

SHARIA AND OTHER LEGAL SYSTEMS

“We have carefully noted the desire of Muslims to have the sharia issue referred to the AFRC [the highest body within the Military Federal Government]. If that body decides to rubber-stamp the desires of Muslims, we shall reject that Constitution and the AFRC must be ready to produce for the Christians a Christian constitution that recognises Ecclesiastical Courts.”

Christian Association of Nigeria, 1988¹

▲ RELATION TO COMMON LAW

The question of the relationship between Nigeria’s common law Constitution and the sharia has been hotly discussed even before independence as part of the general sharia “debate.” Much of this took place in the context of the series of CAs. This history has been summarized in Volume 6 and therefore does not need to be revisited here. You should know, however, that Christian writers on the sharia question are familiar with this history and often summarize it in various contexts.²

Most Christians from all walks of life insist that the Zamfara-style sharia is unconstitutional. Immediately upon the declaration, Gabriel Osu, a Catholic clergyman in Lagos, agreed that the “1999 Constitution gives power to the states to make independent laws, but only in so far as they do not ‘endanger the continuance of a federal government.’ That is why the states are not authorised to adjudicate on criminal laws.” Osu continued, “Sharia will erode the supremacy of the Constitution, challenge its efficacy and authority and make a mockery of it.” Sharia “may well be a recipe for disaster and chaos.” When Balarabe Musa, a former impeached “radical” governor of Kaduna, affirmed that “sharia is above the Constitution,” Albert Agbaje, Anglican bishop in Edo State, dismissed him as an “ignoramus.” He said, “A man of his caliber, who was the head of a government and who ruled his state, not through sharia but through the Constitution, ought to know what he is saying.”³ Joseph Bamigboye declared sharia cannot even be changed to meet constitutional conditions. The precepts of the Qur’an and *Hadiths*, the collection of authoritative traditions, are of a different nature that “cannot under any guise or subterfuge be elevated” to constitutional level.⁴ This statement is an example of the antithesis we have here. Muslims think of sharia as *above* the Constitution, while Bamigboye thinks that it cannot even be *elevated* to fit *under* it!

Dodo explains that Muslims feel subject “to no other law than the sharia. The Constitution is valid only in so far as it reflects the sharia. Touching the sharia is touching the very heart of Islam.” He shares quotes from a few prominent Muslims. Justice Ustaz Yoonus Abdullahi: “The sharia existed before the advent of British colonisers and if one argues legally and logically, the Nigerian Common Law should be the sharia and not the British Common Law. Why? The colonisers met the sharia and left it; the politicians came and went; the military took over—and the sharia is still existing.” Justice Bashir Sambo: “Muslims must rise with all our strength to

see that our Constitution gives us our full Islamic fundamental rights. We must make sure no provision in the Draft Constitution is made binding on us, unless it is in complete agreement with the letter and spirit of Islamic principles from which we have no right to deviate.” The upshot, concluded Dodo, is that for Muslims sharia is supreme over Nigeria’s Constitution, while according to the Constitution, the latter is the supreme law of the land. Elsewhere in the same paper, he wrote that where sharia becomes the supreme law, “the Constitution will be thrown to the dogs and we are going to have a state within a state, and the state of chaos will be the result.” He found support from Richard Akinjide, former federal AG, who said, “The way and manner the implementation of sharia is being done is a violation of the Constitution.” Those who are adopting it “are acting unconstitutionally and illegally.” Now you have heard it “from the horse’s mouth.” So, there you have the constitutional problem between the two parties as Christians see it. In order to solve it, Christians want a return to the Penal Code, while some want the sharia and the entire Muslim legal system “removed completely” from the Constitution and the judicial setup.⁵

The Committee of Concerned Citizens, a body not further identified except by the names of its thirty-two nationally prominent members, both Christian and Muslim, privately distributed a collection of Christian and Muslim lectures on sharia issues.⁶ In his presentation, Ben Nwabueze explained that the precise issue at stake is “whether the state powers can be used to enact or codify the criminal aspects of the sharia to arrest, detain and prosecute offenders and to convict and punish” them and to do so constitutionally. He declared that the issue demands honesty and plain truth. And that truth is that “state enforcement of sharia” in the context of multi-religious Nigeria “cannot coexist with a truly federal form of political association.” If people insist on such a sharia, “all the constituent units should come together and re-negotiate another form

of our association.” Another truth: “Some elements of the sharia incorporated in the Penal Code may well be open to challenge for inconsistency with the Constitution, if their connection with the Muslim religion is so clearly manifest as to indicate that the legislative power of the state has been used to aid, advance, foster, promote or sponsor that religion.”

Agreeing with the retired Muslim Chief Justice, Mohammed Bello, Nwabueze described another restriction on sharia. “Without codification by law enacted by the National Assembly or a State House of Assembly, the application of sharia criminal law by virtue of authority derived directly from the Qur’an or the Sunnah will be inconsistent” with the Constitution, “which prohibits the conviction of a person of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a law enacted” by an assembly. Finally, where sharia demands punishments that are considered “inhuman or degrading or are otherwise derogatory of human dignity” it also “runs foul of the Constitution.” Nwabueze has it both ways. On the one hand, he finds it questionable that the FG or any state government may codify sharia criminal law and apply it to all religions. On the other hand, applying it to Muslims alone “will lay bare its character” in that it now exists as “state sponsorship of that religion.” So, even a sharia criminal law codified properly according to the Constitution is not constitutional. He concludes his presentation by suggesting that if sharia states refuse to drop it, they seem to have opted for “a complete break-up of the association. It is better to pull apart or break up in peace than fight over the issue.”⁷

Rotimi Williams’ paper follows those of Muhammed Bello and Nwabueze. He begins by agreeing with them that basically the new sharia does not fit in the Constitution. He then takes to task those who think that prior to the Penal Code, *alkalai* and their Sharia Courts at the time had “unqualified licence or power to administer the Sharia Criminal Law.” They were restricted by limitations

imposed on them by the Constitution. *Hudud* punishments were not allowed, since they were considered repugnant.

Williams refers to the solution that emerged from the CA 1978 as one that enabled Nigerians “to live together in harmony.” The way forward now is “to stick to that solution.” However, there were “extremists” from both sides. The Muslims amongst them felt the solution “did not go far enough to enable the states to incorporate sharia,” while Christians felt things had gone too far. One mistake the “fathers” of 1978 CA made was to assume “too readily that the arguments which persuaded them to opt for the 1978 solution will automatically be transmitted to succeeding generations.” For this reason Williams proposed establishing an institution that would keep the 1978 solution alive as well as “to propose possible improvements.” In the meantime, any person has the right to challenge the constitutionality of the new sharia in court. Sooner or later, he predicted, the issue will show up in a court, which, by the way, is where many people want to see it, including Governor Sani and the president himself, advocates and antagonists both.⁸

Nwabueze saw the potential for the courts to declare a constitutional inconsistency. Dogaraje’s Gwamna was not quite that hesitant. He declared that in fact the Constitution does contradict itself between the provisions for secularism and sharia. This feature opened the door for Zamfara and led to “one of Nigeria’s worst religious confrontations.”

Christian politicians also entered the fray. The Enugu House of Assembly viewed the new sharia “as an open violation of the 1999 Constitution,” for the latter prohibits every government from imposing a particular religion on anyone.⁹

The governor of the Southern Ogun State, Olusegun Osoba, strongly disagreed with his sharia colleagues. “The Constitution is very clear. Sharia is limited to personal Muslim law and issues of inheritance. Zamfara is taking it beyond the Constitution.” The

limited sharia has a constitutional place comparable to that of customary law, which also is limited in its operation. All the governors have sworn “to protect the Constitution and we must not do anything to undermine it.” The current sharia controversy “should be referred to the Supreme Court,” a suggestion shared by almost all parties. “What will happen,” he predicted, “is that one of us will go to the Supreme Court to interpret the limits of sharia.” He feared that “the possible religious fundamentalism that the introduction of sharia may breed, would negate the oath of office the Zamfara Governor swore to protect the Constitution.”¹⁰

Women participated in the struggle against restrictive religious laws. A group of NGOs concerned with women declared these religious laws “completely unconstitutional,” for they “violate women’s basic human rights. These laws have not undergone the usual process of due diligence. They are too serious to be just declared without exhaustive public discussion”—the same complaint we have heard from some Muslims. Such matters cannot be processed by “military-like and authoritarian decrees” in a democratic society.¹¹

It being the statement from a high-level women’s conference, I have attached the entire document as Appendix 2.

In spite of the general Christian negative attitude, there are a number of prominent Christians who, without necessarily favouring it, do consider the sharia constitutional. According to Vice Admiral Nyako, any state “has the right to enact law on whatever subject.” In addition, “a cardinal pillar of democracy is the acceptance of the majority decision of a legislative body endorsed by the Chief Executive as law.”¹²

“It is worthy of note” that so far neither Christian nor Muslim has “taken his case to a court of law.” “So,” he concluded, “there is really no controversy on the re-introduction of full sharia law where it has been done!” This being the case, “Muslims should be left and encouraged to work out, in their own way, a course of action to suit prevailing exigency. Non-Muslims should understand

that direct interference would only aggravate matters and that denying a Muslim his constitutional right is tantamount to a declaration of war against him. Very dangerous indeed!"¹³

Another Christian with an important legal voice supporting the constitutionality of sharia is that of Kaduna State Chief Judge Rahila Cudjoe. In the previous chapter we heard her declaration that "resentment against the introduction of sharia in Zamfara is spawned by ignorance of the history of sharia in the North." Ali Alkali described hers as a "very significant intervention in the controversy."¹⁴

And then there is Chief Sunday Awoniyi, a national Christian politician who, probably due to the fact that he schooled with them, tends to be close to the bosom of the Northern Muslim establishment. He once served as Secretary to the Sardauna. Currently he is chairman of the Arewa Consultative Forum,¹⁵ an organization in which former Military Head of State Yakubu Gowon, also has held a prominent position and probably for the same reason. Awoniyi's is a most unlikely position in the Forum for a Christian and one that might render him suspect in the eyes of many Christians. Awoniyi supports the Zamfara move and considers it constitutional. It is not the first time he deviated from the Christian consensus. He shares the Muslim expectation that the new sharia will "in the shortest possible time bring back our moral and cultural values which we mortgaged in favour of Western civilisation." Christians should appreciate the sharia for its values. He adduced the example of Saudi, where "citizens go about their daily activities without common vices, which were common in societies that do not practise sharia." Furthermore, there is no reason to fear sharia will lead to the disintegration of Nigeria, since it will not affect Christians. No wonder that his political enemies sought to make hay of Awoniyi's deviation from the Christian consensus. This went too far for them.¹⁶

Mayegun Abayomi, member of the Federal House of

Representatives and Chairman of its Public Relations Committee, judged that Zamfara's sharia is constitutional. Indeed, though the Constitution of 1999 affirms secularism, it also permits states to adopt sharia. He recognized that the latter is an inconsistency in the Constitution that needs to be corrected. In the meantime, he urged "Nigerians to tread with caution on the issue" because of its sensitivity. "Instead of the hue and cry" generated by the issue, it "should be left for the judiciary for proper interpretation."¹⁷

Another Christian exception is Paul Adujie, a resident of New York. Nigeria, he argued, is a federation. That means sharia states are within their rights. It also means he approves of President Obasanjo's hesitance to get involved in the sharia controversy, details of which you will find in Chapter 5.¹⁸

However, while agreeing to the constitutionality of sharia, Adujie disagrees with the extended sharia on other grounds,¹⁹ but that is for another section in this chapter.

Bee Debki, not known for excessive love of Islam, is under the impression that Zamfara's sharia is constitutional by virtue of some legal trickery by the successive federal administrations of Generals Buhari and Babangida. In the 1978 draft constitution it says, "The state shall not adopt any religion as the state religion." However, subsequently, the two generals saw to it that the word "not" in that sentence was scrapped, so that it now read, "The state shall adopt any religion...."²⁰ Governor Sani took advantage of the new clause and launched sharia in an apparently constitutional way.²¹

Musa Gaiya also recognizes that the Constitution did allow the new sharia. He wrote, "It appears the implementing states had some leeway in the 1999 Constitution." After quoting relevant sections of the Constitution, he concluded, "To a layperson, this constitutional provision empowers the state government to make any law through the State House of Assembly that would help in promoting good governance." The problem is caused by an inconsistency in the Constitution. It prevents the states from adopting a

state religion. For this reason, the sharia governments consistently denied that “applying sharia for the sake of good governance did not amount to adopting a particular religion as a state religion.”

Gaiya adduces an argument by Philip Ostien that a certain “delegation clause” in the Constitution “gives the state Houses of Assembly and their Sharia Courts unlimited jurisdictional powers.” Now that is powerful authority! Unfortunately, Gaiya merely dismissed this argument with a “Be that as it may” and then wonders why these states waited twenty years to notice that constitutional provision. It took the “charisma and doggedness” of Governor Sani to put the entire issue on the national table.

As it stands at the moment, if a person is convicted in a Sharia Court of a crime, he has the right to appeal to Federal Courts, “which will overturn the judgment, since Sharia Courts have no constitutional power to hear criminal cases.” This brings a new dynamic into place, predicts Gaiya. To avoid becoming redundant by having their cases overturned in the secular High Court, the Sharia Court of Appeal is likely to rule in favour of the accused. That will be the end of the matter and will prevent a scenario of a Sharia Court losing face. That, Gaiya suggested, is exactly what happened in the cases of Safiya Hussaini and Amina Lawal. When defence lawyers began talking about taking these cases to the High Court, the Sharia Courts relented. Gaiya predicted there will be more such cases. But, I wonder, is that not a politicisation of the court system—and, therefore, corruption?

An additional factor favouring early resolution of such cases in the Sharia Courts is the pressure of both press and human rights groups. As powerful as these may be, they also run serious risks to themselves. Hawa Ibrahim, Amina’s lawyer, denied in an interview that stoning for adultery was a Qur’anic injunction, but it was found in the *hadiths*. The Imam of the Central Mosque in Abuja immediately “declared a *fatwa* that she should be killed.” She went into hiding.²²

▲ CHRISTIAN BACKGROUND TO COMMON LAW —

One of the Muslim charges against the Christian demand for a secular neutral common law is that common law itself is the product of Christians and their religion. It is neither neutral nor common.²³

Already during the CA 1978 phase, various Christians attacked this Muslim allegation. Patrick Okpabi stated that the “Common law is neither a Christian nor Muslim system of law. It is a law for everyone.” Another writer at the time, whose name I am not able to determine, advocated “the common law which is secular and not the sharia which has religious undertones. In order not to make either Muslims or Christians feel that one group has an edge over the other, common law should be adopted—which is secular and neutral from the canon and the sharia laws.”²⁴ By and large this remains the assumption on the part of most Christians.

YouthCAN tries hard to play down any suggestion about a Christian influence on Western law by emphasizing that its background is “predominantly Roman, which itself is a development from ancient legal systems of the Greeks, Egyptians, North Africa and the Middle East.” If its fault is its foreign origin, that is no less true for sharia with its Arab background. Common Law has such a diverse background that it is unreasonable to consider it Christian.²⁵

Byang describes the allegation as “either an exhibition of stark ignorance or a mischievous utterance aimed at provoking Christians.” He quotes from S. U. Utere, who argues against this connection. The originators of common law may have borrowed from Old Testament laws. “Jesus, who is the essence of Christianity, is not given pre-eminence in common law. Thus, these laws cannot be said to be those governing the mode of life and worship of Christians. In fact, the Bible enjoins the Christians not to have their cases heard in common law or any other courts outside the

Christian fold (1 Corinthians 6:1–8).” In addition, common law leaves out adultery and fornication as punishable offences, while they are condemned in the Bible. Byang revisited this issue a year later. “The claim that common law courts are synonymous with Christian laws is untrue,” he wrote. “If they were, how come that Muslims fit into that system even to the extent that one of them is the Chief Justice of the Federation?” This last feature stands in stark contrast to that of sharia, which only serves and can only be operated by members of one religion and thus demonstrates its “purely religious” nature.²⁶

James Kantiok traces the argument about the Christian origin of common law to ignorance, particularly on the part of the Ulamas. Muslims seem to regard everything that is not Islamic in origin, including common law, as Western and “intrinsically Christian.” He comments, “These have no bearing whatsoever to the church today, even though they may have originated from the medieval Western or so-called Christian societies.” The Ulama claim to that effect is part of a larger discussion that “contains a lot of false and misleading information.”²⁷

Muslims, of course, disagree with Byang’s rejection of the Christian background to common law. You can read more about that in Volume 8. Dodo quotes a few of them. Abdulkadir Orire, a Muslim participant in NIREC, referring to “the law of the land” and without further explanation, stated that “we all know it is based mainly on Christian principles of justice.” That is a problem to Muslims, for this “means a Muslim should always submit and succumb to other laws in any matter arising between him and non-Muslims.” Furthermore, Muslim law must be applied only to the extent that it is not considered “repugnant to natural justice, equality and good conscience as determined by the Western sense of value and justice.”

Dodo displayed a degree of sympathy for Muslim arguments and their situation. “I have made these quotations to enable us to

understand exactly what sharia means to Muslims: No sharia; no true Muslim believer.” Also he wanted Christians to know just what they are demanding and why. And then he commented, “Judging from its face value, the position of the Muslims calls for sympathy,” since they are restricted to a very limited slice of sharia. However, he cautions, there are some other valid reasons on the ground for these restrictions that override the issue of the origin of common law. When these have been examined, we can “understand and appreciate” the reasons for the restricted sharia.²⁸

▲ PENAL CODE SUFFICIENT

The question here is whether there really is any need for sharia even for Muslims who wish to be governed by it. Christians argue redundancy on three grounds. First, ordinary judges have the required knowledge. No further specialization is necessary. Second, the workload is insufficient to justify the high salaries of sharia judges. Third, the Penal Code includes all the required sharia provisions with, of course, the exclusion of the “repugnant” *hudud* punishments. Already back in 1988, Byang highlighted the opinion of one A. D. Ajijola, whom he described as a “dedicated Muslim” and an experienced lawyer. This man saw “no necessity for the establishment of Sharia Courts with special judges. He debunked the argument that Sharia Courts are needed, because High Court judges have no knowledge of sharia. ‘They have the knowledge of justice,’ he affirmed.” Byang then let him tell us “how wasteful Sharia Courts are: I do not know the fundamental necessity of setting up an independent Sharia Court of Appeal. There is little or no work for the judge appointed thereto. If any state Sharia Court of Appeal believes it has sufficient work to occupy the judge, I challenge such Sharia Court of Appeal to tell the public how many cases were filed in their courts

in 1985, how many they disposed of and how many are still pending.” Byang commented, “What a challenge! It is a fact that the Grand Khadis and the Khadis of the Sharia Courts do nothing worthy of the remuneration that they enjoy.” “It is outrageous that they are so paid to do little or nothing. If this is true of Sharia Appeal Courts in the North, where we have large numbers of Muslims, it will be worse in the South, where Muslims are much fewer. And if the State Sharia Courts of Appeal are redundant, one wonders how much worse the situation will be at the federal level.”²⁹

Years later, Byang still strongly insists on the sufficiency of the Penal Code. It was created for the specific purpose of meeting the needs of Muslims and of covering the requirements of sharia. That being the case, he asks, “If the Penal Code and the Constitution retained most of the sharia, then what are the Muslim leaders clamouring for?” He gives a two-pronged answer. First, they want the *hudud* punishments restored, that is, the amputations, floggings and stonings. Secondly, “they want the sharia to be the supreme law of the land, and not the Constitution.” Even a responsible person like Balarabe Musa stated as much.

Drawing upon CAN documentation, Byang explains the background of the Penal Code. Colonialists accepted much of the sharia they found functioning when they arrived. Subsequently, they placed many of the Middle Belt peoples who were practicing ATR under Muslim emirs. As these ethnic groups Christianized, they became increasingly restless under Muslim rule with their unremitting Islamizing pressures, until they finally “revolted against this foreign system of justice.” Their protests had reached a near-boiling point as Independence approached. Between 1955 and 1959, these Northern Christians “fought hard to have the Bill of Rights of the United Nations inserted in the Independence Constitution as a means of guaranteeing their religious freedom.” Before the handover, authorities “synthesized the Sharia Code with the

English Criminal Code to produce the Penal Code, which is still in operation in the North, to appease both the Muslims and the Christians.” The struggle re-emerged at the CA 1977 and continued from there on. All these years Christians “have persisted against the supreme sharia.”³⁰

Bamigboye similarly affirms that “there is nothing in sharia law as legislated by these aberrant states that is not already in our laws.” This then leads him to the conclusion that “the whole project of sharia at this period is sinister and ill motivated.” “Muslims in the South have not clamoured for sharia.”³¹

Though it may be true that it did not become a people movement in the South, in Volume 6 there is evidence of considerable clamour for it, going way back to the 19th century.

Extracts from notes on the Penal Code that were written by Richardson indicate that the process leading up to the Penal Code around independence included concern that, with Muslims being the majority in the North, “the new system should not be in conflict with the injunctions” of Islam. Hence it was decided to create a code based on that of Sudan, since that “had worked satisfactorily in a country in many ways similar to the Northern Region.” It had been in operation since 1899. In other words, the Code was not crafted by a bunch of indifferent secularists; prominent Muslims were involved in the process and their sensitivities taken into serious account.³²

Onaiyekan suggests that if Muslims want sharia in order “to improve the moral standards of our country, we need to look more at the problem of implementation.” He continues as follows:

There are already adequate provisions in the laws of our land to take care of the more common anti-social behaviours like stealing, violence, murder, sexual irresponsibility, drunkenness, to mention only a few. The problem is not that the laws

*are not there. The problem is that the laws are not only being infringed upon, but that people are getting away with blatant disregard of the law. It is all the more serious when those who are supposed to uphold the law are the ones who are by-passing it. I personally believe that this is where our problem is, a problem that even the sharia will have to contend with.*³³

Fellow Catholic John Gangwari is persistent in his opinion that there is no need for sharia, since everything is covered by the Penal Code. He lists all the requirements of sharia that have their equivalent in the Code. It “has incorporated a large corpus of Islamic criminal law” and “has been applied successfully in Northern Nigeria since independence.” “Until very recently, almost all Area Courts were manned by Islamic *Kabdis* or *Alkalis* who applied Islamic law, adjudicating cases even where litigants were Christian.” So, “why has it all of a sudden become inadequate?” Is all this “truly a fulfilment of genuine religious yearning? Or is it another way of using religion for political gains?”³⁴

If there was any Christian who tried to be fair to Muslims, it surely was the late Justice Haruna Dandaura, the “Apostle of Religious Harmony.” However, even Dandaura did not favour sharia for several reasons, one of which is that all the sharia concerns are adequately taken care of in the Penal Code. So, it is not necessary. He wrote a letter to President Obasanjo in which he summarized the history of the Code and how care had been taken to adequately meet Muslim sensibilities. He then suggested that the president convene a meeting of all the sharia governors to get them to rescind the new sharia until the Constitution undergoes a review from that perspective.³⁵ Most readers will know that, in fact, such a meeting took place,³⁶ though it did not achieve Dandaura’s aim. I do not know whether it was that letter that stimulated the president to convene the meeting.

▲ CANON LAW

Throughout the entire period from 1977 till now, Christians have occasionally advocated the establishment of Canon Law Courts. The thinking is that if the government is going to support the religious law of Muslims, then Christians should have similar support for a Christian version. For some, this would lead to Canon Law. The reasoning is similar to the successful demand some decades ago for Christian Pilgrim Welfare Boards. If government is to spend on one religion, it must spend on all recognized religions. The name of the game is equal treatment for all.

1977 was a productive year for Canon Law enthusiasts. Just before the opening of CA 1977, Adeolu Adegbola, at the time Director of the ICS and my boss, was one of the first to publicly recommend Canon Law for serious consideration.³⁷ He suggested “that encouragement be given to church leaders, working through their experts in Canon Law with other legal specialists, to review, collate and synthesize ecclesiastical laws and legal norms which exist and which can be given recognition and fully incorporated into the judicial system at each level as may be found appropriate.” This step was necessary if Nigeria was to “keep Islamic courts of law as part of the judicial system” and do so with a constitution that “is capable of leading Nigeria into a future of unity and peace.” The draft constitution based its recognition of Sharia Courts on the principle of “the need to give relevance to the moral, religious and ethical beliefs of all segments of this society.” That principle and recognition demanded the inclusion of other faith systems in the country.

Adegbola was not keen on finding solutions to Nigeria’s problems of pluralism in other countries. Writing in 1977, he explained that Western nations have denominational pluralism within the confines of one religion, while Nigeria’s is multi-religious. Others may have Christians and Muslims, but they have not solved their own problems. So, he concluded, “This is a time for honest, hum-

ble and patient co-operation, not for brazen slogan-ranting nor for guerrilla strategy-planning against one another.”

He found that “the most plausible interpretation” had come from the Muslim Justice Sambo, who pointed out that the “Government has already recognized religion as part of the way of life of the people.” That meant that “the consequent duty of the government is to ensure both the teaching and the practice ‘of each divine religion.’” Thus the Constitution should include the following: “The state shall not adopt any one religion by itself as the state religion. Rather, all religions in the country shall be equally treated as if they are all together, jointly rather than severally, the state religion.” This means, Adegbola explained, “that in the expenditure of public funds, equitable treatment shall be given to all religious people.”³⁸

Adegbola defined Canon Law “as a body of laws laid down by the authority of the church and constituted to work for social harmony, so that the practice of morality in personal relationships and the administration of social justice can be based on the canon of Christian religious faith and discipline.” The scope should be similar to that of Sharia Courts—mainly to cover marriage and family relationships, including inheritance issues. He then suggested ways in which such a system could be incorporated in Nigeria’s legal system. Once that would be done, all three major religions would enjoy equal recognition and equal treatment. He was optimistic that the laws and customs of the various Christian denominations “can be reasonably brought up to date for incorporation into the legal system of our land.”

But Adegbola did recognize a problem of equality and human rights. The pluralistic system he recommended might lead to the state’s giving concessions “to a religious group to preserve social habits of inequality under the protection of religious laws converted to become the laws of this land.” This potential “ought to shake Christian confidence in the ability of a composite legal sys-

tem to bring the divine equality to become a social reality.” So, problems remained to challenge us further.

Recently, Adegbola wrote, ecclesiastical disputes had been taken to the secular courts. Sometimes a non-Christian judge would preside over such cases, which constitutes a scandal. Such cases would be taken to the suggested Canon Courts. However, before doing so, clear procedures would have to be established to ensure impartiality. “The theology of power would first need to be carefully defined according to the mind of Christ.”³⁹

During the course of the same CA, Dandaura wrote a letter to Ibrahim Sangari Usman, a Christian member of CA 1977 representing the constituency of Wukari-Takum in the then Gongola State, now Taraba. Dandaura expressed his fear that sharia might lead to a “multiplicity of laws. The Muslim wants sharia law, the Christian wants Canon law, then the Pagan wants his Customary law.” He wanted to discourage such “enshrinement.” This letter is dated 27 September 1977.⁴⁰

Perhaps Dandaura was aware of Usman’s plan to submit a proposal to the 1977 CA to consider the establishment of Canon Law Courts. It appears that Usman did not accept the warning. A few weeks after Dandaura’s letter, on 31 October 1977, Usman submitted his proposal as follows:

The Secretary to the Constituent Assembly, Lagos

Sir,

I send herewith a notice of my “motion” concerning the Draft Constitution to the CA:—

Motion:

Be it resolved that—

“In view of the fact that Nigeria operates a complex legal and judicial system comprising:

(1) The English Common Law, the doctrines of equity and various

statutory enactments;

(2) The various customary and native laws of different tribes in the country, and

(3) The Islamic law as applied to Muslims.

Now therefore, as a matter of great national urgency and importance: This CA hereby approve the setting up of a special committee of Christian jurists and experts among the members of the Assembly to investigate and recommend the establishment of a Nigerian Canon Law Courts system for inclusion in the new Nigerian Constitution for the interest of the teeming population of Nigerian Christians.

The recommendations should include such aspects of the Canon Law to be administered by canon judges in Nigerian Canon Courts; the types of hierarchy of Canon Courts and their respective jurisdictions. And also proposals for necessary procedures for the establishment of a system of training for canon lawyers in the Faculties of Law in Nigerian Universities.”

Sincerely yours,

Signed: Ibrahim Sangari Usman.⁴¹

In the notes accompanying the above motion, Usman wrote to his colleagues, “I do believe earnestly that every true Nigerian Christian and even the liberal Muslims in this country will support the idea.” He pointed out that the current system made provisions for Muslims but not for Christians. “One can see the complete absence of a court system to cater also for the Christian religion, which pillar should stand parallel to the other two.” He did not foresee “any rancour or bitterness among any group of our society. There would definitely be no problem or danger to our unity, if this system is made more accommodating by filling the existing gap with the proposed Canon Law Court system. Otherwise, it would be an unfair treatment to deny the Christian Religion its rightful place in the scheme of our national affairs. This could be alleged as an act of injustice or omission to undermine the very

foundation of Christianity in this country.” This “tripartite court system would foster our unity in diversity, our mutual co-operation and understanding would further be enhanced.” Cases involving members of different religions “could go to the common secular courts for settlement.”

Usman may have been the first and, possibly, the only one ever to officially propose a Canon Law Court system. He may have been serious about it. It may have been a tactic on Usman’s part to oppose the adoption of the Sharia Court that was at issue, showing the logical consequence of its adoption that, he might have assumed, no one would want. It may have been triggered by Dandaura’s letter with an effect opposite to the letter’s intention. It may have been written *despite* the letter. His proposal was rejected, but the idea did not die with the CA. Various Christians continued to toy with it in a more or less serious manner.⁴²

Christopher Abashiya, one of the “Fathers” of this project, was a Christian member of the Kaduna State investigation committee studying the causes of the Kafanchan riots in 1987.⁴³

Rumour had it that the committee “recommended the implementation of sharia in totality.” Abashiya nixed the rumour. The committee did assert “that the implementation of sharia would certainly affect non-Muslims.” However, should the government allow such implementation, then provision must be made to give Christians “the option to go to their own courts, and, in the event of any conflict between a Muslim and a non-Muslim, a court of resolution must be established to resolve the issue.”⁴⁴

Byang did not think it unconstitutional “if government finances religious institutions,” as long as it supports all equally. There are two ways in which the situation can be corrected. Either the government withdraws from the religious Sharia Courts or it supports other religions having their courts. This can be done either by government establishing courts for the other religions or “better still, government should pay the workers of other religions

who perform for their members the same duties that Sharia Courts perform, which is settling personal matters between Muslims.” “What stops the government from setting up Ecclesiastical Courts for Christians and from investing in them the coercive powers of the state to determine and enforce Canon Laws, with regards to personal cases?”⁴⁵

We have already noted the 1988 CAN declaration that *if sharia, then also* “Ecclesiastical Courts.” It had become a common cry, though not the general Christian preference. The majority preference is to have no religious courts at all.⁴⁶

Hence, after all is said and done, Byang preferred the opinion of Utere, who wrote, “Since it would be economically, socially and politically unwise to have government-funded religious courts for every religion in the country, non-Muslims would want a situation where government disengages itself from funding Islamic courts and in fact, special centers for Arabic and Islamic studies, Arabic and Islamic teachers’ colleges and schools, and so on.” Byang really did not want Nigeria to move towards religious courts, not even in order to create equality of recognition, access and expenditures.⁴⁷

E. O. Alemika, a Christian sociologist at Unijos, rejected entirely the notion that tax money be used “to enforce religious injunctions.” He saw no reason why any religious law should be incorporated into the Constitution. He wondered why Muslims cannot use their religion’s institutions to administer sharia injunctions, but instead want the state to enforce them on their behalf. He said, “From my understanding, it demonstrates gross lack of capacity to conform to one’s religion without state coercion.” Dodo reports that Alemika “advised that the (1988) CA should remove all traces of laws” that tend to favour a specific religion. “We must have a constitution that will regulate our behaviour irrespective of our beliefs, while religious groups should devise ways and means within their organisation to promote compliance with the tenets of their beliefs.”⁴⁸

The same issue arose in the context of the Draft Constitution and the CA of 1995. Obed Minchakpu similarly demanded that if Sharia Courts are established for Muslims, then “alternative courts should be established for Christians.” He does not propose a name, but there is hardly any doubt that he thought about some form of Canon Law. The reason for his proposal was that the Bible “forbids Christians from appearing before non-Christians on matters of litigation,”⁴⁹ another argument heard frequently.

Onaiyekan affirms that the Roman Catholic Church has “a body of Catholic moral norms as well as the Code of Canon Law, which guide everything that we do. We do our best to follow these rules and ideals. We may not always succeed, but at least we know where we are going.” “The major question is not whether Muslims should be guided by sharia; they certainly must be. Nor is it whether Christians should be guided by their religious norms; they have the duty to do so. The question rather is whether these religious norms must be implemented and enforced by legal instruments of government, precisely as religious law. This is where we must focus our attention.” At this point Onaiyekan steers the discussion towards the issue of secularism, since that underlies the sharia issue.⁵⁰

Later in his paper, Onaiyekan returns to the subject of Christian alternatives. It is worthwhile quoting a paragraph in its entirety:

What about the advice that Christians should agitate for their own Christian laws to be integrated into the Constitution? There are some Christians who have threatened that they would insist on some form of Christian law to run side by side with the sharia law.⁵¹ Whatever the good intentions of those who make such a suggestion, I find it a problematic one to implement. It will mean a more complex arrangement than just Christians and Muslims. Definitely within the Christian

*fold, we have a wide range of differences when it comes to the laws of the churches. The Canon Law of the Catholic Church does not bind any other Christian group. How many such laws and legal frameworks are we going to put up for recognition and how will they be implemented and worked out in practice?*⁵²

Alexander Lar, at the time COCIN president, suggested that Canon Law would be a natural response to sharia, but he did not define it. In fact, he does not want either one. Neither should challenge the Constitution; they need to be restricted to church and mosque or, at least, to their respective religious communities, not be appealed to in public affairs.⁵³ Ibrahim Usman's townsman, Dodo, says the church is completely prepared with its long tradition of Canon Law, yet, in contrast to Muslims, they "have not said hell should be let loose if Canon Law is not enshrined in the Constitution."⁵⁴

In his generally peaceful style, Badejo states that Christians respect the Muslim assertion that the sharia is "given to Muslims by God." He also wants it understood "that we Christians have the Holy Bible as a legal code given by God." He then continues, "In fact we are even enjoined not to go to any court that is manned by non-Christians as is recorded in 1 Corinthians 6. Therefore, ideally Christians are not supposed to go to the Common Law Courts. These are not Christian. But Christians attend such courts simply because these courts have been established by the colonial masters. For the sake of peaceful coexistence, over the years we Christians have not insisted on having our own courts."⁵⁵

James Kantiok is scornful of the idea of Canon Courts. Responding to what he considers Muslim ridicule about Christian demands for such courts, he exclaims, "Nothing could be more humiliating to Christians than this sort of satire and ridicule of the

Church by Muslims. Is it really true that Christians need ecclesiastical courts? For what reason and purpose? Is it because Muslims are demanding sharia or what?” A bit further on he argues, “Is it not ridiculous for Christian leaders to demand to be paid by government for fulfilling their ministerial call to their parishioners? Does CAN really want all pastors paid by government for settling disputes between their parishioners? I believe that the Church in Nigeria, particularly in Northern Nigeria, still has a long way to go as far as Muslim-Christian relations are concerned.”

Kantiok then lumps this issue together with the Christian demand for government financing of pilgrimage to Jerusalem as a counterbalance to government support of the Muslim pilgrimage. He asks, “Are we simply imitating Muslims? Has the Church forgotten that it represents the light of the world and that it must let the light shine?” The government “is wasting a lot of money on the Muslim pilgrimages. Should Christians join in the destruction of the nation’s economy in the name of equal treatment for Christians and Muslims?” Furthermore, there are people of other or even no religions in the country. “Should the Church turn a blind eye against them because they are a minority? Are we not doing the same thing the Muslims are doing by ignoring the voice of reason from non-Muslims?” He finally asks, “How could the demands by CAN be reconciled with the Christian teaching on agape love?” A lot of hard questions, most of them rhetorical.⁵⁶

It is interesting that Governor Sani called the Christians’ bluff. He knew that, though Christians were demanding Canon Law in exchange for the expanded sharia, they were not serious and did not for the most part want it at all. He said “he was ready to implement Canon Law for Christians if they so wish.” “After all,” he purred, “all we are after is to reform our people so that justice, equity and fairness can prevail.”⁵⁷ I have not heard whether Christians called his bluff.

Since canon law crops up frequently in this context, an expla-

nation may be in place. Canon law is a body of laws operative within some Christian churches, especially the Roman Catholic, Anglican and Orthodox. It was apparently not always restricted to the church. Drawing upon a lecture by the Christian Justice Karibi Whyte, Justice Abdulkadir Orire tells us that William the Conqueror, King of England, established Ecclesiastical Courts that applied Canon Law to society. The Reformation and subsequent wars led to a reduction of their scope and power. By 1837 the remaining societal laws were removed from Canon Law and absorbed into common law.⁵⁸ Canon Law was left to regulate the internal life of the church.

Some churches have different names for it. My own church calls it “church order.” It is by now definitely not designed to serve as a nation’s legal structure. It is an exclusively ecclesiastical set of laws with at best indirect relevance beyond church borders. It regulates authority structures within the church, geographical relations, ecclesiastical procedures, sacraments, marriage and divorce, ecumenical relations and many more. It has nothing to say about the regulation of government, politics, economics, social structures, science, medicine, or any other issues that need regulating in the society at large. It may touch upon any of these entities only in so far as they impinge upon the internal life of the church. And it may occasionally have spillover effects in society.⁵⁹

Canon Law as we know it today thus has no direct relevance to the discussion about sharia and common law, but it has become relevant in Nigeria, because both Muslims and Christians keep bringing it up. If the term is meant to refer to Biblical law, especially Mosaic law, then another term might be preferred to avoid confusion with the ancient and highly delineated Canon Law of today. Attempts to activate it in the current context would surely trigger serious controversy among Christians, especially if attempts were made to produce a unified system applicable to all Christians. If at all, I believe it would have to allow each major Christian tra-

dition to devise its own, with the provision of certain standards to be met by all. As Adegbola suggested, this situation requires imagination, creativity and co-operation. Nigerians often come up with creative solutions. They could do it again! If they do, I hope they will come up with another name for it, to avoid confusing it with existing Canon Law traditions. In 2007, seven years after the Zamfara Declaration and thirty years after Ibrahim Usman’s submission, I no longer hear calls for it.

▲ LEGAL PLURALISM

The demand for sharia implies acceptance of legal pluralism. Legal pluralism means that there is more than one legal system in effect. For example, Canada has a French legal system in Quebec, a British-like system for the rest of its non-native population, while its Aboriginals enjoy certain legal exceptions to that of the other two systems. However, it has only one constitution that stands above all. Legal pluralism is a concept that Muslims defend in the Nigerian context, but Christians reject. Most are not serious about the establishment of Canon Courts. Christians fully recognize the pluralistic multi-religious scene in Nigeria and affirm or support it fully. Yes to multi-religion. That is just the way things are. But they do not accept the notion of legal pluralism that Muslims demand, a two-track legal system beyond that inherited from colonial days.

A group called “Christian Elders,” at the time coordinated by Christopher Abashiya, already in 1994 called for one constitution and one legal code binding on all. In another context, Abashiya similarly argued that one country demands one legal system.⁶⁰ In such a context, writes Bamigboye, compromise is called for. “None of the parties can have their way all of the time. The interest of others and the continued existence of the state” is always to be considered. “It is obvious that the introduction of sharia in a plural society with multiple faiths and religions is in bad faith and a desta-

bilisation project.” It is for this reason that Sunday Mbang, the National Chairman of CAN, described the architects of the new sharia as “originators of madness.”⁶¹

Badejo speaks strongly against legal pluralism. So far, Nigerians have lived under one constitution, but after the introduction of the new sharia, the “Qur’an and other religious books of Islam” must become the constitution for Muslims. The current constitution would be restricted in its effect to Christians and others. “How,” he asks, “can two groups of people, living within the same territory, be governed by two separate constitutions? Will such a situation unify or divide the people?”⁶²

Already in his BZ writing, Kukah referred to this development. “What happens when a nation seeks to run two legal systems?” he asked. “This has been the struggle in Nigeria as Muslims continue to agitate for sharia, which, they argue, is fundamental to their full rights.” This insistence has led Christians to “argue that such a legal system is inimical to their interests and to their access to justice.”⁶³

Is it possible, asked Onaiyekan, for one nation to have different laws? He regarded this as “a major issue that we must face squarely and honestly.” If Nigeria is to be a “united country under God, we would need to look seriously at ensuring that the laws that govern should be the same for all. Any moves that tend to create different laws for different categories of Nigerians seem to me clearly running against the desire for a united country.”⁶⁴

Debki argues against legal pluralism on basis of the confusion that may result. For the same offence, people could be tried by any one of four different authorities and they could serve one of three different punishments, he pointed out. Legal pluralism puts a “demarcation between people” who before lived and ate together.⁶⁵

Apparently the former Christian Governor Lar of Plateau State, a major defender of the state’s security and its Christians, had no such hang-ups about legal pluralism. He was the first to establish a Customary Court of Appeal in 1980. Lar appointed

Haruna Dandaura its first judge. This court was of the same status as the High Court and the Sharia Court of Appeal. The aim was to ensure “that everyone, irrespective of ethnic, political or religious affiliation, should enjoy justice in all its ramifications, without discrimination.”⁶⁶

I do not recall any major complaint against this pluralistic system during its first sixteen years while I lived in Jos. Why was legal pluralism acceptable then but not now? Of course, it was restricted pluralism with only one Constitution. It involved no change with respect to the existing limited sharia of the day. And surely that situation did not involve Muslim sharia challenges to the Constitution.

The arrangement described in the previous paragraph might lead us to expect that Dandaura would also favour some form of legal pluralism. After all, he was one of its national pioneers. Not quite, at least not in the earlier years. You will recall his 1977 letter to Ibrahim Usman, in which he warned against legal pluralism. He could hardly have guessed that only three years later he would come to personify a form of limited legal pluralism! Whether this led him to a change of opinion, I do not know. Did he ever “eat the words” he wrote to Usman?

▲ A CONCLUDING PROMISE

Basically, though Muslims strongly advocated legal pluralism in order to make room for the expanded sharia, Christians on the whole were not interested, not even in Canon Courts. They continued to insist on the status quo with a Common Law system for all, that was said to be neutral and objective, secular and non-religious. That evaluation, I now serve you notice, I will challenge in Volume 8.