Imperial law and native authority: legal pluralism in the making of colonial Northern Nigeria, 1900-1920

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Abstract: This article explores the development of a plural legal order under British colonial rule in Northern Nigeria between 1900 and 1920. It argues that the colonial conquest of the territory was justified on the grounds of abolishing slavery and imposing English law on supposedly lawless African societies. However, once control was established, the British colonial authority retreated from the universality of English law and institutionalised a more pragmatic system of native authority: governing through African rulers and incorporating elements of Islamic law. Drawing on colonial reports, published anthropological studies, and secondary sources, the article demonstrates how legal pluralism was instrumental in the making of the native authority system in Northern Nigeria. It contends that the native authority system, while postured as collaborative, functioned as a calculated form of legal subjugation. British officials redefined the legal powers of African rulers and selectively integrated Islamic law, subordinating it to colonial interests. The result was a "state-centric" legal pluralism that hollowed out African legal autonomy while retaining its appearance. The article examines the making of the Slavery Proclamation of 1901 as a case study, illustrating both "state-centric" legal pluralism and the manipulation of African institutions to serve imperial interests.

Keywords: British Empire; Indirect Rule; Nigeria; Legal Pluralism

Introduction

The British experience with princely states of Victorian India after the Indian Mutiny of 1857 provided the model for British colonial encounters in Africa. The Mutiny of 1857 shifted British imperial ideology from direct administration to indirect governance of colonial subjects, through a retention of the subjects' "traditional" administrative authority (Chatterjee 2012). Accordingly, by the late nineteenth century, when the "Scramble for Africa"[1] was beginning to gather momentum, indirect rule had been established as the preferred method of British colonial rule and would be invoked in African territories.

Indirect rule was carried out in Africa through pre-existing power structures. For the British authority, collaboration with African rulers was necessary, as colonial resources were spread thin, and military capacity was significantly restricted (Shaw 1905, Kirk-Greene 1980, Berry 1992). [2] In Northern Nigeria,[3] what appears to be a collaborative government was declared when British high commissioner Frederick Lugard,[4] promised the Islamic rulers of the pre-colonial African territories a partnership form of colonial rule known as the native authority system (Perham 1937, Temple 1968, Nicholson 1969, Tukur 2016). Lugard guaranteed the Islamic rulers that, 'Government will in no way interfere with the Mohammedan religion.' (Akande 2020, 462)

[1] This refers to the European partitioning and conquest of African territories. For a comprehensive account, see Thomas Pakenham, The Scramble for Africa: The White Man's Conquest of the Dark Continent from 1876 to 1912 (London: Weidenfeld and Nicolson, 1991)

[2] To put the resource burden into context, in the year 1905, there were 400 British officials in the Northern Nigerian service; all of whom were expected to legislate over military, legal, medical and administrative affairs. Conversely, the population of Africans in Northern Nigeria was 9,269,000 in 1910. The shortage of British officials in Northern Nigeria extended into the 1910s, thereby rendering the native authority system a necessity. See His Majesty's Stationary Office (HMSO), Annual Report of the Colonies, Northern Nigeria, 1910-11, 704/1912, 52.

[3] The term Northern Nigeria denotes the protectorate which the British proclaimed in the African territory equivalent to Sokoto Caliphate and Borno Empire that preceded colonialism. The Northern Nigeria protectorate was a single colonial entity which lasted from 1903 to 1914 and was referred to in colonial records as 'Northern Nigeria'.

[4] Frederick Lugard is the foremost theorist and practician of the native authority system in Africa. For the definitive biography of Lugard, see Margery Perham, *Lugard: The Years of Authority- The Maker of Modern Nigeria 1898-1945,* Vol. 2 (London, 1960).

A ‘moral’ factor also necessitated that Britain adopt an indirect system of colonial rule in Africa. While Britain had been heavily involved in the Atlantic slave trade from the eighteenth century, the trade was abolished in the early nineteenth century, with Britain also playing a key role in the latter event. Thus, a new “moral” standard of colonial domination was set, and the direct method of imperial rule - with its domineering connotations - did not measure up to the standard.[5]

This resulted in a justification for the British colonial conquest of the territories of Northern Nigeria - a postured benevolent intention to abolish slavery in the perceived regressive and lawless African territories.[6] Having conquered the territories,[7] the British authority aimed to create a colonial polity that would harness its resources for the advancement of its people into higher stages of civilisation (Lugard 1922). To achieve these objectives, the British developed a postured system of diarchal rule, commonly known as the native administration system, where British officials would exert control on their colonial subjects through African administrators- who operated squarely between the British and the subjects.

This article adopts a synthetic approach to examine the advent of British colonial rule in Northern Nigeria and the creation of a plural legal order between 1900 and 1920. While primarily a close reading of law situated within the historical literature of British indirect rule through native authority, it also draws on a range of primary sources, including colonial reports and anthropological studies, alongside secondary sources. I make two arguments. First, I contend that the absence of a positivist form of law served as a justification for the colonial conquest of territories that became Northern Nigeria. Second, I argue that having conquered these territories, the claim of the superiority and universality of English law, and the projected intention to transplant this legal system into the African territories was abandoned for the particularity of colonial needs. The administrative impracticality of direct colonial rule would necessitate the creation of a dual legal order, with English law applying to the colonial power and Islamic law applying to the colonial subjects. Within the legal arrangement, British

[5] Note that the Brussels Anti-Slavery Conference 1889-1890, set up to abolish slave trade in Africa, was spearheaded by Britain. For more on the conference, see Alfred Le Ghait, ‘The anti-slavery conference’, *The North American Review*, 154, 424, (1892).

[6] For a discussion on the justification, see Her Majesty’s Stationary Office (HMSO), Report by Sir F. D. Lugard on the Amalgamation of Northern and Southern Nigeria, and Administration, 1912-1919, 609/1920, 12.

[7] For an account of the military conquest, see C. N. Ubah ‘The British Occupation of the Sokoto Caliphate: The Military Dimension, 1897-1906,’ *Paideuma*, 40, (1994).

officials not only defined the limits of African administrators' legal powers but also modified and redefined Islamic law to align with colonial interests. This would result in a "state-centric"[8] legal pluralism, where laws and legal institutions of the colonial subjects were manipulated to serve imperial interests.

The main body of the article is divided into three sections. In the first section, I examine the British Colonial authority's attempt to "find law" in Northern Nigeria. In section two, I explore the nature and workings of the indirect rule system, during the years following the advent of colonialism, and the creation of a "state-centric" plural legal order. The final section of the article observes how a "state-centric" form of legal pluralism informed the creation of a colonial anti-slavery legislation.

The colonial authority's attempt to "find law" in Northern Nigeria

The British colonial conquest of Northern Nigeria was legitimised through a prevailing imperial narrative: that these territories were devoid of law and thus required the civilising intervention of English law.[9] The British colonial authority justified conquest as a benevolent venture to impose order and legality upon societies perceived as primitive. However, once these territories were subdued, the colonial authority undertook an intricate search for equivalents of English legal structures within African "traditions", an endeavour mirrored in other imperial contexts, notably British India. As Cohn (1996, 57) notes, the British pursued the concept of a timeless "Ancient Indian Constitution", a search that ironically culminated in the imposition of English law under the guise of continuity and reform.

In the attempt to find law in the colonial periphery, a legal positivist approach saw the British employ a Eurocentric bias privileging codified systems over oral or customary norms. British

[8] "State-centric" is my own term. Legal pluralism scholars use 'weak' or 'state' to describe a similar form of legal pluralism. A distinction is made between 'weak' or 'state' legal pluralism, on the one hand, and 'strong' or 'deep' legal pluralism, on the other. While different definitions of the two exist, it can be said that strong legal pluralism involves the co-existence of legal orders with different sources of authority, whereas state legal pluralism includes two or more bodies of norms that have the same source of authority or a legal system in which the state is placed at the centre of multiple legal orders. I use "state-centric" throughout this article to capture the nature and workings of legal pluralism in colonial Northern Nigeria.

[9] Her Majesty's Stationary Office (HMSO), Report by Sir F. D. Lugard on the Amalgamation of Northern and Southern Nigeria, and Administration, 1912-1919, 609/1920, 12. The "lawlessness" of the colonised population constitutes one justification for colonialism in Africa. Other justifications are: belief in progress and civilisation, commitment to an idea of white racial supremacy, and moral superiority of Christianity. See S.E. Merry, "Law and Colonialism", Law & Society Review, 25, 4 (1991). 896.

authorities deemed only those legal orders with recognisable institutions, written codes, and hierarchies as sufficiently "civilised" (Diala and Kangwa 2019). In contrast, the communal, rights-oriented structures prevalent across much of pre-colonial Africa were seen as antithetical to the individualistic, rule-based paradigm that British jurists and administrators considered legitimate.

Such thinking was grounded in nineteenth century liberal imperialist ideology. John Stuart Mill, in his Dissertations and Discussions, provided philosophical endorsement for colonial subjugation, describing colonised people as "barbarous" and therefore unentitled to rights as sovereign nations (Mill 1867, 26–27).[10] In his view, imperial governance was not only justifiable but necessary to prepare such populations for eventual inclusion in a civilised society. This racialised rationale reinforced the perception that African societies lacked "real" law and thus required tutelage under British legal norms. The search for equivalents of English law in colonial societies reflected a broader ideological turn in late Victorian imperialism. While earlier justifications for empire had leaned on liberal claims of progress and civilisation, this approach gave way to what Mantena (2010) describes as a culturalist model of governance. Centred on the work of Henry Maine, this shift emphasised the resilience of "traditional" societies and the dangers of imposing radical reform, thereby providing an intellectual foundation for the embrace of indirect rule.

Critiques of the Eurocentric legal imaginary have come from postcolonial scholars and legal historians. Peter Fitzpatrick (1992) argues that colonial constructions of legality were narrowly tailored to serve the interests of the metropole. Though dressed in the language of universal order, the law functioned primarily as an instrument of imperial control. Rather than "civilising" the societies of the colonised, the application of such Eurocentric laws- in Africa during the colonial period for instance, was dictatorial, as it 'conferred on the colonial administrator powers of a range and discretion that would have exceeded the most expansive appetites of the Khadi or the patrimonial patriarch.' (Fitzpatrick 1992, 111). The result of this was that the law of the coloniser was contradictory as it operates in two conflicting capacities-

[10] John Stuart Mill (1806-1873), a leading English-speaking philosopher of the nineteenth century, spent his entire professional life, spanning 35 years, in the service of the British East-India Company, from 1823 to 1858 - the latter being the year the company was abolished. A significant aspect of Mill's intellectual production was dedicated to the subject of liberty, and the parameters on its extension to all kinds of people in a society. For Mill's life and knowledge production in India, see John Stuart Mill, 'Writings on India', *Collected Works of John Stuart Mill,* vol. 30, Eds. John M. Robson, Martin Moir and Zawahir Moir (London: Routledge and Kegan Paul, 1990).

an enlightenment ideal and a tool of colonial subjugation. The contradiction between law as a civilising force and as a vehicle of domination is most evident in colonial emancipation efforts. Mahmud Tukur, as referenced in Abubakar (1990), observes in his analysis of British anti-slavery policy in Northern Nigeria, that the idea of a colonial power liberating slaves within a colonial regime was paradoxical - amounting to one form of domination replacing another. That the British liberated slaves in their colony, Tukur affirms, "would have been a veritable paradox, given that colonialism, by its very nature, was a form of slavery imposed on the colonised society" (Abubakar 1990, 107).

In the quest for "finding law" in Northern Nigeria, the British deployed anthropological expertise.[11] Charles Kingsley Meek, an Oxford-trained anthropologist appointed as Northern Nigeria's first government anthropologist in 1912, was tasked with identifying and classifying the legal traditions of the region's "tribal groups." Working with African interpreters, Meek embarked on an ethnographic study based on 51 tribal groups of Northern Nigeria, published in his seminal The Northern Tribes of Nigeria (Meek 1925). He classified these groups along evolutionary trajectories, into three groups: the least advanced, whom he termed "local unconsolidated group"; a marginally more advanced group that had the capacity to form a "central tribal government"; and the most advanced, who had "united to form kingdoms and empires." (Meek 1925, 226).

Meek placed the Fulani in the highest category of advancement, citing their Islamic faith and structured legal system as evidence of a developed legal order. However, this classification was reductive. It failed to account for the historical intermixing of the Fulani with other Hausa groups and overlooked the internal diversity of their legal and cultural practices. Importantly, Meek's scheme mirrored the European preoccupation with codified, hierarchical systems,

[11] Colonial anthropologists in Africa attempted to ascertain rules and customs of colonised populations through observations and interactions with African experts and 'traditional' rulers. Their observations on African legal and normative systems were important, not only from an academic standpoint, but also from a practical perspective, as they provided simplified guidebooks for colonial officials. For instance, Isaac Shapera studied Tswana customary law not only out of academic interest but to provide a simplified guidebook for colonial officials supervising the courts. See Isaac Schapera, *A Handbook of Tswana Law and Custom: Compiled for the Bechuanaland Protectorate Administration* (London; OUP, 1938). Another legal scholar who tried to ascertain rules of the colonised population and converse the rules in a textbook is J.B. Danquah from the Gold Coast. For his collection of Akan laws and customs, see J.B. Danquah, *Gold Coast: Akan Laws and Customs and the Akim Abuakwa Constitution* (London; George Routledge and sons, 1928).

marginalising more fluid and communal forms of governance characteristic of many African societies (Diala and Kangwa 2019).

Due to what was perceived by the British as its universality and identifiability, Islamic law was formally recognised by the colonial authority as the "native law" of Northern Nigeria.[12] But this recognition was hedged with caveats. Frederick Lugard, the first British high commissioner of Northern Nigeria, admired Islam's "civilising effect" and "well-defined code of justice," but simultaneously viewed it as "incapable of the highest development" and would only be useful in ordering African populations under the rule of a European colonising power (Lugard 1922, 78). In his view, Islamic law was valuable so far as it could order subject populations under indirect rule, but not as an autonomous legal tradition.

Thus, what emerged in Northern Nigeria was a colonial legal regime that acknowledged Islamic law, subject to its subordination to British colonial control. The following section explores how this approach materialised into a "state-centric" plural legal order under British authority.

Native authority system and a "state-centric" plural legal order

While the British initially justified their conquest of Northern Nigeria by claiming a lack of law and invoking the universality of English legal norms, the actual colonial legal order that emerged departed significantly from these purported ideals. The claim of English law's universality would be abandoned for the particularity of colonial needs. Thus, rather than establishing a uniform system based exclusively on English law, the British opted for a hybrid framework: an amalgam of English common law and Islamic legal traditions (Naniya 1990, Akande 2023, Owolade 2023). This adaptation was not a mere pragmatic concession; it was a strategic reconfiguration of indigenous authority to serve imperial interests.

The particularity of colonial needs meant that the British had to seek alliance from pre-colonial Northern Nigeria rulers when creating a legal system. The legal system was a key feature of the doctrine of indirect rule, which sought alliances with pre-existing political elites, most notably the Fulani aristocracy of the nineteenth century Sokoto Caliphate. In his influential treatise *The Dual Mandate in British Tropical Africa*, Frederick Lugard articulated

[12] Note that the perceived universality and thus recognition of Islamic law in Northern Nigeria is in stark contrast to the treatment of the clusters of 'indigenous' normative orders of non-Muslim communities of Nigeria- with many failing to pass the colonial recognition test. For a discussion, see T. Olawale Elias, *Groundwork of Nigerian Law* (London: Routledge and Kegan Paul, 1954), 13.

this doctrine of colonial rule as a partnership of bifurcated benefit for the "advanced" British colonisers and the perceived dormant colonised Africans - who were "in the opening stages of civilisation". (Lugard 1922, 540). According to the doctrine, the British authority would guide African subjects, harnessing their resources for the mutual benefit of the British and the African. But in practice, this entailed preserving the outward forms of native governance while ensuring that ultimate authority rested firmly with the colonial administration.

The arrangement developed by the British authority in Northern Nigeria was expected to be carried out with the co-operation of African administrators- mostly the Fulani aristocracy of the nineteenth century Sokoto Caliphate. During this period, the British emphasised ceremonial deference to the remains of the caliphal institutions (Naniya 1990, Akande 2023). In the seeming diarchal system, otherwise known as the native authority system, colonial policies would be created by the British, and presented to African rulers who were expected to implement these policies in their spheres of influence, according to the guidelines put in place by the British, and in ways that did not radically depart from the laws and customs of the pre-colonial territories- thereby giving the impression of "native" rule. But while the impression of African rule is created, the British held the sole responsibility of defining the objectives of colonial rule.

The implementation of this dual authority model was explained in the 1901 Northern Nigeria Annual Report, where Lugard declared that the British administration would "utilise and work through the native chiefs," particularly leveraging the "intelligence and powers of governing of the Fulani caste," if they conformed to British notions of "fundamental laws of humanity and justice". [13] This conditional retention of precolonial systems masked a deeper contradiction: the colonial state claimed to uplift the colonised through British norms, yet it entrenched pre-colonial African structures that it simultaneously regarded as regressive.

Early gestures of goodwill from the British reinforced this performative pandering to the African rulers. In 1900, Lugard invited the Sultan of Sokoto to nominate a new Emir for Kontagora, describing it as an effort "to lead to a better understanding between us and the

[13] School of Oriental and African Studies Library (SOAS Library), Northern Nigeria Annual Report of 1900-1901, 346/1901, p. 26. For detailed discussions of the working of indirect rule in Northern Nigeria, see C.L. Temple, *Native races and their rulers* (London: Routledge, 1968), Margery Perham, *Native Administration in Nigeria* (London: OUP, 1937), Mahmud Modibbo Tukur, *The Imposition of British Colonial Domination on the Sokoto Caliphate, Borno and Neighbouring Areas, 1897-1914; A Reinterpretation of Colonial Sources* (Dakar: Amalion, 2016) and I.F Nicholson, *The Administration of Nigeria 1900-1960: Men, Methods, and Myths* (Oxford: Clarendon Press, 1969).

Mohammedan rulers".[14] Nonetheless, the proposals coexisted with deep-seated scepticism. While Lugard praised the ruling Fulani group, he lamented: "Yet capable as they are, it requires the ceaseless vigilance of the British staff to maintain a high standard of administrative integrity, and to prevent oppression of the peasantry." (Lugard 1922, 196-197). This perceived lapse in administrative integrity would lead to the British authority stepping in to control the parameters of the administrative and legal powers of their African administrators. The ensuing paternal prying into the colonial duties of African administrators would constitute a distinguishing feature of the plural legal system created in Northern Nigeria. Thus, beneath the rhetoric of partnership lay a paternalistic colonial regime in which African rulers were confined to executing policies dictated by the British authority.

This supervisory dynamic became a defining feature of the plural legal order in Northern Nigeria. Although Islamic law was formally acknowledged as "native law", its legitimacy was conditioned upon its subordination to British oversight. Scholars such as Lauren Benton (2002) and Sally Engle Merry (1988) have shown that this "state-centric" form of pluralism enabled colonial authorities to construct artificial categories of indigenous law. These systems were neither wholly "native" nor autonomous, but rather curated and constrained to reinforce colonial objectives.

In British Africa, the background development to a "state-centric" legal pluralism, as Lauren Benton observes, was the British colonial project in India, which had transitioned from a more fluid legal pluralism to the more planned pluralism of "high" colonialism (Benton 2002, 129). In India, British legal intervention had been slowly extended, in piecemeal fashion, for nearly two hundred years, from the establishment of the first British colonies in late 1600s to the advent of the British raj in 1858 (Benton 2002, 131). By the end of the nineteenth century, at the dawn of the colonial project in Africa, the British would begin to create "state-centric" plural legal orders on the continent. In Ebrahim Moosa's study on colonialism and Islamic law, describing a "state-centric" form of legal pluralism, the Islamic scholar argued that European colonialism relegated Islamic adjudicating bodies in Muslim colonised territories to informal adjudication options as opposed to recognised judicial bodies, which limited the legal influence of Islamic legal personnel and emboldened the influence of the colonial state (Moosa 2009). Moosa observes that during the pre-colonial period, "Muslim law was really a nomocratic order – one regulated by norms arrived at consensually, enforced by a theocentric moral authority and regulated by individuals and communities of coercion." (Moosa 2009, 166). He further

[14] SOAS Library, Northern Nigeria Annual Report of 1900-1901, 346/1901, 13.

contends that in the earlier period, the state had minimal role in the legal processes in operation, but after colonial intervention: "the secular state gained a greater and direct stake in the application of the law and thus became a major stakeholder.' (Moosa 2009, 166).

The colonial constraints to the influence of Islamic adjudicating bodies observed by Moosa, appear to have taken place in Northern Nigeria. The nineteenth century pre-colonial Sokoto Caliphate evolved an Islamic legal system that saw an elevated importance and influence of judicial officials. The system developed a broad list of judicial officials, including: *Nai'b qadi* (deputy of the judge), *mufti* (juris consult), *Katib* (court scribe or clerk), *Tarjuman* (interpreter), *Muqawwim* (valuer of properties), *Qasim* (estate distributor) and *Awn* (messenger). (Gwandu 1986, 20-22). On the advent of colonialism, the British reduced this expansive judiciary to a meagre "Native Court" system, peopled mainly by loyalists of the colonial project and primarily tasked with administrative record-keeping for British colonial residents. The mufti, once a critical source of independent legal reasoning, was repurposed to "keep minutes" for imperial oversight. [15]

The British asserted control over Islamic law through the so-called "repugnancy clause," which allowed colonial judges to override any native legal practice deemed incompatible with British norms of justice. In 1901, Lugard created a legal system in Northern Nigeria which aimed to recognise the existence and application of two forms of law- i.e. English law and "native" law,[16] in so far as the latter form of law is not "repugnant" to European conceptions of law and "justice".[17] As the definition of "justice" was dictated by European ideals, and often aligned with the interests of the British authority, the "repugnant clause" provided the British authority with what appears to be a *carte blanche* to modify and re-invent pre-colonial "native" laws to their liking.[18] The incorporation of Islamic law into the colonial legal order, and the

[15] See National Archives, Kaduna (NAK), SNP, Judicial council of Katagum, 2510/1923.

[16] Native law here means Islamic law, since the latter is the predominant legal system of precolonial Northern Nigeria.

[17] Supreme Court Proclamation of 1902, s. 18, cited in Frederick Lugard, *Memoranda by the High Commissioner to Political Officers* (London: Waterlow and Sons, 1906), 56. See also, *An ordinance to make provision for the administration of justice and to constitute the supreme court of Nigeria. No VI, 1914*, 9; and F.H., Ruxton, *Maliki Law: Being a Summary from French Translations of the Mukhtasar of Sidi Khalil with Notes and Bibliography* (Cairo: El Nahar, 2004), v.

[18] Note that the repugnance clause appeared in other British colonies. See Kristin Mann and Richard Roberts, 'Slave Voices in African Colonial Courts: Sources and Methods', in *African Voices on Slavery and the Slave Trade*, eds. Alice Bellagamba, Sandra E. Greene, and Martin A. Klein, Vol. 2 (Cambridge University Press: Cambridge, 2016), 135.

seeming *carte blanche* liberty to use the repugnance clause, would allow the British to gain a greater stake in the application of Islamic law. The creation of land tenure laws in Northern Nigeria during the 1900s and 1910s illustrates this point.

Islamic principles of land tenure in the nineteenth century Sokoto Caliphate, codified by Abdullahi dan Fodio, held that land rights could be acquired either by permission of the Imam or through use of unclaimed land (Pierce 2005, 96). Land captured in war belonged collectively to the victorious party, with the Imam acting as its custodian. This legal reasoning legitimised British claims over Northern Nigeria land following their conquest of the pre-colonial Sokoto Caliphate; and unsurprisingly, became central to the colonial thinking when formulating definitions of land ownership in Northern Nigeria and creating legislations to enforce the new policy (Pierce 2013, 155). Though Islamic concepts and definitions surrounding land possession varies, the British authority would justify this interpretation by pointing to their own understanding of the Islamic *waqf* (endowment) principle, which meant: land belonged, in total, to the Emir of an Islamic state, who owned it as inheritance by virtue of his office; and rights of ownership are transferred to the British crown by virtue of conquest, "as believed by the Emir and his people" (Ruxton 2004, 253). Ruxton (2004, 253), a British colonial official and author of the *Maliki fiqh*[19] guidebook used by colonial officials, affirms: "the system by which the government of Northern Nigeria has nationalized the land conforms in almost every particular aspect to the legal concepts of the Maliki school."

This rationale underpinned the Land Revenue Proclamation of 1904, which enabled the British to share in taxes levied on landholders. Whilst implying a collaborative approach to land tenure and a level-playing field between the British authority and African administrators, the legislation placed ultimate authority in the hands of the British authority, allowing for unilateral amendments and enforcement.[20] The 1904 proclamation was replaced by the Land and Native Rights Proclamation of 1910, which further entrenched British authority over land policy and tax collection in Northern Nigeria (Pierce 2013, 153). The result was a colonial legal regime that selectively appropriated Islamic legal norms while subordinating them to British administrative control.

[19] *Maliki fiqh* (Maliki school), based on the teachings of Imam Malik, is the school of Islamic law practiced in Northern Nigeria.

[20] For a discussion, see Land Revenue Proclamation, 1904, in NAK SNP Land Tenure and Land Revenue in Northern Nigeria, 162/1907.

This section has examined how indirect rule produced a legal pluralism in Northern Nigeria that was structurally "state-centric", embedding imperial authority within African institutions. The following section will take a closer look at how this plural legal order functioned in practice through law-making.

Law-making and the slavery proclamation of 1901: the illusion of legal collaboration

The abolition of slavery served as a moral pretext for conquest and formal establishment of British colonial authority in Northern Nigeria. Having proclaimed a British protectorate within Northern Nigeria, Lugard enacted the Slavery Proclamation of 1901 which abolished the legal status of slavery (Lugard 1906, 135-136). Being one of the earliest pieces of colonial legislations enacted, the process of constructing the 1901 proclamation was marred by blunders, and was an early indication that the postured collaborative approach (between the British authority and African rulers) to legal administration would make way for a "state-centric", unilateral legal order. This section examines the making of the Proclamation, its legal rationale, and the implications for the plural legal system of Northern Nigeria.

Colonial law in Northern Nigeria was promulgated through proclamations issued by the high commissioner and ratified by His Majesty's Government via Order-in-Council. (Lugard 1906, 55). Two legal sources coexisted within this framework. First were "fundamental laws", which comprised English common law, doctrines of equity, and statutes of general application in force in England as of 1 January 1900. The second were "native laws," recognised insofar as they were not repugnant to natural justice or opposed to proclamations of the protectorate. (Lugard 1906, 55). In practice, Islamic law functioned as the dominant form of "native law" in Northern Nigeria. In cases of conflict between Islamic law and English law, the latter mostly prevailed. This conflict was to manifest in the question of the permissibility of slavery, and Lugard would present an incoherent legal argument to show why English law should supersede Islamic law, which permitted the practice - though with specific conditions (Lugard 1906, 56).

The 1901 proclamation banning the legal status of slavery provides an example of this legal hierarchy in practice. Lugard justified the abolition not merely on humanitarian grounds, but through a complex and often contradictory legal argument that elevated English law above Islamic law. He cited international legal instruments, specifically the Brussels Act of 1890, as secondary sources of applicable law, albeit requiring localisation through a colonial proclamation to attain domestic legal force (Lugard 1906, 56).

The colonial administrator ruled that some international laws will be recognised as a source of law, although not in their original form. For an international convention or treaty to affect

the protectorate, he maintained, it had to be introduced as a "local law by a proclamation of an order-in-council on that subject." (Lugard 1906, 56). Lugard then specified that the Brussels Act on Slave Trade and the Importation into Africa of Firearms, Ammunition, and Spirituous Liquors (Brussels Act) would be "localised" into a Northern Nigeria anti-slavery legislation by a colonial proclamation.[21]

The Brussels Act, signed in 1890 primarily by European powers, was ostensibly a humanitarian charter aimed at eradicating the "Negro Slave Trade" and improving the moral and material conditions of "native" populations (Le Ghait, 1892). [22] While it represented an early attempt to universalise Eurocentric ideas of morality and liberalism, its invocation by Lugard also served to legitimise the imposition of colonial law within a plural legal context.

More so, the Brussels Act would provide to Lugard, an international precedent for the abolition of slavery, and a pretext to show that slavery was repugnant to European principles of natural justice and humanity- this being the test invoked by the British authority to validate "native" laws in their African colonies (Lugard 1906, 56). Lugard was however not satisfied with using the "repugnant" test alone. The colonial administrator provided another reason to abolish slavery, and in his legal reasoning, he attempted to present a secular re-interpretation of Islamic law's position on slavery. While he approached Islamic law from an oriental context and with limited Muslim experience, he postured as an expert who understood the legal system better than the Muslim subjects of colonial rule in Northern Nigeria.

Lugard posited that the regulation of slavery in the region was inconsistent and dependent on public opinion rather than codified jurisprudence. He argued that the Qur'an and Hadith emphasised humane treatment of slaves but did not, in themselves, constitute binding legal codes unless universally applied within a region. Therefore, he asserted, slavery in Northern Nigeria lacked uniformity and legal coherence. He explains:

> "The Koran lays down generosity and consideration towards slaves, and Mohammed inculcated kindness, forbearance, and equal liberality in the matter of food and raiment, as to the free members of the household. But neither the Koran nor the traditions are law except so far as they are embodied in the various codes. And it is important to note that

[21] The Brussels Act was modified into Northern Nigeria Law by Proclamations 1 of 1901, 1 of 1902 and 27 of 1904, respectively.

[22] For the Brussels agreement, see Slave trade and importation into Africa of firearms, ammunition, and spirituous liquors (General Act of Brussels) of 1890. available at https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0134.pdf [assessed 10 October 2020].

human treatment, which is so usual in this country, is due to personal or national character, custom, public opinion." (Lugard 1906*,* 298).

Historians have shown that slavery was a universally accepted and deeply embedded practice in pre-colonial Northern Nigeria (Last 1967, Lovejoy and Hogendorn 1993, Lofkrantz 2012). After the Fulani jihad of 1804-1808, which birthed the nineteenth-century Sokoto Caliphate, slavery became a normalised practice in the region. There was a consensus in the intellectual discourses among Islamic scholars closely associated with the jihad, that the enslavement of non-Muslims was legal, although the enslavement of freeborn Muslims divided opinions (Lofkrantz, 2012). Importantly, slavery was not solely practiced by Muslims. The non-Muslim groups of pre-colonial Northern Nigeria, provided they had the means to, also engaged in the practice (Meek 1925, 288). [23] This broad acceptance along religious and ethnic lines challenges Lugard's assertion that the legal principles regulating slavery were not universally applied in the pre-colonial territories of Northern Nigeria.

Nonetheless, Lugard upheld that since the rules regulating slavery were based on mere public opinion, it was inevitable that the application will sometimes be lax, and sometimes strict, and as such, would lead to inconsistencies when applied (Lugard 1906*,* 298). Accordingly, Lugard's response to the supposed inconsistency was to ban slavery altogether.

To justify his claim of inconsistency, Lugard cited anecdotal evidence gathered across the Northern Nigeria protectorate. In the southern territories of the protectorate, such as Lokoja and among the Nupe, enslaved persons could sometimes contest their sale or choose a new enslaver - the public opinion on the transaction of enslaved persons was liberal. In contrast, in northern territories, particularly in Sokoto town, slave ownership was absolute and unchallengeable. Liberality in the interpretation of the laws regulating slavery did not exist, as no one could interfere with what the enslaver does with his enslaved. (Lugard 1906*,* 298).

Another area where public opinion on rules regulating slavery varied among the people of Northern Nigeria, according to Lugard, is the treatment of *bachuceni* (children born of enslaved parents). Although selling a *bachuceni* born in the household or farm of an enslaver (a practice occasionally carried out by the Fulani) is not a breach of slavery laws applied in most parts of the protectorate, the general treatment of *bachuceni,* varied from place-to-place in Northern Nigeria (Lugard 1906*,* 304). While it was the 'rule' in Lafia- a town in the southern part of the

[23] For a discussion, see *The Diary of Hamman Yaji: The Chronicle of a West African Muslim ruler*, ed. James H. Vaughan and Antony H.M. Kirk-Greene (Bloomington: Indiana University Press, 1995)

protectorate- that the *bachuceni* ought not to be taught 'slave-work' or given a 'slave-name'; a nearby town called Keffi- also a southern territory of the protectorate - held the opposing view that the *bachuceni* ought to be taught "slave-work" and given a "slave-name" (Lugard 1906*,* 304).

The lack of uniformity in the laws regulating slavery in pre-colonial Northern Nigeria, as outlined above, provided Lugard with a rationale for abolition. While Islamic law in the Sokoto Caliphate recognised the legal status of slavery, Lugard sought to eliminate this recognition through the Slavery Proclamation of 1901. He presented the perceived legal fragmentation as incompatible with the colonial state's mission of justice and order, thereby justifying unilateral abolition. In practice, however, the proclamation was more symbolic than substantive (Lovejoy and Hogendorn 1993). Rather than a general emancipation of enslaved people, the colonial authority adopted a peculiar approach of abolishing the legal status of slavery, but not the actual institution. Explaining the implication of this form of abolition, Lugard states:

> 'in the eye of the law, property in persons (as slaves) is not recognised, and a 'slave', is accounted to be personally responsible for his acts, and competent to give evidence in court. The institution of domestic slavery is not thereby abolished, as would be done by a decree of general emancipation, and, while, as a matter of fact it gives a slave the means of asserting his freedom, it does not constitute it an offence for a native to own slaves… [provided the master and his slave] work harmoniously together.' (Lugard 1906*,* 135-136).

The reluctance by the British authority to abolish slavery in its entirety was necessitated by the practicality of taking such a decision, given that the institution had been an integral part of pre-colonial Sokoto Caliphate. This strategy, designed to avoid alienating African administrators whose cooperation was vital to indirect rule, reveals the limits of British humanitarianism in colonial governance. Importantly, the unilateral enactment of the 1901 Slavery Proclamation by the British authority, and limited consultation with African administrators, signalled an early departure from the postured collaborative approach to legal administration. While the indirect rule system formally acknowledged African laws, the actual construction of legal authority was concentrated in the British authority. The Slavery Proclamation of 1901 thus serves as an early example of the "state-centric" plural legal order that would come to define Northern Nigeria: one in which indigenous laws were tolerated only within parameters defined by imperial interests.

By the end of Lugard's first tenure as high commissioner of Northern Nigeria in 1906, his official biographer, Margery Perham, described his native authority system as the most

comprehensive, coherent, and renowned in British Africa (Perham 1960, 138). Central to Lugard's reputation was the construction of a plural legal order, which became a defining feature of Nigeria's legal system during the first thirty years of British colonial rule (Elias 1954, 121). This section has shown that although the plural legal order was presented as collaborative, in practice it was more hierarchical than the term "plural" suggests, and was essentially "state-centric". The Slavery Proclamation of 1901 illustrates this clearly. Framed as a humanitarian measure, it abolished only the legal status of slavery while allowing the institution to persist, demonstrating both the limits of British humanitarianism and the unilateral nature of colonial law-making. On 1 January 1914, the protectorate of Northern Nigeria was amalgamated with Southern Nigeria to form the single colony of Nigeria, with Lugard appointed as its first governor.[24] Following amalgamation, the legal system of Northern Nigeria was extended southwards, embedding the "state-centric" pluralism across the colony that remained formative during the first thirty years of colonial rule (Keay and Richardson 1966, Afigbo 1972, Nwabueze 1982).

Conclusion

This article has examined the formation of a plural legal order in Northern Nigeria between 1900 and 1920, situating the legal transformations within the broader context of British indirect rule. Although the colonial conquest was initially justified through claims of the universality of English law and the moral imperative to abolish slavery, the practicalities of colonial governance led to a strategic retreat from these claims. What emerged was a policy of indirect rule, where the British authority co-opted and repurposed pre-colonial political structures to rule African subjects and serve imperial interests.

This framework of indirect rule shaped the legal system of Northern Nigeria. Rather than imposing a monolithic English legal system, the British authority projected a plural legal system that formally recognised Islamic law as "native law", albeit under the "repugnancy clause" and strict supervision from British officials. Within the legal arrangement, British

[24] See HMSO, Report by Sir F. D. Lugard on the Amalgamation of Northern and Southern Nigeria, and Administration, 1912-1919, 609/1920. The amalgamation was carried out for economic reasons. Northern Nigeria's budget was largely dependent on annual grants from the Imperial Government, which had run into £314,500 of British taxpayer's money between 1902 and 1912. Southern Nigeria, on the hand, had seen its material prosperity increase with astonishing rapidity during the 1900s. As the North was barely able to balance its budget, the colonial administration sought to use the budget surpluses in Southern Nigeria to offset this deficit.

officials not only defined the limits of African administrators' legal powers but also modified and redefined Islamic law to align with colonial interests. Thus, the British role, while posturing legal collaboration, was in practice paternalistic.

The Slavery Proclamation of 1901 offers an early instance of the legal arrangement. Though postured in the language of humanitarian reform, the legislation was enacted unilaterally, serving British imperial interests, and bypassing meaningful engagement with African legal authority. The selective abolition of the legal status of slavery, but not the actual practice, highlights the "state-centric" nature of colonial law-making. In sum, the colonial legal order in Northern Nigeria was less a negotiated pluralism than a managed hierarchy- created to advance British imperial interests through law.

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