caliphate aristocracy. As a cousin of the sultan of Sokoto and a direct descendant of Usman dan Fodio, the sardauna drew on his religious legitimacy to stake his claim for political leadership. With the exception of "Middle Belt radicals," as some British administrators labeled the leaders of the less compromising Middle Belt Christians, the sardauna's pedigree in the caliphate ensured his widespread popularity throughout the Northern Region. Consequently, he worked to ameliorate intra-Muslim conflict by paying his respects at the tombs of both qadiri and tijani leaders,<sup>14</sup> and he tried to assure leaders of Christian minority groups that they have an important role to play in the administration of an emergent Northern Region.<sup>15</sup> Calling Abubakar Tafawa Balewa, the NPC deputy leader and soon-to-be-prime minister of Nigeria, his "able lieutenant," the sardauna felt that the rough-and-tumble of national politics in Lagos was below his stature, and left others to carry out what the *Times* of London referred to as work not fit for "a Muslim nobleman out of another century." This sense of his own destiny would only increase when he became premier of the Northern Region in 1954. His ability to draw support from a large spectrum of Northern public opinion lent credibility to any agreement to which he was party. Indeed, it was inconceivable to successfully implement constitutional reforms in the Hausa-Fulani emirates without the active engagement of the caliphate aristocracy under the leadership of someone with the sardauna's stature. With regard to the sardauna, Ahmadu Bello, Governor Macpherson notes:

His great advantage from the beginning until almost the end was that he was not only a leader of the North but he was a leader who could claim the following of probably almost all shades of opinion in the Northern Region, apart from a few urban or Middle Belt revolutionaries. It would have been quite impossible to introduce into the conservative, traditional Muslim North anything approaching the democratic system which we did in 1951 and 1954 unless it had been accepted and fathered and worked by a member of the Fulani ruling caste. . . . The Premier was a descendant of Usman dan Fodio; he was a cousin of the Sultan; he was a big man in his own right. If any form of change or democratic progress were to be introduced, then he was the man to do it. The chiefs would follow him and the NAs [native authorities] would follow him. So far as the Middle Belt was concerned, the pagans and the Christianized Northerners were probably in awe but at least they accepted him.<sup>16</sup>

The sardauna's influence was projected well beyond the borders of Nigeria, as he began to travel in the late 1950s to predominantly Muslim African states such as Niger, Guinea, Senegal, Gambia, Morocco, Algeria, Libya, and Tunisia. And as his influence grew in these African states, Ahmadu Bello sought diplomatic connections to the wider Muslim world, notably Saudi Arabia, Pakistan, Iran, Lebanon, Yemen, Iraq, Kuwait, the United Arab Emirate, and Jordan. The sardauna built mosques at home and positioned himself as the leader of Nigerian Muslims.<sup>17</sup> While connecting Hausa-Fulani identity to his Islamization strategy, the sardauna also built a working relationship with leaders of Christian minorities in the Northern Region, especially in Middle Belt communities. Though they harbored resentment against the politico-religious doctrine from which he drew his legitimacy, non-Muslims in the region grudgingly accepted his leadership.<sup>18</sup> In his autobiography, Bello notes his historic mission in Nigerian political history:

I have never sought the political limelight or a leading position. . . . But I could not avoid the obligation of my birth and destiny. My great-great-grandfather built an Empire in the Western Sudan. It has fallen to my lot to play a not inconsiderable part in building a new nation. My ancestor was chosen to lead the Holy War which set up his Empire. I have been chosen by a free electorate to help build a modern State. . . . This, then, is the story of my life.<sup>19</sup>

Equally significant was the position of the Northern Region's main opposition party, the Northern Elements Peoples Union (NEPU). It consisted of a

small group of emirate progressives led by Aminu Kano, who during decolonization argued for a powerful central government, in contrast to the NPC's preference for a federal arrangement based on stronger regions vis-à-vis a weak federal center. Thus, while the NPC was committed to a political project legitimated by the Northern Muslim aristocracy, Aminu Kano's NEPU combined egalitarian doctrines in Islam with socialist thought to advocate for social improvements for the *talakawa*, the masses of Hausa commoners. Aminu Kano possessed strong Islamic credentials drawn from his training in Islamic law and fluency in Arabic.<sup>20</sup> Having worked on women's rights and the promotion of egalitarian policies, Aminu Kano was keenly aware of Usman dan Fodio's strong legacy on Islamic doctrines of social justice. His NEPU colleague, Isa Wali, blamed Hausa-Fulani Muslim rulers for collusion with British authorities and alleged misrule by the *sarakuna*, the Hausa-Fulani Muslim aristocracy.<sup>21</sup> Drawing its religious patronage from the populist *tijaniyya* order—in opposition to the *qadiriyya* order that dominated the NPC's Sokoto Caliphate base—NEPU leaders denounced emirate structures as a feudal system that had betrayed the Islamic piety of Usman dan Fodio's *jihad*.<sup>22</sup> In the long term, NEPU's impact on political reform was negligible because of its limited constituency in emirate society and the strong opposition of British authorities to its call for radical change.<sup>23</sup>

To be sure, both NPC and NEPU shared cultural ties at the initial stages of their formation to *Jam'iyyar Mutanen Arewa*, the dominant regional sociopolitical organization that had emerged in the early years of decolonization. But it was the NPC that emerged as the official Northern party because of its deep roots in the Sokoto Caliphate. Using its extensive socioreligious networks in emirate society to leverage British authorities, the NPC consolidated the structure of class dominance derived from the caliphate.<sup>24</sup> This emergent Hausa-Fulani power structure of emirs and politicians embraced both “traditional” and “modern” elements of governance. As C. S. Whitaker notes in his magisterial book *The Politics of Tradition: Continuity and Change in Northern Nigeria, 1946–1966*, political development during decolonization was not a linear process from a “traditional” Islamic aristocracy to a more “modern” pattern of constitutional government. Rather, it came out of a dialectical process combining “traditional” and “modern” attributes and drawing its legitimacy from the traditions of the Sokoto Caliphate.<sup>25</sup>

The contending perspectives of Hausa-Fulani Muslim rulers and their Southern Christian counterparts about Nigeria's political future took center stage during the 1953 London Constitution Conference that ultimately led to the 1954 Constitution. According to British administrator A. E. T. Benson,<sup>26</sup> participants from Southern areas were animated during the constitutional

deliberations, while Northern delegates “appeared dour and out of their depths.” Led by the deputy NPC leader, Abubakar Tafawa Balewa, who later became Nigeria’s prime minister, the Northern delegation argued for a loose federation with a weak federal center and called for a slower pace toward independence so that their region could develop on its own terms. In the spirit of developmental catch-up, Northern delegates supported the colonial government’s gradual approach to independence.<sup>27</sup>

The divergent perspectives of the Southern delegates at the conference in part reflected the fundamentally different experience they had obtained in mission schools and Western postsecondary institutions, going back to the turn of the twentieth century. For example, Obafemi Awolowo, a product of Christian mission schools from the Ijebu town of Ikenne and a London-trained lawyer, led the Action Group (AG), the dominant party in the Western Region, to the 1953 London Conference. Western Region delegates at the conference<sup>28</sup> called for Nigeria’s independence from Britain and insisted on a strong federal system that would ensure autonomy for Nigeria’s ethnic groups. Awolowo had earlier argued that any viable constitution for an emergent Nigerian state must underscore the country’s ethnic diversity. He contended that the peoples of Nigeria were naturally divided by the River Niger and River Benue into three main areas—the North, West, and East—and further subdivided into ten ethno-national groups: Hausa, Fulani, Kanuri, Tiv, Nupe, Igbo, Ibibio/Efik, Ijaw, Yoruba, and Edo. The differences between the three major ethno-national groups (Hausa-Fulani, Yoruba, and Igbo), Awolowo insisted, were as great as that between the German, French, and British.<sup>29</sup> Reminiscing on the brief history of constitutional changes since the imposition of colonial rule, Awolowo chastised colonial officials, especially those in the Northern Colonial Service, for promoting the interest of the Hausa-Fulani Muslim aristocracy at the expense of the Christian-educated elite from the Western and Eastern Regions.<sup>30</sup> In all, Awolowo called for a clearer definition of the jurisdiction of regional and federal governments, the withdrawal of British administrators from regional and central governments, and the elimination of a numerical principle that gave greater advantage to the Northern Region in the distribution of resources in Nigeria’s evolving federal system.

The National Council of Nigeria Citizens (NCNC), the party that controlled the Eastern Region Government, was dominated by the Igbo elite and led by the renowned nationalist Nnamdi Azikiwe. Like the AG, the NCNC struck a political pose against the NPC’s conservatism; NCNC supported the AG’s stand on immediate self-rule. Reacting against what it considered the negative impact of the NPC’s northernization policy on Southerners, especially Igbo settlers

in Northern cities, the NCNC pressured the Supreme Court in Lagos for a legal ruling that would protect Southern immigrants in the Northern Region.<sup>31</sup>

In the end, the Northern, Western, and Eastern Regions got some aspects of their political preferences consolidated in the 1954 Constitution, though it was the Northern Region that had more to celebrate: the 1954 Nigerian Constitution accepted the national bicameral legislature, which satisfied the interests of the political parties in the Eastern and Western Regions, though the Constitution also devolved substantial judicial powers to the regional governments, in accordance with Hausa-Fulani Muslim interests.<sup>32</sup> Ultimately, the Northern political establishment was sustained by the NPC, the party of the Hausa-Fulani Muslim rulers, while NEPU, the United Middle Belt Congress (UMBC—the party of Christian minorities from the Middle Belt), and another newly formed regional party, the Bornu Youth Movement (representing the interest of Kanuri Muslims in the Northeast), mounted opposition against the dominant NPC.<sup>33</sup> In practical terms, Hausa-Fulani Muslim rulers emerged the most successful among the three regional power centers in the constitutional deliberations. Representing the interest of the Sokoto Caliphate, the NPC solidified its control over the Northern Region's social structure; for example, 68 percent of Northern Regional parliamentarians were from the Sokoto Caliphate royalty and nobility, while only a small percentage represented religious and ethnic minority groups.<sup>34</sup>

The NPC Regional Government also reformed its relationship with the native authorities,<sup>35</sup> further reinforcing the powers of the masu sarauta in several important ways: the reformed native authority structures were brought under the firm control of emirs and district heads, who also dominated the Regional Houses of Assembly and Chiefs; new set of local government laws gave the NPC Regional Government even greater control over the appointment of native authority officials, and the Regional Government gave the emirate-dominated native authorities more power over religious and ethnic minorities.<sup>36</sup> Lastly, the NPC regional authorities retained statutory control over the NA system.<sup>37</sup> As the prominent Northern Nigerian Catholic theologian Rev. Dr. Matthew Kukah observed, “Royal blood, the Hausa language, and the Muslim religion” remained the criteria for NPC political leadership during the period of decolonization.<sup>38</sup>

### Decolonization and the Resurgence of Religious Identity

The process of decolonization was politically significant, not only because it produced rapid constitutional transformation but also because it encouraged significant changes among both Muslim and Christian groups in Nigeria's

Northern Provinces. This was expressed in the intra-Muslim tensions among the dominant Sufi tariqas, the qadiriyya and the tijaniyya. According to John Paden, the Sufi orders were critical to defining the character of politics in the city of Kano, the region's preeminent city. Although the qadiriyya originally (in the early nineteenth century) was associated with the Sokoto Caliphate, the movement gained significant popularity because of its connection to Nasiru Kabara of Kano in the twentieth century. Kabara linked West African forms of qadiriyya with some North African branches, such as the *shaziliyya* (with its two sub-branches, *arosiyya* and *salamiyya*); over time, local trends in emirate Northern Nigerian society would predominate over North African traditions.<sup>39</sup>

However, from the mid-1900s, the competing Sufi order, the tijaniyya, rapidly grew in prominence in many Northern communities and soon became the dominant tariqa in Kano. This growth was precipitated by the work of Ibrahim Niass, a Wolof sheikh from Kaolack, Senegal, who had arrived in Kano during World War II and introduced a "reformed" version of tijaniyya that emphasized group prayers. Initially, this reformed tijaniyya doctrine appealed to the Hausa section of the city, mainly traders and crafts workers; later, with the installation of Muhammad Sanusi, a tijaniyya devotee, as emir of Kano in 1954, reformed tijaniyya spread throughout the emirate and across many urban centers of Northern Nigeria. Reformed tijaniyya embraced modern methods of communication, effectively using radio, print media, and the Hausa language to propagate its doctrines among its long-distance Hausa adherents, who traded between their homes in Kano through tariqa guest houses (*zawiyas*) throughout West Africa. With this rapid growth of the tijaniyya after World War II, intrareligious tensions developed between the region's two dominant Sufi orders in the 1950s.

Although Qur'anic imperatives discourage conflict between these two dominant Northern Nigerian tariqas, Bryan Sharwood-Smith, governor of Northern Nigeria's secret memorandum to the governor-general in Lagos, vividly explains the factors that led to conflict between the two regional tariqas in the 1950s. According to Sharwood-Smith, lingering tension erupted into a theological conflict by the early 1950s, when some prominent tjanis began praying with their hands crossed over their chests, which previously had been viewed as an expression of Mahdism. As previously discussed, Mahdism was a tariqa that had been associated with militancy against duly constituted authority.<sup>40</sup> In the early years of colonial rule, its millenarian doctrine understandably resonated among the masses of the poor, who were likely to follow the self-proclaimed Mahdi and help usher in a righteous Islamic order.<sup>41</sup>



Clashes between these tariqas came to a head in 1956, as some “radical” tījanis crossed the line by openly questioning the qādiris’ commitment to Islam. This claim that qādiris were not true Muslims was an expression of contempt for an established Islamic school of thought, denying the unity of Islam. When violence broke out between the two tariqas, British authorities intervened, striking a balance between the leaders of the two Sufi orders while marginalizing Mahdists, seen as a militant Muslim sect that threatened the stability of emirate society.<sup>42</sup>

Meanwhile, Christian missions were working diligently to advance their common cause in evangelization, especially in the Middle Belt region and among non-Muslim minority groups in emirate society. In particular, the Catholic Church achieved remarkable advance under the leadership of Dr. David Matthew, the auxiliary Catholic bishop of Westminster who had been appointed Apostle Delegate of British East and West Africa territories in 1946, giving him supervisory authority over Catholic churches in Nigeria, Sierra Leone, and the Gold Coast. Matthew used his good relations with British administrators to draw the Catholic Church closer to the colonial state. Although local missionaries were ambivalent about Matthew’s style of administration, they appreciated his contribution to the growth of Catholic missionary work in Nigeria and admired his influence among British administrators. Matthew’s vigorous leadership led to the establishment of the prefecture in the Northern city of Yola (in Adamawa) in 1950, and ecclesiastical jurisdictions were created throughout the Northern Region. Eventually new prefectures were established in the Northern Muslim heartlands of Sokoto, Katsina, and Bornu provinces. The colonial state was a major beneficiary of this Christian missionary project because the new missions provided critical social services for local communities. The Adamawa Native Authority, for instance, depended mainly on the Franciscan Sisters of the Catholic Church for health care and various other social services. Although colonial administrators sought broadly to control missionary activity, in the main there was interdependence between church and state to promote development in the region.<sup>43</sup>

Intra-Christian relations also improved, particularly in the Eastern Region, where the Catholic Church was most dominant. After several decades of frosty relations over theological and ministerial differences, CMS and Catholic missionaries in the Eastern Region built bridges that would have an established role in the new nation. CMS Anglican bishop Cecil Patterson and Catholic archbishop Charles Heerey met regularly to discuss matters of common interest, especially in the important areas of education and health care. In due course, the CMS strengthened its grip in Tiv, Idoma, and other Middle Belt

regions, and other Southern Christian missionary groups began to open missions in the Middle Belt and in the non-Muslim areas inside the emirates. But this development soon would generate a political reaction from the Northern Muslim seat of power: Hausa-Fulani Muslim rulers mounted strong opposition against the northward push by the Catholics, CMS, Methodists, Presbyterian Brethren, and the Christian Council of Nigeria. Eventually, as part of the northernization policy that was taking root, and in the interests of stability, British administrators worked collaboratively with the NPC regional government to curtail missionary work in the North.<sup>44</sup>

Restrictive official policies did not dampen the enthusiasm of these Protestant and Catholic missions. In fact, leading Christian missions worked even harder to spread the word; these missionary efforts encouraged national and international partnerships among educators, theologians, and technical experts to promote education, health care, and agriculture. Support came in the form of personnel and financial investments from England, Canada, Australia, and the United States. Moreover, with a new generation of Nigerians now leading the church, CMS work reflected the changing condition of the times. Many of these new-breed CMS ministers had attended leading Anglican colleges of theology in England, such as St. Aidan's College, Birkenhead, London College of Divinity, and St. Augustine College in Canterbury, in the decade immediately after World War II. Indeed, a new generation of outstanding Nigerian CMS clergymen were sponsored for advanced studies in theology and education in England and Canada and at the recently established Nigerian universities.<sup>45</sup> CMS missionary activities had shifted even more from the earlier emphasis on pastoral work to general human development. In collaboration with Methodist and Presbyterian missions, the CMS established two theological training colleges in Ibadan and Umuahia. This collaborative effort provided the three Protestant missions with a wider pool of talented clergy, better equipped to respond to the demands of a rapidly changing society.<sup>46</sup>

The Northern Muslim hierarchy would not be outdone; the NPC tightened its grip over emirate society, creating greater cooperation among various tariqas by the late 1950s, as decolonization was winding down. In particular, the sardauna raised funds from Arab countries to launch what came to be known as the Muslim "conversion campaign" to expand the influence of Islam. As these dynamic religious forces exposed the tension within the Northern Region—and between the Northern Region and the rest of the country—they also revealed contradictions between Islamic law and English common law in the Northern Region during this period of political transition.

## Islamic Law in Northern Nigeria: Contending Issues

British colonial authorities convened three major conferences (1953, 1956, and 1959) to emphasize the necessity of legal reform in Britain's African colonies during decolonization. While the first was held at Makerere College in Uganda—East Africa's leading institution of higher learning—the second was held in Jos, Nigeria's principal Middle Belt city. The 1953 and 1956 conferences confirmed the challenges of reconciling “native” law (including Islamic) and English common law in Britain's increasingly complex colonies. In principle, these two conferences sought to develop a viable legal framework to respond to the pressing demands of Britain's African colonies.

Convened by the secretary of state for the colonies in London in 1959, the final conference on the future of law in Britain's African colonies was chaired by the eminent English jurist Lord Alfred Thompson Denning. Conference participants explored the interactions between customary, Islamic, and English law and discussed ways to reduce tensions among the various legal systems at the eve of independence. Significantly, this historic conference and the previous legal conferences were central to the intense debate over the tension between sharia and English common law, particularly in Northern Nigeria. While Lord Denning and his colleagues were optimistic about the future, the developments of the last several decades reveal the enormous challenges of reconciling Islamic, native, and common law in modern Nigerian state and society. Lord Denning noted:

One group of pieces is founded on the costumes of the African Peoples, which vary from territory to territory, and from tribe to tribe. Another group of pieces is founded on the law of Islam, with all its many schools and sects. Yet another group is founded on the English common law. Another on the Roman-Dutch law, another on Indian statutes and so forth. If the peoples of Africa are to emerge into a great civilization, then these discordant pieces must all be sorted out and fitted together into a single whole. The result is bound to be a patch work, but we should remember that a patch work quilt of many colors can be just as serviceable as one of a single color, and is often more to be admired because of the effort needed to make it.<sup>47</sup>

The laws that were in force in Britain's African colonial territories north of the Zambezi can be broadly divided into two sections: general law and specific law. Applied in default of other provisions to every person within colonial jurisdictions, general law had been based on English common law. It can be further

divided into four parts: the received law of England as it was understood at a particular date (for example, January 1, 1900, the formal date of British rule, in the case of Nigeria); common-law doctrines of equity, the statutes of general application in force in England on that date (January 1, 1900); modifications of the colonial legislature; and modifications by act of the imperial parliament, or by an order in Council. These laws, of course, were expected to go through significant modifications once independence was obtained by the colony.<sup>48</sup>

Specific law, on the other hand, includes the bodies of laws applied as exceptions or additions to the general law in a defined class of cases. These laws include customary (or native) laws within specified jurisdictions, and religious laws (for example, Islamic law in Northern Nigeria). The most important expression of specific law was what was generally known in colonial parlance as “African customary law,” which consisted of a variety of laws that address the legal concern of diverse communities. Since the vast majority of local inhabitants were subjected to customary or native law, most cases in colonial courts were governed by specific law. During colonial rule, however, the consequences of rapidly changing social conditions meant that customary law was ultimately a *mélange* of rules from “indigenous” customary practices, English common law, and Islamic law (where applicable, such as Northern Nigeria).<sup>49</sup>

During decolonization, Northern Nigeria was British colonial Africa’s ultimate test case for these discussions at the intersections of customary, Islamic, and English common laws. Despite a decade of constitutional reform in Nigeria, and although Islamic law had been applied more extensively in Northern Nigeria than anywhere in the world except Afghanistan and the Arabian Peninsula, Islamic law was still subsumed under native law in the region.<sup>50</sup> To many British administrators in the Northern Nigerian Colonial Service, the institutional design that had evolved under Lugardian indirect rule was “genius,” because it allowed for varied application (the so-called sliding scale) that reflected contending socio-religious conditions. In principle, Islamic law was applied strictly in Muslim areas, non-Islamic customary laws ruled in largely non-Muslim areas, and an amalgam of Islamic and customary law was enforced where the population was a combination of Muslim and non-Muslims. For instance, in the Jarawa Court, a non-Muslim Native Authority court in Bauchi Province, “Muslim members” were allowed to advise on Islamic law in cases involving only Muslims while taking into account local custom within the Native Authority jurisdiction.<sup>51</sup> Moreover, the maintenance of the Repugnancy Clause, reaffirmed in 1956, contributed to this malleability by setting an upper bound on the applicability of Islamic law.<sup>52</sup> Thus, institutional flexibility allowed courts to adjust the law to social conditions and work out decisions often agreeable to most parties.<sup>53</sup>

However, this flexible application of the law also was problematic, especially to Hausa-Fulani Muslim clerics, who found it objectionable to mix Islamic codes developed in the Arabian Peninsula, Europe, and North Africa with local customary practices that were presumably indigenous to “tribal” Nigerian communities.<sup>54</sup> Moreover, as Islamic scholar A. A. Oba would later argue, customary law is (by definition) *determined by* cultural practices, whereas Islamic law is a universal code that *determines* cultural practices.<sup>55</sup> In addition to Muslim objections to this classification, the legal variation within jurisdictions that resulted from such flexibility created disparities in access to justice among communities. Most problematic, this varied application lacked an “established framework for distinguishing customary law from non-legal customary practice.”<sup>56</sup>

With rapid social change by the period of decolonization in the 1950s, it had become difficult for both British administrators and native court judges to distinguish between legally enforceable normative rules of behavior, drawn from widespread local usage, and legally unenforceable social, moral, and religious obligations that simply reflected customary practice. This ambiguity became pronounced just as the value of customary practice increased, as local people guarded “tradition” more closely than before. The “sliding scale” instead depended on judges to interpret evolving social conditions outside the legislative context; rather than letting such change work its way up through the administrative system, with the law interpreted according to recognized societal norms, this task was left to individual judges. This made institutional adjustment to societal change an uneven process, as there was little real possibility to enact legal recognition of such evolving conditions. Furthermore, this rebounded back on changing social identities; the fact that the legal system could not apply a uniform code intensified varied identities throughout Nigeria’s colonial provinces. Ironically, then, as this legal system reflected ambiguous social relations, it also solidified contending communal identities. In short, social upheaval in the late colonial period moved too quickly for the ad hoc customary law to handle; society and the legal system governing it were transforming at different speeds.<sup>57</sup>

This system was grossly inadequate for pressing social and political conditions in the Northern Region during the critical period of decolonization. Consequently, as the pressure for legal reforms grew, regional authorities introduced the Native Court Law of 1956. This reform separated Islamic law from customary law, institutionalizing sharia courts alongside non-Islamic native courts.<sup>58</sup> Moreover, the new law established the first Muslim Court of Appeal.<sup>59</sup> In reality, though, these changes amounted to half-measures. Islamic courts still fell under the broad category of customary law, considered *prima facie* applicable to

Africans “in the vast majority of cases.” The Muslim Court of Appeal was also circumscribed, with jurisdiction over appeals from native courts on matters pertaining to personal law. It was not a “standing” court; instead judges convened on an ad hoc basis. Far weaker than its English common-law counterpart (the High Court), the Muslim Court of Appeal looked more like a patchwork solution to Northern Nigeria’s long-term legal problem.<sup>60</sup> Also, while the dreaded repugnancy clause remained in force,<sup>61</sup> the law allowed non-Muslims in the Northern Region to opt out of Islamic law.<sup>62</sup> In sum, this reform recognized the real distinction between Native and Islamic law, but also reified it along a Muslim/non-Muslim axis, ending the “sliding scale” of judicial interpretation of social context. This essentially froze social change from a juridical perspective,<sup>63</sup> cementing religious division in the Northern Region.

This change created numerous legal challenges in the following important ways. First, the distinction between Islamic courts and native courts, heavily influenced by the interests and perspectives of Hausa-Fulani Muslim rulers, was murky at best. The Islamic courts were less flexible, insisting on doctrinal interpretations of Islamic law, and the native courts also rested on Islamic law as a matter of administrative guidance.<sup>64</sup> According to British officers, within a few years it was evident that the average Northern Muslim drew little distinction between Islamic and customary law. But the Northern Region contrasted sharply with the Western Region (the southwestern region of the Yoruba people), which also had a significant Muslim population: the former was two-thirds Muslim, with predominantly Islamic law, while in the latter, although about half of its population was Muslim, Yoruba native law and customs formed the basis of local legal codes. This disparity resulted from the arrival of Islam in Southern Nigeria during a period of European imperial influence, creating a liberal conception of monotheistic religion, while the Northern Region, as discussed in previous chapters, had experienced centuries of Islamization that was consolidated by the success of the Sokoto Jihad.

Second, customary law policies of previous decades were, by the period of decolonization, largely inadequate because of complex social conditions, especially labor migration, which complicated colonial legal designations such as “Muslims,” “indigenes,” and “settlers.” The labor migration, especially the movement of Southern Christians as migrant workers to the Northern Region, meant that many Nigerians now fell within the problematic jurisdictions of Islamic, customary, or English common law that hardly captured their identities.<sup>65</sup> Furthermore, not only had overlapping identities become increasingly salient along religious and ethnic lines in the Northern Region; the impact of Christian missionary work had also increasingly transformed the meaning

of “indigenous custom,” especially in the Middle Belt region and among non-Muslim minority groups in the emirates. The crude distinction of common law, customary law, and Islamic law was far removed from the complex reality of intersecting ethno-religious identities most local people encountered in everyday life. This rigid imposition of legal categories on dynamic social conditions in local communities was deleterious to the carriage of justice in the reified Northern Region Native Court Law of 1956. This complexity is best reflected in the way elite Northern Muslims utilized Islamic law and common law: they tended to opt out of Islamic law to facilitate commerce, but personal matters, such as inheritance issues, were exclusively decided by Islamic courts. The courts thus became not only an arena for the interpretation of changing social identities, but also a vehicle for the manipulating of these shifting identities.<sup>66</sup>

This shortcoming was particularly pronounced in civil law issues such as marriage and inheritance, as well as disputes over land tenure. In matters of succession, for instance, customary law held that a plurality of heirs would divide the inheritance, whereas English common law split estates according to a legal document. This difference seemed largely unbridgeable,<sup>67</sup> yet rapid integration of the two categories necessitated a compromise. The result was the same fusion before the reform: a poorly defined trichotomy of areas of customary (including Islamic) law tempered by English common-law influence. *De jure* fusion, in this sense, became a *de facto* failure of reform. In land-tenure cases, English common law holds property to the individual citizen, whereas indigenous practice (as formulated under native law) recognized communal ownership. Traditionally, local power brokers could not dispose of such land without the consensus of members of the relevant corporate—often family or kinship—groups. As economic migration picked up, however, English laws of transfer came to bear on customary practice. Across Nigeria, Western standards of individual ownership were borrowed and built into local practice, particularly in coastal areas with long-standing European connections. This fusion is most pronounced in cities that evolved almost exclusively from migrants, such as Jos, Kaduna, and Port Harcourt, lacking strong preexisting local traditions and thus indigenous authorities to adjudicate land-tenure matters on a native-court basis. In some cases, colonial planners removed such urban areas from the jurisdiction of customary land tenure altogether, designating them “extra-customary centers,” leaving only personal matters under customary law. Thus, in some of the heterogeneous and highly mobile cities of the Middle Belt, with weak centralized customary practices and growing foreign economic interests, coherent land laws were rarely found.<sup>68</sup>

A third problem was that the Native Court Law of 1956 failed to resolve the tensions of running parallel legal systems—which is what had motivated the reform in the first place. The differences between the courts remained vast from a legal perspective. In capital cases, for instance, the ability to enter evidence to support the defense of provocation can bear heavily on an outcome: Islamic law does not recognize such evidence, but English common law does. As a result, justice was determined by the particular agencies trying the case instead of the circumstances of the crime itself. Norman Anderson offered an example of a man allegedly provoked to murder who was arrested by the emir's officers, tried, convicted, and executed, even though he just as easily could have been apprehended by the Nigerian Police and tried under English common law, potentially with a much different outcome.<sup>69</sup> The 1956 reforms thus failed to resolve such issues, and there appears to be little indication that the new system worked any better. While power was further regionalized, debate simply shifted to the disparity in authorities of the legal systems: instead of lamenting the absence of a sharia appellate court, Northern Muslim clerics now lamented its weakness in comparison to common law. The persistence of these legal contradictions during self-rule in the mid-1950s would require a greater review of sharia in the Northern Region as Nigeria approached independence in 1960.

### Constructing Islamic Law in the Northern Region

The legal and constitutional foundations on which governance in the Northern Region would be based during self-rule were further explored in the late 1950s, with independence fast approaching. The pressure for reform was initially precipitated when a judicial committee called on the Northern Regional Government to review the defense of provocation in homicide cases under Islamic law.<sup>70</sup> This was paired with recommendations of the Willink Commission, a high-profile commission of inquiry established by the British authorities to investigate the rights of ethnic and religious minority groups in Nigeria's three regions. Significantly, the Willink Commission recommended that the Northern Regional Government exempt non-Muslims from the jurisdiction of Islamic law under the native authority system.<sup>71</sup> The commission also recommended that the powers of Islamic law and native law should be restricted to personal matters in Northern Nigeria.<sup>72</sup> Predictably, prominent Hausa-Fulani Muslim rulers opposed the recommendation. More importantly, with growing queries on the role of sharia in legal administration, the NPC regional government established a fact-finding committee to investigate this enduring problem in state affairs. Governing about 20 million people, two-thirds of them



Muslim, the NPC government, with the guidance of the outgoing Northern colonial service, sent representatives to explore recent legal reform in Libya, Sudan, and Pakistan, all newly independent Muslim countries with considerable non-Muslim minorities.<sup>73</sup> On their return in 1958, the delegates further deliberated and submitted a report that once again kicked off debate over reforming the legal institutions of Northern Nigeria.

In addition to the challenge of reforming the Northern Region's legal system, there was a growing strain between the colonial administrators and the Northern Muslim leadership because of the rising sense of self-confidence among the NPC hierarchy. Hausa-Fulani Muslim rulers had gained significant exposure from the initial exercise of semi-autonomous regional rule; most had traveled abroad, gained diplomatic experience, implemented public policy, and made decisions that sometimes clashed with British policy. Seeing the British in their natural habitat at Whitehall also gave the Hausa-Fulani elite perspective on how governance was inevitably anchored in social context, a discovery they leveraged to their benefit. More importantly, this development transpired with the sardauna's push to bring emirs to heel, effectively bringing the emirate structure under the authority of the NPC government. Thus, emirs and chiefs had to comply with ministerial decrees in 1957 and 1959 as their judgments became subject to appeal of the regional government.<sup>74</sup> Finally, even those changes that state officials agreed on would require review by the Regional Executive Council, the House of Assembly, and the House of Chiefs, all under the control of the NPC regional government.<sup>75</sup> This assertion in the authority of the NPC regional government provided the context for a far-reaching review of the region's judiciary system.

The NPC regional government judicial review committee was chaired by Syed Abu Rannat, chief justice of Sudan; other members of the committee included the chairman of the Pakistan Law Reform Committee and former justice of the Supreme Court of Pakistan, Mohammed Sharif; the waziri of Bornu, Shettima Kashim; the chief alkali of Bida, Mallam Inusa; a former minister of the Northern Region, Peter Achimugu; and Professor Norman Anderson of London University's School of Oriental and African Studies. The commissioner for native courts in the attorney general's office, S. S. Richardson, was appointed secretary of the Reform Committee.<sup>76</sup> Professor Anderson summed up what was at stake for the Northern Muslim political elite:

After independence they would need to attract foreign capital, so they must have a legal and judicial system which would give confidence to foreigners. They would wish to be members of the United Nations

Organization, so they must expect awkward questions and put themselves in a position to give satisfactory answers. They must have a legal and judicial system of training which would enable them to administer these systems themselves.<sup>77</sup>

Although the committee's proposal invested more powers in a regional Sharia Court of Appeal, it still subjected native courts (including Islamic courts) to the Penal Code and the Criminal Procedure Code under the authority of common-law courts. However, to accommodate the new powers invested in the Sharia Court of Appeal, the committee recommended substantial reform of the procedure governing the Penal Code.

Not surprisingly, the committee's proposals were announced to immediate criticism. Most strident was the opposition to reform the Penal Code, despite claims of judicial indiscretion and abuse.<sup>78</sup> Some British officials, especially common-law judges and many Hausa-Fulani Muslim clerics, disagreed with the proposals; the former engaged in a drawn-out argument over new procedural provisions and the bureaucratic burden of implementing them.<sup>79</sup> This dissent from British administrators stemmed from the fact that the proposals sought to strike a compromise between common and Islamic codes. In doing so, the committee adopted the Sudanese procedure, itself based on the Pakistani approach, which was, in turn, a derivative of Indian innovations on colonial legal procedure. Unlike the British system, where police take statements, interview witnesses and suspects, charge whom they suspect, bring the accused before the court, and leave him or her to the Crown's prosecution, the Indian system saw the magistrate doing the inquisitorial work. No statements were made before the police, nor did they prepare the charges. Instead, the magistrate took the statements, certified them, directed the police investigation, framed the charges, charged the accused, and then either tried the case or sent it to another magistrate. Such a system appalled British jurists, who revered their procedural code as much as Muslim clerics did their own.<sup>80</sup>

To resolve this objection, a final meeting was called at the Kaduna residence of the chief justice of Northern Nigeria, Sir Algernon Brown. Among the attendees were Regional High Court Judge Henry Skinner, S. S. Richardson, Chief Registrar Smith, Attorney General Hedley Marshall, and Marshall's draftsman, Imanus Nunan. Here, Brown criticized the procedural law as "novel, eccentric, and disagreeable," referring to it as a "reactionary and unwarranted deviation" from the time-tested British system.<sup>81</sup> After the meeting, he broke protocol and sent a missive to the colonial office protesting the change, referring to Richardson and Marshall (both officers in Northern Nigerian colonial

service) as “Prussian and unyielding.”<sup>82</sup> Thereafter, he continued to solicit support from colonial officers, even contacting the inspector general of police in Lagos. Attorney General Marshall pushed back, reminding Brown that he had been bound by similar procedure during his previous tenure as a high court judge in Singapore. At any rate, the Colonial Office supported the proposed reform. Minor concessions were made to appease Brown and like-minded English common-law jurists, but the reforms moved ahead largely as planned. Marshall later recalled:

The Muslim countries to which the earlier delegation had been sent had come to terms with their Muslim law in a way which had enabled them to keep pace with the modern world and in which, of course, Northern Nigeria had up to then been unable to do. . . . What I can say, however, is that the carrying out of the proposals of the Panel of jurists involved a tremendous overhaul in the legal and penal structures of the North and involved a considerable amount of legislation.<sup>83</sup>

Opposition of Hausa-Fulani Muslim rulers, on the other hand, mostly came from a perception that the new Penal Code weakened sharia.<sup>84</sup> Northern Muslim clerics felt that the Penal Code was an intrusion into age-old moral codes of emirate society: “The sharia (a divine law) had become subjugated to what they believed was mere human law.”<sup>85</sup> In crippling Islamic law, sharia advocate Auwalu Yadudu later reflected, “the Minorities Commission and the Abu Rannat Panel were in effect used as a smokescreen by the departing colonial administration to give local legislative legitimacy to a decision which had long been officially entertained.”<sup>86</sup> Protesting the new Penal Code’s specific provisions were more conservative emirs such as emir of Kano, Alhaji Sanusi. For such critics in Northern Muslim royalty and aristocracy, the main sticking point was that sharia in criminal cases was subjected to the appellate authority of English common law.

A second major concern was a specific matter of Islamic legal doctrine expressively championed by the emir of Kano: the provocation defense in a homicide case. An intensely religious man described by Marshall as “medieval with his superstitions,” the emir was seen as “almost the Henry VII or Louis XI of the Muslim hierarchy,” and thus harbor a deep revulsion to any reform that would weaken sharia.<sup>87</sup> British authorities thought they could convince him by mobilizing authoritative Muslim scholars who could overcome his obstinacy. Marshall thus got the sardauna to persuade the emir of Kano to meet with Chief Justice Rannat and the grand mufti of Sudan, who were in Kaduna for a celebration of Northern Nigerian self-government. The parties met at the

Council Chamber in Nasarawa, with Isa Kaita representing the sardauna and the emir appearing very “sulky.” The grand mufti brought out a book of Hanafi law to convince the emir that the proposals were in line with the Islamic practice of punishing homicide according to the circumstances of the case. He and Chief Justice Rannat both had been tutors of the emir, and were thus able to persuade him, as Marshall had hoped. With Emir Sanusi’s approval, the Penal Code was all but settled.<sup>88</sup>

The panel’s other recommendations for reform were broadly accepted. Widespread support for the proposals in large part stemmed from the fact that they were derived from the (substantially Maliki-based) legal systems of the three consulted countries. Thus, the sultan of Sokoto and other emirate rulers were supportive throughout, only dissenting with the removal of Islamic courts from the native authority jurisdiction, which they argued would undermine the authority of the Hausa-Fulani Muslim hierarchy.<sup>89</sup>

Another recommendation approved by the panel was Richardson’s nomination as commissioner of native courts in the attorney general’s office. Responsible for supervising courts, preparing its rules, and checking its records, he actively participated in formulating policy and drafting legislation.<sup>90</sup> In his negotiations with cautious Northern Muslim clerics, his “cheery, friendly way, his knowledge of Hausa and Arabic, [and] his personal friendship” with many emirate rulers helped to win their support. Even hardliners were converted to Richardson’s side. Finally, the proposals were helped by the fact that eminent foreign Muslim jurists authored them.<sup>91</sup> Rannat and Sudan’s grand mufti met with various public opinion leaders in the region, particularly emirs and Muslim jurists, to convince them about the merits of the reform. As with the case of the emir of Kano’s opposition to the Penal Code, their influence was decisive.

After such support had been corralled, the legislative package was introduced to the Northern Regional Legislature. It consisted of seven parts: the much-debated Penal Code; the far-reaching Native Court Amendment Law; the High Court Amendment Law, which would constitute a Native Court of Appeal division run by the chief justice, the grand qadi of the Northern Region, and other important Islamic judges; the new Magistrate Courts Law; the District Court Law; the Sharia Court of Appeal Law, which established a venue for appeals from Islamic native courts on civil cases; and the Court of Resolution Law, based on the Sudanese Court of Jurisdiction, which resolved jurisdictional issues arising from conflict among the high court and the sharia courts. Attached to this raft of bills was a Supplementary Evidence Amendment Law, which stipulated that the native courts would be guided—but not bound—by the Codes and Evidence Act.<sup>92</sup> Without such a provision, it is likely

that many native-court decisions would have failed the repugnancy test on appeal, as procedural violations were rampant. Despite such leniency, the reform was still a major change, as this was the first time that native courts would be subject to the Penal Code and the Criminal Procedure Code.<sup>93</sup>

The judicial system thus was organized into three parallel ladders: Islamic, native, and common law. The Muslim Court of Appeal had been eliminated only four years after its constitution and replaced with the much stronger Sharia Court of Appeal.<sup>94</sup> Oba writes:

There are only two major differences between the Moslem Court of Appeal and the Sharia Court of Appeal. The first is that appeals no longer lie to the High Court from the court. The decisions of the Sharia Court of Appeal are final. The second is that the Sharia Court of Appeal now has a standing membership consisting of a Grand Qadi and Qadis specifically appointed to man the court. . . . The High Court retained jurisdiction over appeals from Native courts in Islamic law matters other than Islamic personal law.<sup>95</sup>

In other words, the Sharia Court of Appeal had no original jurisdiction, but full appellate power over lower and provincial courts. It had four justices and was considered duly constituted when three of them sat.<sup>96</sup> Moreover, when an appeal from a native court relating to Islamic law went to the High Court, common-law judges would be aided by a qadi. The Penal Code was passed in 1959 with the backing of religious leaders, despite minor difficulty in the House of Assembly; after much debate but little opposition, the rest of the bills passed the legislature in 1960. The entire program went into force later that year.

Implementation would prove a predictably daunting task. Despite earlier agreeing to back the reforms, the emir of Kano “did all he could to sabotage the [new] system”<sup>97</sup> when the laws came into force. There also were logistical problems, as seven hundred native (mostly Islamic) courts handled 95 percent of the region’s system of justice. Given the Northern Region’s social complexity and general illiteracy, translating the law into local languages substantially complicated matters. Similarly, five thousand new staff members had to be hired and all existing jurists retrained. As a result of such difficulties, the regional government set the target for full implementation for the mid-1960s. To help meet this goal, it opened a law school at the Institute of Administration in Zaria with the aim of retraining alkalis, native court presidents, and other senior legal officials, as well as stepping up its program to train jurists abroad.<sup>98</sup> Finally, the reform policy needed support from local communities. To win such support, the regional government began public education campaigns, including an

adult literacy program, attempting to popularize the new legal system through print, radio, and later television media. Such efforts were particularly necessary for the legitimacy of the new high and magistrate courts, as local people considered both of those courts “English”—that is, distant, corrupt, and representing foreign interests. As these courts were about to come under the jurisdiction of the Northern Region Government, the panel in charge of implementation undertook a public-relations campaign that included educating the public about its functions. Officials also encouraged English common-law justices to learn the Hausa language, the lingua franca of the Northern Region.<sup>99</sup> Such measures completed the reform project.

This was the status of the legal system in the predominantly Muslim Northern Region when independence arrived in October 1960. In the years immediately after the Second World War, British authorities collaborated with the political elite of the three major regions to address the deep structural imbalance between the Northern Region and the Southern Regions (the Eastern and Western Regions). However, despite their best attempts, British reform policies achieved little to ameliorate the deep division between the North and the South. Indeed, with regard to the legal reforms of the 1950s, British reformers soon recognized the steep challenge ahead. By the time of independence, British officials openly confronted the dearth of trained professional staff to run the Northern Region’s courts and government offices; in 1960, there were only four barristers for the entire Northern Region and no new crop of legal minds on the immediate horizon. To resolve this serious shortage, the Institute of Administration, Zaria, partnered with several British legal institutions such as the Council of Legal Education and the Masters of the Benches of Lincoln’s Inn and the Middle Temple, to prepare promising Northern Nigerian candidates to take the English bar examination. Initially the program was committed to preparing fifteen candidates annually, anticipating a “steady flow of competent, homegrown lawyers, judges, magistrates,” and other jurists to replace expatriates and former colonial officers.<sup>100</sup> Such programs indicate the extent to which British reforms had failed to achieve the “balance” administrators had wished for. Moreover, the British system of indirect rule and reform policies during decolonization solidified ethno-regional identities that exacerbated the structural disparity between the Northern and the Southern Regions. As the regionalization of state power intensified, British administrators—especially those in the Northern Civil Service—further reified the authority of emirate structures, delegitimizing indigenous religions and cultural practices while extending the powers of the dominant ethno-religious potentates in the region.

To underscore a central issue in this chapter, Western-oriented Southern elites from the Eastern and Western Regions, dominated by products of Christian missions, insisted on independence and pushed for a powerful central government to challenge the Northern Region's superior population. They attempted to control the legal-bureaucratic agencies of the federal government and called for a developmental agenda to transform the country.<sup>101</sup> To a large extent, Hausa-Fulani Muslim elites were able to stem this tide of change and preserve their formal regional autonomy because of British policy preferences, and the remarkable coherence of the *masu sarauta*. Emirate leaders consistently drew from their religious legitimacy to gain political and legal authority, dictating the shape, content, and direction of the Northern Region administration and its role in the broader Nigerian state project.