Writing a Colonial Legal History of Northern Nigeria: An Analysis of Methods and Sources

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Abstract: This article analyzes the methods and sources of writing a colonial legal history of Africa. The analysis is carried out with a case study of the dual legal system operative in colonial Northern Nigeria from 1900 to 1960, which saw the English common law coexist with Islamic law. I examine how three sources of colonial law – namely, legislations, case law, and legal writings – reveal the varied perspectives of European colonial officials and Africans on the workings of this legal system. I argue that while colonial legislations and legal writings are lopsided toward the perspectives of the British authority, case law in conjunction with African commentaries provide some prospect to engage in a narrative that foregrounds the voices of Africans.

Résumé: Cet article analyse les méthodes et les sources pour écrire une histoire coloniale juridique de l'Afrique. L'analyse est réalisée à partir d'une étude de cas du système juridique mixte en vigueur dans le nord du Nigeria colonial de 1900 à 1960, qui a vu la common law anglaise coexister avec la loi islamique. J'examine comment trois sources du droit colonial (législation, jurisprudence et écrits juridiques) révèlent les perspectives variées sur le fonctionnement de ce système juridique des responsables coloniaux européens et africains. Je soutiens que si la législation coloniale et les écrits juridiques sont déséquilibrés en faveur des perspectives de l'autorité britannique, la jurisprudence, conjointement avec les commentaires africains, met potentiellement en avant un récit qui met au premier plan la voix des Africains.

Key words: Northern Nigeria, British Empire, Colonial Law

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Introduction: Writing a Colonial Legal History of Africa

African colonial legal history has in the past forty years become an intensively treated subject. Studies in this sub-field of African history have treated colonial law through a dichotomous lens; firstly, as an instrument used by the colonial authority to codify clusters of African laws for the purpose of constituting colonial authority, and secondly, as a tool used by Africans to contest colonial authority. After reviewing the growing number of studies in African colonial legal history, John Comaroff highlights how colonial law may not only serve as an autocratic instrument deployed by the colonizer to control the colonized population, but can also be used by colonized people to challenge old and new manifestations of power.[1] In a co-edited volume on law in colonial Africa, several historians explored similar ways in which Africans were not only subjugated by colonial law but were also empowered by it.[2] A recent addition to the dichotomized working of colonial law sees George Karekwaivanane explore ways in which colonial and postcolonial law was deployed in the "constitution" and "contestation" of state power and legitimacy in colonial Southern Rhodesia and independent Zimbabwe, between 1950 and 2008.[3]

Some studies on African colonial legal history have a gendered focus, exploring ways that colonial law created an opportunity for African women to challenge manifestations of oppression. In her study on a landmark court case in Kenya, Patricia Stamp stated that while African customary law (as codified by the colonial authorities) subverts the rights of women enshrined in the pre-colonial period, colonial-based common law "underpins women's strivings for rights in the contemporary state."[4] Another relevant study on gender and colonial law is Elke Stockreiter's *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar Town*, which surveyed legal disputes in the Islamic courts of colonial Zanzibar, in post-abolition British rule, from 1890 to 1963.[5] Tracing the various dimensions of female agency, Stockreiter provides accounts of women across the social hierarchy who brought claims to the Islamic courts. Other historians such as Laura Fair and Margaret Strobel have highlighted the social and economic agency of Muslim women in the context of patriarchal post-abolition colonial Africa.[6]

[1] John L. Comaroff, "Colonialism, Culture, and the Law: A Foreword," *Law & Social Inquiry* 26–2 (2001), 306.

[2] Kristin Mann and Richard L. Roberts (eds.), *Law in Colonial Africa* (Portsmouth: Heinemann, 1991).

[3] George Karekwaivanane, *The Struggle over State Power in Zimbabwe: Law and Politics since 1950* (Cambridge: Cambridge University Press, 2017).

[4] Patricia Stamp, "Burying Otieno: The Politics of Gender and Ethnicity in Kenya," *Signs: Journal of Women in Culture and Society* 16–4 (1991), 811.

[5] Elke E. Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar Town* (Cambridge: Cambridge University Press, 2015).

[6] See Laura Fair, *Pastimes and Politics: Culture, Community, and Identity in Post-Abolition Urban Zanzibar, 1890–1945* (Athens: Ohio University Press, 2001); and

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Though not focused on gender and colonial law, Bonny Ibhawoh's *Imperialism and Human Rights* uses British-colonized Nigeria as a case study to investigate the links between European imperialism and rights discourses in African history.[7] Examining whether the concept of universal human rights began with the inception of the Universal Declaration of Human Rights (1948), Ibhawoh argued that several aspects of local colonial history are reflected in discussions on rights, with examples including European missionary operations, the anti-slavery movement, and the colonial legal system.

While these studies show the emancipation opportunities of colonial law, Mitra Sharafi cautions us not to see this legal system as one that restores agency of colonial subjects. [8] The opportunity to maneuver through the legal system did not always yield a positive outcome. It was more of, as Sharafi terms, a "legal lottery."[9]

The emancipatory opportunities provided by colonial law to Africans were often closed by colonial officials when they tried to shore up the authority of ruling Africans.[10] This phenomenon, which had a gendered implication, was one of the central themes in Martin Chanock's seminal study of law, custom, and social order in colonial Malawi and Zambia published in 1985.[11] Elizabeth Schmidt later used a similar framework in her study of Zimbabwe, which posits that the union of African and European patriarchy during the colonial period had a mutual subordination of African women.[12] In a recent addition to this line of inquiry, Tom McClendon used a gender lens in his analysis of court struggles in segregation-era South Africa to show that while the colonial project seemingly gave African women a broader range of opportunities, the social and legal construction of gender was later used by the colonial authority and African patriarchs to control the women at a time when their apparently increased independence threatened male power and the colonial state.[13]

Margaret Strobel, *Muslim Women in Mombasa 1890–1975* (New Haven: Yale University Press, 1979).

[7] Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (Albany: State University of New York Press, 2007).

[8] Mitra Sharafi, "The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda," *Law and History Review* 28–4 (2010), 980.

[9] Sharafi, "The Marital Patchwork of Colonial South Asia," 982.

[10] See Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985); and Elizabeth Schmidt, *Peasants, Traders, and Wives: Shona Women in the History of Zimbabwe, 1870–1939* (London: James Currey, 1992).

[11] Martin Chanock, *Law, Custom and Social Order.*

[12] Schmidt, *Peasants, Traders, and Wives.*

[13] Thomas McClendon, *Genders and Generations Apart: Labor Tenants and Customary Law in Segregation-Era South Africa, 1920s to 1940s* (Portsmouth: Heinemann, 2002).

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Writing a colonial legal history of Africa presents a familiar problem faced by historians of colonial Africa: that of striking a balance between the perspectives of the colonizing power and those of the colonial subjects. The majority of the available sources in this area are still colonial in origin. During the colonial episode, Europeans ascertained the laws of the colonised population through anthropological investigations, which led to a key primary source of colonial legal history, which could be referred to as "legal writings." A notable example is Isaac Shapera's study on Tswana customary law, which provides a simplified guidebook for European officials supervising the colonial courts of Buchuanaland protectorate.[14] In Nigeria, Frederick Lugard's writings constitute an important colonial perspective on the type of legal system created in this region. These writings include the two volumes of the *Political Memoranda*, *The Dual Mandate*, and the report on the amalgamation of Southern and Northern Nigerian territories in 1914.[15] While these works referenced anthropological studies on African legal and normative systems, such as the works of colonial government anthropologist C. K. Meek,[16] the legal accounts provided in the writings are lopsided toward the perspectives of the British authority. Another key source of colonial legal history of Africa is colonial legislation. Like legal writings, legislations are biased toward the Europeans in their origin and the perspectives they convey. This source played an important role in altering aspects of African laws considered strange to western ideals of justice and morality.

European colonialism often involved large-scale transfer of law and legal institutions from the colonial metropole to the periphery, the result being a dual legal system, one for the colonial power and the other for the subjects.[17] Within the dual legal system, the two main legal orders coexisted in an unequal and hierarchical legal system where the European law was elevated to the colonial state law. The colonial state law then played a role of restructuring, as it modified "indigenous" legal systems and in some cases created

[14] See Isaac Schapera, *A Handbook of Tswana Law and Custom: Compiled for the Bechuanaland Protectorate Administration* (London: Oxford University Press, 1938).

[15] Frederick Lugard, *Memoranda by the High Commissioner to Political Officers* (London: Waterlow and Sons, 1906); Frederick Lugard, *Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative 1913–1918*, 3rd edn. (London: Frank Cass, 1970); Frederick Lugard, *The Dual Mandate in British Tropical Africa* (Edinburgh: William Blackwood and Sons, 1922); and HMSO, Report by Sir F. D. Lugard on the Amalgamation of Northern and Southern Nigeria, and Administration, 1912–1919, 609/1920, 1920, 80.

[16] Charles Kingsley Meek, *The Northern Tribes of Nigeria,* 2 vols. (London: OUP, 1925). Note that Meek was appointed in 1912 as colonial government anthropology of Northern Nigeria.

[17] Sally Engle Merry, "Law and Colonialism," *Law & Society Review* 25–4 (1991). 890. For a general overview of the dual legal systems created in British colonial Africa, see A. N. Allott, "What Is to Be Done with African Customary Law? The Experience of Problems and Reforms in Anglophone Africa from 1950," *Journal of African Law* 28–1–2 (1984).

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new ones. This process of modification was achieved with colonial legislations.

In the Islamic territories of British Africa, the introduction of a dual legal system meant that English concepts of law were often upheld when they came into conflict with Islamic law.[18] This encouraged colonial intervention in legal issues where gaps in Islamic law were found or instances where "questionable practices" (questionable, according to the British colonial authority) were legitimized by Islamic law. In Northern Nigeria,[19] the recognition of Islamic laws was contingent on a legislative clause, which states that the law in question must not be "repugnant to natural justice or opposed to any proclamation of the protectorate."[20] What would become known as the "repugnancy clause" was used across British Africa to "sanitize" those aspects of pre-colonial African laws considered strange to western ideals of justice and morality.[21]

Using Northern Nigeria as a case study, this article explores the methods and sources of writing a colonial legal history of Africa. The Northern Nigeria region, from the advent of colonial rule in 1900 to the independence of Nigeria in 1960, provides a useful case study to observe patterns of legal colonialism in Africa. The region was declared a protectorate by the British in 1900. By 1910, it had developed a detectible legal system applicable to a population of 9,269,000 Africans, spread across thirteen provinces.[22] On

[18] Note that this partly stems from a strongly held colonial idea that when an Englishman goes abroad, he takes his law with him. For a discussion, see L. C. Green, "Native Law and the Common Law: Conflict or Harmony," *Malaya Law Review* 12–1 (1970).

[19] Note that the term "Northern Nigeria" denotes the protectorate that the British proclaimed in the African territory equivalent to Sokoto Caliphate and Borno Empire that preceded colonialism. After the amalgamation of Northern and Southern Nigeria territories in 1914, Northern Nigeria became part of a single Nigeria colony and was referred to as Northern Nigeria, northern provinces and northern region. For the sake of consistency, I will refer to the region as Northern Nigeria throughout this article.

[20] Supreme Court Proclamation of 1902, s. 18, cited in Lugard, *Political Memoranda,* 56.

[21] The repugnancy test was authoritatively established in British Africa in 1915 by the Privy Council in *Kobina Angu v Cudjoe Attah* (Gold Coast Colony). See *Kobina Angu v Cudjoe Attah* (Gold Coast Colony) Privy Council Appeal No. 78 of 1915 (1916). Parts of judgment available online at https://www.casemine.com/judgement/in/5779f5e4e561096c9313046a, (accessed 10 October 2020). Note that the final court of appeal for cases heard in colonies of the British empire is the Privy Council of the United Kingdom, which is an executive body comprised of senior politicians who are current or former members of either the House of Commons or the House of Lords.

[22] His Majesty's Stationary Office (HMSO), Annual Report of the Colonies, Northern Nigeria, 1910–11, 704/1912, 1912, 52.

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1 January 1914, the protectorate of Northern Nigeria was amalgamated with the protectorate and colony of Southern Nigeria to form the single colony of Nigeria. Following amalgamation, Frederick Lugard – who had served as the first High Commissioner of Northern Nigeria (1900–1906) – was appointed as the Governor-General of Nigeria. The colonial administrator then extended the colonial legal system he established in Northern Nigeria to the southern territories of Nigeria.[23]

In the following sections, I examine the development and application of three sources of colonial law in Northern Nigeria: namely, legislations, case law, and legal writings. The examination is carried out against the backdrop of the dual legal system of Northern Nigeria, which saw Islamic law coexist with English law.[24] I contend that a holistic engagement with the sources is necessary when writing a colonial legal history of Africa.

Colonial Legislation

Legislations constitute the most important source of law for legal researchers.[25] In the colonies of British Africa, this source of law emanates from the authority of a legislature or similar governing bodies, through a process that starts from the introduction of a bill (draft law) and ends with approval by a reigning monarch. The content of legislations, as well as the process leading to their promulgation, changed during the course of British colonial rule in Africa. In Northern Nigeria, colonial legislations were enacted by the High Commissioner and approved by his Majesty the King of the United Kingdom through an Order-in-Council.[26] These legislations were divided into two categories. The first category, called "fundamental laws" included the English common law and doctrines of equity (administered concurrently), as well as the statutes of general application in force in England on 1 January 1900. The second category included "native laws" insofar as they were recognized and not "repugnant to natural justice or opposed to any proclamation of the protectorate." [27] Whenever there was a

[23] HMSO, Report by Sir F. D. Lugard on the Amalgamation of Northern and Southern Nigeria, and Administration, 1912–1919, 609/1920, 20–22. For accounts of how Native Courts of south-eastern Nigeria adopted the Native Authority system developed in the North, see Adiele Afigbo, *The Warrant Chiefs: Indirect Rule in Southern Nigeria, 1891–1929* (Harlow: Longman, 1972).

[24] While Islamic law was the recognised the "customary law" of Northern Nigeria, it is worth noting some non-Islamic legal and normative orders existed in the periphery of the colonial state.

[25] For a discussion, see Dale McFadzean and Lynn Allardyce Irvine, *Legal Method Essentials* (Edinburgh: Edinburgh University Press, 2017), 19–46.

[26] Lugard, *Memoranda by the High Commissioner*, 55.

[27] Supreme Court Proclamation of 1902, s. 18, cited in Lugard, *Memoranda*, 56.

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conflict of these two categories of laws in a legal case and the question arose as to which category will be administered, the "fundamental laws" superseded "native laws."

This process of promulgating legislations in Northern Nigeria changed in 1914 when the protectorate was amalgamated with the territories of Southern Nigeria to form the single colony of Nigeria.[28] Following amalgamation, Frederick Lugard was appointed as the colony's Governor. Having been responsible for constructing Northern Nigeria's judicial system, Lugard extended this system into the southern territories of Nigeria.[29] In an attempt to unify the diverse legal systems of northern and southern Nigeria, the British authority collated the laws of these territories, introduced amendments, and merged these laws to apply to the entire Nigeria colony. This was sealed by the enactment of a Native Courts Ordinance in the Nigeria Colony in 1914.[30] A volume consisting of all existing legislations, rules, and orders in council of Nigeria was then issued in 1917.[31] Hugh Clifford succeeded Lugard in 1919 as the Governor of Nigeria and enacted the first constitution of the colony in 1922. The 1922 constitution created for the first time a National Legislative Council, to include Africans in the law-making processes of the colony. From the enactment of the 1922 constitution to the culmination of British rule in 1960, the scope of Africans' involvement in the law-making process became broader with the introduction of interim constitutions in 1946, 1951, and 1954.[32]

[28] This unification was carried out by the British for administrative convenience and 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. 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, 1920, 7.

[29] For accounts of how native courts of southeastern Nigeria adopted the native authority system developed in the North, see Adiele Afigbo, *The Warrant Chiefs: Indirect Rule in Southern Nigeria, 1891–1929* (Harlow: Longman, 1972).

[30] Elliot Alexander Keay and Sam Scruton Richardson, *The Native and Customary Courts of Nigeria* (London, Sweet & Maxwell, 1966), 29. Note that the 1914 ordinance was revised into the Native Courts Ordinance of 1918. The ordinances of 1914 and 1918 were modelled after the Native Courts Proclamation of 1906. See National Archives of Nigeria, Kaduna (hereafter NAK), SNP, Judicial council of Katagum, 2510/1923. 1923.

[31] Keay and Richardson, *The Native and Customary Courts of Nigeria,* 17.

[32] For the seminal study on constitutional development in colonial Nigeria, see Kalu Ezera, *Constitutional Developments in Nigeria: An Analytical Study of Nigeria's Constitution-Making Developments and the Historical and Political Factors that Affected Constitutional Change* (Cambridge: Cambridge University Press, 1960).

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Though most colonial legislations in British Africa were local, international legislations constitute a supplementary source of legislative laws – albeit a secondary source. For an international legislation (convention or treaty) to affect a British protectorate, it had to be introduced as a "local law by a proclamation of an order-in-council on that subject."[33] An example is the "Brussels Act on Slave trade and importation into Africa of firearms, ammunition, and spirituous liquors," which was "localized" into a Northern Nigeria anti-slavery law by the following colonial proclamations: Proclamation 1 of 1901, Proclamation 1 of 1902 and Proclamation 27 of 1904. The Brussels Act – signed in 1890 by mostly European powers – aimed to achieve a two-tier objective of putting an end to "negro" Slave Trade and improving the moral and material conditions of formerly enslaved persons.[34]

While legislations provide a useful source for writing Africa's colonial legal history, this source is usually reflective of the views and intentions of European colonists. Legislations are also regarded in legal studies as the most legalistic source of law, and the utilization of the source is often situated within the boundaries of legal research. To this end, the extent to which the source provides a possibility for a legal historian to probe the lopsided European narratives of colonial legal processes and explore African perspectives is limited. Nonetheless, a closer look at the processes preceding the enactments of legislations can shed light on how colonial ideation informed the creation of colonial laws.

The recognition and legislation of pre-colonial laws in British Africa was contingent on the satisfaction of an ideologically driven two-fold recognition test. The first test states that the pre-colonial African law seeking colonial recognition will have to be perceived by the British to be legally recognized by Africans living in a colony or protectorate.[35] As a result of the British perception that Islamic law had a "universal appeal" and recognition in pre-colonial Northern Nigeria territories, aspects of this system of law became recognized by the colonial authority. However, the universal appeal, as perceived by the British authority, of Islamic law in Northern Nigeria was in stark contrast to the unfavorable perception of non-Islamic laws (collectively referred to as customary laws) of Southern Nigeria, which meant that these laws often failed the recognition test.[36] It is important to note that the favorable perception of Islamic law developed within the colonial ranks as a

[33] Lugard, *Memoranda by the High Commissioner*, 56.

[34] Alfred Le Ghait, "The Anti-Slavery Conference," *The North American Review* 154–424 (1892).

[35] *An ordinance to make provision for the administration of justice and to constitute the supreme court of Nigeria. No VI* (Lagos: Government Printer, 1914), 9.

[36] See T. Olawale Elias, *Groundwork of Nigerian Law* (London: Routledge and Kegan Paul, 1954), 13.

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result of a skewed oriental outlook of Islam.[37] Lugard, for instance, took a liking to what he describes as Islam's "civilizing effect" on Africa and its "well-defined code of justice."[38] The colonial administrator would however concede (some years after he left colonial service in Nigeria) that the religion is "incapable of the highest development" and would only be useful in ordering African populations under the rule of an European power.

The second recognition test holds that the "native" law must not be repugnant to the principles of natural justice and humanity.[39] Commonly known as the "repugnance clause," this recognition test would appear in different forms throughout British Africa.[40] Like the first recognition test, colonial ideation informed the ways in which the repugnancy clause was utilized. As the definition of "natural justice" was dictated by European ideals, the repugnant clause would grant the British authority the full discretionary power to validate African laws aligned with British interests and nullify laws that compromise these interests.[41]

This section reveals that colonial legislations are lopsided toward the European colonizers in their origin and the perspectives they reflect. The historian seeking to unearth the voices of Africans and unsettle narratives of legal processes produced by colonial officials, must consider other sources.

Case Law

An important source of law in legal studies, case law (also known as judicial precedent) emanates from the decisions of judges in legal cases.[42] While scholars of African colonial legal history have attempted to utilize case law as a primary source, the selection of relevant cases poses a significant

[37] For the seminal study on the skewed western views on Islam, see Edward W. Said, *Orientalism* (New York: Pantheon Books, 1978). See also Rana Kabbani, *Europe's Myths of Orient: Devise and Rule* (London: MacMillan, 1986).

[38] Lugard, *The Dual Mandate*, 78.

[39] 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.

[40] See Kristin Mann and Richard Roberts, "Slave Voices in African Colonial Courts: Sources and Methods," in Bellagamba, Alice, Greene, Sandra E., and Klein, Martin A. (eds.), *African Voices on Slavery and the Slave Trade, Vol. 2* (Cambridge University Press: Cambridge, 2016), 135. For a discussion on the use of the repugnance clause in Northern Nigeria, see 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.

[41] This autocratic leeway to modify African law was a central aspect of the colonial project. See Chanock, *Law, Custom and Social Order*; Schmidt, *Peasants, Traders, and Wives*; and Comaroff, "Colonialism, Culture, and the Law."

[42] For an extensive discussion, see McFadzean and Allardyce Irvine, *Legal Method Essentials*, 79–88.

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methodological obstacle. The obstacle emanates from a dilemma of selecting cases that are either illustrative of wider trends in colonial Africa or cases that produce contested outcomes. While the cases that are illustrative of wider trends often tend to be well documented, cases that produce contested outcomes are less so.

An example of a richly documented case which produced a contested outcome is *Tsofo Gubba v Gwandu Native Authority* (1947).[43] The Nigerian case, which involved homicide, revealed how the existence of two channels of appeals in Nigeria effectively confirm the supremacy of English law over Islamic law in the colony. While this case was decided in the first instance in the court of the Emir of Gwandu – an Islamic court (also known as "native court") – in Northern Nigeria, the party who was served a death penalty for homicide appealed the decision in the Supreme Court of Nigeria, and then again in the West African Court of Appeal. The latter court allowed the party's appeal and effectively revoked the judgement of the lower Islamic court.

Conversely, there are cases that, while not richly documented, are still as important, such as the case of Tsofo Gubba, because they uncover the marginalized voices of commoner Africans when studied in conjunction with African accounts of colonial rule. Examples of these thinly document cases can be found in the court records of the judicial council (colonial native court) of Muhammad Abbass, the Emir of Kano, Northern Nigeria (1903–1919).[44] The collection of 415 cases, recorded between 1913 and 1914 in this Islamic court of the Kano monarch, were translated from Arabic and Hausa into English and published by Allen Christelow in 1994.[45] The 415 cases cover eleven different topics related to British colonial rule in Northern Nigeria, which include slavery emancipation. Of these cases, 37 cover the slavery emancipation topic, and 6 cases from the latter group will be examined in this section.

The selected cases involve enslaved women who used British emancipation laws to assert their freedom in the court of the Emir of Kano. The colonial province of Kano in Northern Nigeria is a useful case study to observe legal disputes in the entire Northern Nigeria. By the fourteenth century, Kano Kingdom had become established as a commercial nerve of pre-colonial Northern Nigeria territories due to its rich intellectual heritage

[43] For more, see *Tsofo Gubba v Gwandu Native Authority* (1947) 12 W.A.C.-A. 141, cited in Keay and Richardson, *The Native and Customary Courts of Nigeria*, 46–51.

[44] The judicial council of Emir Abbass was assembled by British Resident of Kano (Northern Nigeria) C.L Temple in 1909. See Tijanni Naniya, "The Transformation of the Administration of Justice in Kano emirate. 1903–1966" (unpublished PhD thesis, Bayero University Kano, 1990), 144.

[45] Allen Christelow, ed., *Thus ruled Emir 'Abbas: Selected Cases from the Records of the Emir of Kano's Judicial Council* (East Lansing: Michigan State University Press, 1994).

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and strategic trade location.[46] By the advent of colonial rule, the British would convert Kano into an administrative province, which became the economic center and the most populous province of Northern Nigeria.[47]

The information contained in these cases are meager, restricted to a short paragraph of the following points: the lodged complaint; the summoning of defendants and witnesses; reading of brief facts of the case; and finally, a reading of the judgment. This pattern is mirrored by studies on the three most extensive sets of court records of Islamic colonial Africa. They include the Islamic court record of Brava in Italian Somaliland, the Islamic court record of St. Louis in French Senegal, and the Islamic court record of British Zanzibar and its archipelago of linked islands.[48]

But while these cases are relatively thinly documented, there is scope to mitigate the lack of information by using other written sources as African accounts on colonial rule, to fill in the gaps.[49] This would allow a legal historian of colonial Africa to bring to bear the voices of commoner Africans in the colonial legal processes. Adopting this methodological approach is Thomas McClendon, a trained lawyer and historian of Africa, whose study analyzes colonial court cases in conjunction with written records and oral interviews, with an aim to unearth the authentic voices of commoner Africans in segregation-era South Africa. [50]

Drawing from this methodological approach, the rest of this section will analyze six legal cases entertained in the judicial council of Emir Abbas, which involved enslaved women of Northern Nigeria that attempted to assert their freedom with colonial law.[51] While analyzing the cases, I draw on the

[46] Christelow, *Thus ruled Emir 'Abbas,* 2.

[47] Of a population of 9,269,000 people spread across thirteen provinces of Northern Nigeria in 1910, Kano province contributed 3,500,000 people. See His Majesty's Stationary Office (HMSO), Annual Report of the Colonies, Northern Nigeria, 1910–11, 704/1912, 1912, 52.

[48] Mann and Roberts, "Slave Voices in African Colonial Courts," 151–152. The studies that utilize these court records, as cited by Mann and Roberts, are Alessandra Vianello and Mohamed M. Kassim (eds.), *Servants of the Sharia: The Civil Register of the Qadis' Court of Brava, 1893–1900*, 2 vols. (Leiden: Brill, 2006); Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks, and Cross-Cultural Exchange in Nineteenth-Century Western Africa* (New York: Cambridge University Press, 2009). See also, Elke E. Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar Town* (Cambridge: Cambridge University Press, 2015).

[49] A key text which produced rich accounts on the legal issues discussed in the court records of Emir Abbass, is the biography of Baba of Karo, an African woman of colonial Northern Nigeria. Some of the legal Issues covered in this text include the legal status of slavery, emancipation and taxation. See Mary F. Smith, *Baba of Karo: A Woman of the Muslim Hausa*, 2nd edn. (New Haven: Yale University Press, 1981).

[50] Thomas McClendon, *Genders and Generations Apart.*

[51] The women analyzed in this section attempted to assert their freedom through the method "emancipation by order of a native court." This method of

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biography of Baba of Karo – a commoner African woman of colonial Northern Nigeria who provided extensive information on the abolition of the legal status of slavery and the perception of African women on abolition in Northern Nigeria.[52] I now turn to analying the cases.

In the case of *Gesu Guruma v Sarkin Gera* (1913),[53] a woman named Gesu from Guruma is reported to have been in possession of an enslaved woman, who she set free. For a reason not disclosed by the court scribe, *Sarkin* (King of) Gera summoned the newly freed woman. The woman obliged and went to the King, after which he then kidnapped and enslaved her. Gesu approached the Emir's judicial council and made a formal complaint about Sarkin Gera's enslavement of the freed woman. The Emir's court investigated and confirmed the facts of the case. After confirmation, the Emir took the freed woman from Sarkin Gera and placed her back in the possession of Gesu. The Emir then scolded Sarkin Gera sternly and said to him "stay away from her." Sarkin Gera obliged and repented.

The salient facts of Gesu's legal claim for the current analysis are her unaccompanied appearance before the court – i.e., without any male custodian, and the willingness to engage in a legal dispute with a King. These facts, combined with the successful outcome of her claim, confirm a concern held by the *masu sarauta* (title holders) of Northern Nigeria, over the implication of the liberal rhetoric of the slavery proclamations, which would grant a form of female autonomy from male control, and constitute a "threat" to the patriarchal society.[54]

Although it is uncommon for Gesu to insist that she retains 'ownership' of the freed woman, this does not necessarily imply an ongoing state of enslavement. To be clear, in setting the enslaved woman free, Gesu gains the Islamic right of *wala* (guardianship).[55] In Islamic law, this is a practice that commonly took place whenever the owner wanted to keep hold of an enslaved person but still had to satisfy the legal expectation to emancipate the enslaved. The guardianship arrangement is usually beneficial to the

emancipation was encouraged by Lugard, given that the method allowed colonial residents and native administrators to work closely together, further strengthening the indirect rule system. See Lugard, *Memoranda,* 136–150. Other methods of emancipation in Northern Nigeria are: Self-redemption, manumission by owner, ransom by relatives, emancipation by Military Expedition and ransom by intending husband. See NAK, Kano Prof, Kano Province Annual Report 1923, 92/1924. 1924.

[52] Smith, *Baba of Karo.*

[53] *Gesu Guruma v Sarkin Gera*, Kano Emirate Judicial Council, 6E, 9/6/1913, in Christelow, *Thus ruled Emir 'Abbas*, 117–118.

[54] See Steven Pierce, *Farmers and the State in Colonial Kano: Land Tenure and the Legal Imaginatio*n (Indiana: Indiana University Press, 2005), 122.

[55] For more on the "*wala"* relationship, see 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), 369n1.

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newly freed woman who may not have to worry about re-enslavement. That this worry has manifested in the studied case is not surprising. In her primary account of slavery in the pre-colonial Sokoto Caliphate period, Baba of Karo explains that kidnappings and enslavements of free women by male rulers, title holders, and other men of authority was a normal practice. Women kidnapped by slave raiders were occasionally sold to male members of the royals and enslaved as concubines.

Baba provides numerous examples where her own female siblings were kidnapped by slave raiders and then sold to male title holders in Kano and neighboring communities during the 1890s. At other times, such transactions did not take place. Women were simply taken by the title holders and then enslaved as concubines. Baba explains, "If the chief liked the look of your daughter, he would take her and put her in the house; you could do nothing about it."[56] This explanation reflects an aspect of the abuse of power practiced by Muslim rulers against the dictate of Islamic law on enslavement.

In a concubinage case recorded by the Emir of Kano's judicial council (or court), an unnamed concubine complained that she did not "like" the man (named Khalid from Yargaya) who enslaved her and that she wanted to be free from his possession.[57] The judicial council summoned Khalid, after which the concubine was asked by the court for another fault in Khalid, but she could not raise any. The court then sent Khalid and the concubine to "barracks"[58] of the supervising British official to resolve the case. The concubine repeated to the British official that she did not "like" Khalid and wanted to be free. The British official then said, "I leave you free, there is no more work for you."[59] Subsequently, the British official sent both parties of the claim back to the Emir. The Emir then said, "We are the same."

Like the first case analyzed in this section, the court scribe leaves out a fair number of crucial details in the present case. There is no mention of the law applied, or the meaning of the Emir's "we are the same" statement. While this may suggest that the concubine is free, the British official's statement of "there is no more work for you" appears to be a direct reference to labor work, which ignores the crux of the concubine's claim of her sexual enslavement. [60] Thus, there is no clear indication that the concubine had totally emancipated herself from the control of Khalid. Ultimately, despite the concubine's

[56] Smith, *Baba of Karo*, 68. For a study on concubinage and attempts to abolish this practice in Northern Nigeria, see Paul Lovejoy, "Concubinage and the Status of Women Slaves in Early Colonial Northern Nigeria," *Journal of African History* 24 (1988).

[57] *A Concubine V Khalid Yargaya,* Kano Emirate Judicial Council, 17B, 13/7/1913, in Christelow, *Thus ruled Emir 'Abbas,* 120.

[58] The term barracks, as recorded in this case, possibly refers to the British official's station.

[59] *A Concubine V Khalid Yargaya,* Kano Emirate Judicial Council, 17B, 13/7/1913, in Christelow, *Thus ruled Emir 'Abbas,* 120.

[60] Observation made by Christelow.

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willingness to assert her freedom from Khalid, and Baba of Karo's assertion that the concubinage practice declined following the advent of British colonial rule, this case exposes a limitation of the scope of the abolition of concubinage, which is the uncertainty of fate created for the supposedly freed woman after the court grants an emancipation order.

Indeed, Heidi Nast confirms that palace concubinage as an institution persisted during the reign of Emir 'Abbas of Kano (1903–1919), and only gradually declined from the 1920s when the British began to implement policies to prohibit the practice.[61] In Elke Stockreiter's study on the abolition of concubinage in British Zanzibar, the historian found a similar trend of an initial reluctance on the part of the British to abolish concubinage when the abolition decree was passed in 1897.[62] As was the case in Northern Nigeria, the colonial authority in Zanzibar was concerned about disrupting the social structures that upheld the control of the sexuality of concubines by their male enslavers. But after a drastic increase in the enslavement of free women, the British reluctantly included concubines in Zanzibar's legal status abolition in an amendment of the abolition degree in 1909.[63]

In another case of an enslaved woman, titled *Isa v Juwma Danbarta* (1913), a man named Isa approached the Emir of Kano's court to lodge a formal complaint, affirming that a formerly enslaved woman named Juwma should be in his possession.[64] Juwma was captured from the community of Danbarta,[65] taken to the town of Damagaram, and placed in the possession of Isa, where she stayed for an undisclosed number of years, working under slavery conditions. She then managed to evade captivity and traveled back to Danbarta. Afterward, as a free woman, she married a man called Shekarau. Not long after, Isa saw Juwma and recaptured her. This is then said to have resulted in a dispute between Isa and Shekarau, Juwma's husband.

The case was investigated by the Emir's court, and it was confirmed that the facts were accurate. After the court's confirmation, the Emir referred the legal question to the supervising British official. Having deliberated on the facts of the case, the British official said to Juwma, "You are free."[66] When

[61] Heidi J. Nast, "The Impact of British Imperialism on the Landscape of Female Slavery in the Kano Palace, Northern Nigeria," *Africa: Journal of the International African Institute* 64–1 (1994), 53–59.

[62] Elke E. Stockreiter, "British Perceptions of Concubinage and the Patriarchal Arab Household: The Reluctant Abolition of Slavery in Zanzibar, 1890s–1900s," *Slavery & Abolition, A Journal of Slave and Post-Slave Studies*, 36, 4, (2015).

[63] Stockreiter, "British Perceptions of Concubinage," 730–731.

[64] *Isa v Juwma Danbarta*, Kano Emirate Judicial Council, 1C, 17/5/1913, in Christelow, *Thus ruled Emir 'Abbas,* 117.

[65] Note that the town "Danbarta" is in the present day spelt as as Danbatta. It serves as a Local Government Area in Kano State, Nigeria, and is located about 49 miles north of the Kano city.

[66] *Isa v Juwma Danbarta*, Kano Emirate Judicial Council, 1C, 17/5/1913, in Christelow, *Thus ruled Emir 'Abbas,* 117.

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the Emir heard the statement of the British official, he said, "We judge in the same way." The Emir then put Juwma in the possession of her husband Shekarau.

Juwma's escape from captivity and marriage with Shekarau are acts of defiance against Islamic law's position on slavery. The consummation of the marriage is *zina* (fornication), according to the widely accepted Sidi Khalil's interpretation of Islamic law on the issue, which states that a Muslim commits the crime of fornication when he has intercourse with a woman to whose "sexual possession he had no lawful right."[67] While she had escaped captivity, Juwma would be deemed – in Islamic law – a "slave" at the time of her marriage to Shekarau, who has no lawful right to her, and the sexual nature of their relationship will be regarded as *zina* (fornication). Accordingly, what appears to be Juwma's defiant actions against Islamic law and her emancipation case against Isa illustrate why anti-slavery laws did not sit well with the *ulama* (Islamic scholars) of Northern Nigeria, who often struggled with coming to terms with the nature of these laws.[68]

The Emir's court arrived at a similar judgment in another case that involved an enslaved woman. Titled *Suleiman Gawo* (1913), this case saw the Emir's court emancipate an enslaved woman who absconded from her captives. The woman, named Halima, was captured during the Kano Civil War (1893–1895)[69] and escaped from captivity.[70] A detailed examination of this case is important since, though the facts of the case are similar to that of Juwma's case, the court scribe peculiarly emphasized here that a decision was met by the application of Islamic law (and not the slavery proclamation of 1901).

Suleiman, from the community of Gawo in Kano city, had a daughter named Halima. An army of raiders captured her on an unspecified date during the Kano Civil War and then took her to the community of Wadai, where she was sold into slavery. She worked in this community under slavery conditions for about twenty years and bore two daughters. Afterward, she came back by herself to Kano (presumably evading captivity) and went to her former house, where she found her father and mother, still alive. Halima's father (i.e., Suleiman) then asked the Emir's court to free his daughter so that

[67] 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), 329.

[68] Naniya, "The Transformation of the Administration of Justice in Kano emirate," 165. For a general discussion on the intellectual responses of Muslims of Northern Nigeria to British rule, see Mohammed Sani Umar, *Islam and Colonialism: Intellectual Responses of Muslims of Northern Nigeria to British Colonial Rule* (Leiden: Brill, 2006)

[69] For a sustained discussion on the war, see Adamu Fika, *The Kano Civil War and British Over-rule, 1882–1940* (Oxford: OUP, 1978).

[70] *Suleiman Gawo*, Kano Emirate Judicial Council, 7A, 9/6/1913, in Christelow, *Thus ruled Emir 'Abbas,* 118.

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he could hold custody of her and her children – i.e., his grandchildren. After validating the facts of the case, the court ordered for Halima to be put in the possession of Suleiman, along with her children. The case was decided on the basis of Islamic law.

It is conceivable that Halima's escape from captivity with her two daughters was fostered by her awareness of British colonial rule and her understanding of the newly instituted anti-slavery policy. The advent of British colonialism – referred to in the Hausa language as *zaman turawa*[71] – was prophesied during the late nineteenth century by *mallamai* (Islamic scholars) of Hausaland, who predicted that this event would bring forth a period of peace and tranquillity, especially for the *talakawa* (commoners) of Kano – who were burdened by the lawlessness and slave raids prevalent during the Kano Civil War.[72] When the Civil War broke out in Kano, legal institutions ceased to be effective and women vulnerable to enslavement.[73] Baba of Karo suggests that the advent of British colonialism had encouraged some of the enslaved persons acquired from slave markets during the Kano Civil War, to abscond from their enslavers.[74]

It was clear that *zaman turawa* (advent of British colonialism) had become a legal terminology for Africans in Northern Nigeria when an enslaved mother of an enslaved girl approached the Emir's court to demand the immediate emancipation of her daughter because she "heard that everyone born in the zamān tūrāwā' [i.e., advent of British colonialism] was free."[75] In the case that involved an unnamed mother of an enslaved girl and two men named Muhammad Kunduwaje and 'Abdu (1913), Muhammad from the community of Kunduwaje, asked to redeem the enslaved woman from 'Abdu. 'Abdu agreed and asked Muhammad to pay a redemption fee of 6 cows and 140,000 cowries. Muhammad then paid this redemption fee, after which 'Abdu put the enslaved girl in Muhammad's possession. The mother of the girl complained to the Emir's judicial council, asserting the following, "Two men contracted the redemption of my daughter. But she is young. I heard

[71] For the etymology of *zaman turawa* and its Islamic origin, see Allen Christelow, "In Search of One Word's Meaning: Zaman in Early Twentieth-Century Kano," *History in Africa* 24 (1997), 95–97.

[72] Smith, *Baba of Karo*, 66.

[73] While victims of slave-raids were of both genders, women were particularly vulnerable to the practice. There is a key reason for this. As explained by Baba of Karo, an enslaved woman could serve in two capacities. This included working on the farm and as a sex slave.

[74] Smith, *Baba of Karo*, 67. For a general discussion on how people living in Hausaland made sense of *zaman turawa*, in the first decade of colonization, see Christelow, "In Search of One Word's Meaning."

[75] *Mother of Slave Girl v Muhammad Kunduwaje and 'Abdu*, Kano Emirate Judicial Council, 13F, 7/7/1913, in Christelow, *Thus ruled Emir 'Abbas*, 119.

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that everyone born in the zamān tūrāwā' [advent of British colonialism] was free. Thus, I complain to you."[76]

The Emir's court investigated the facts of the case and held that since the enslaved girl was found to be a child born after the arrival of the British, the transaction was null and void. Thus, 'Abdu was ordered to repay the redemption fee of 6 cows and 140,000 cowries back to Muhammad. Also, the enslaved girl was taken from the possession of Muhammad and placed in the possession of 'Abdu, who retained the right to her *wala* (guardianship). This decision was made on a section of the Slavery Proclamation of 1901, which upholds that children born after 31 March 1901 were born free, and could not be enslaved under any circumstances.[77] The girl's mother, also enslaved, but born before 1901, however, remained enslaved as she could not afford to pay her redemption fee. This indicates that the abolition of slavery by the British colonial authority was far from absolute; and, as Frederick Lugard stressed, "the institution of domestic slavery is not… abolished, as would be done by a decree of general emancipation."[78]

Mothers of enslaved children born between 1900 and 1910 continued to bring forth *zaman turawa* emancipation claims before the judicial council, under the premise of what the British authority described as the "1901 proclamation rule."[79] The claims were not always successful for several reasons, including a confusion surrounding, on the one hand, the actual start year of the advent of British colonial rule in Kano Emirate (which was 1903) and, on the other hand, the date in which the proclamation rule went into effect (i.e., 31 March 1901). In other words, the 31 March 1901 date – when the "1901 proclamation rule" takes effect – was often confused with the actual year that Kano Emirate (as part of the Sokoto Caliphate) was conquered by the British, which was 1903. An added layer to this dating complication is that the year when the Protectorate of Northern Nigeria was declared by Colonel Frederick Lugard, who was then the Commander of the West African Frontier Force (WAFF) was 1900. This confusion, which was never rectified by the British authority, made it difficult for the judicial council to calculate the age of enslaved children as they sometimes wrongly used 1903, instead of 1901.

In the case of *Amina Yelwa v Dabo Yelwa* (1913), an enslaved woman called Amina unsuccessfully made a "1901 proclamation rule" claim in the Emir's judicial council. Amina from the community of Yelwa claimed that her enslaved daughter, named Sa'ada, was born in 1903.[80] Both Amina and Sa'ada were enslaved by a man called Dabo. Having confirmed the facts,

[76] (Bracket added).
[77] Lovejoy and Hogendorn, *Slow Death for Slavery*, 234–260.
[78] Lugard, *Memoranda,* 135–136. (Bracket added).
[79] Christelow, *Thus ruled Emir 'Abbas,* 119.
[80] *Amina Yelwa v Dabo Yelwa*, Kano Emirate Judicial Council, 33A, 22/8/1913, in Christelow, *Thus ruled Emir 'Abbas,* 122–123.

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the Emir referred the case to the supervising British official, who investigated the matter and found that Sa'ada was fourteen years old, meaning that she was born around 1899, and had missed the *zaman turawa* (advent of British colonialism), the cut-off date. The Emir and the British official then suggested to Amina that if she finds the redemption fee for her daughter, she could approach the chief *alkali* (Islamic judge) of Kano, or a junior Islamic judge, to complete the emancipation process for her daughter Sa'ada. This accompanying cost of emancipation suggests a significant limitation to the scope of British anti-slavery legislations in Northern Nigeria.

The above analysis shows that case law in conjunction with African accounts on colonial rule provide to historians a potential source that foregrounds the erstwhile silenced voices of Africans in colonial legal processes, and a prospect to engage in a narrative that spans beyond the familiar narratives of the colonial authority. The extent to which this prospect would yield positive results is contingent, and the reliability of the gap-filling African source is contingent on some key factors, such as the means of production, the mediation entailed, and the process of translation.[81] Two noteworthy attempts of this methodological approach are Elke Stockreiter's analysis of Islamic court records of post-abolition Zanzibar and Thomas McClendon's analysis of colonial court records of segregation-era South Africa.[82]

Legal Writings

Legal writings offer commentary on the law, point to authoritative primary sources, and provide an overall picture of an area of law.[83] Though considered a secondary source in legal research, legal writings constitute an important primary source to historians writing on Africa's colonial legal history. Two corpora of legal writings are of great value to the study of the colonial legal history of Kano Emirate, in particular, and of the larger Northern Nigeria region. They include the legal collections of the Sokoto "jihadists"[84]

[81] Determining the objectivity of the gap-filling sources could be dicey. For a discussion on the benefits and challenges of using African oral sources to reconstruct histories of enslaved Africans, see Alice Bellagamba, Sandra E. Greene and Martin A. Klein, "Sources and Methods: Writing about African Slavery and the Slave Trade," in Bellagamba, Alice, Greene, Sandra E., and Klein, Martin A. (eds.), *African Voices on Slavery and the Slave Trade, Vol. 2* (Cambridge University Press: Cambridge, 2016), 12–14.

[82] See Elke E. Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar Town* (Cambridge: Cambridge University Press, 2015), and Thomas McClendon, *Genders and Generations Apart.*

[83] McFadzean and Allardyce Irvine, *Legal Method Essentials,* 125–146.

[84] "Jihadists" in this study is used with caution to refer strictly to those associated with the Sokoto *jihad* of 1804–1808 and the scholarly contributions made by these figures.

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and the political memoranda of Frederick Lugard – the inaugural High Commissioner of Northern Nigeria (1900–1906). These two bodies of sources are significantly different in content and illustrative of different canons of knowledge. While the legal writings of the Sokoto jihadists are reflective of the Islamic canon of knowledge and detail the pre-colonial Islamic legal structures that the British authority intended to retain at the advent of colonial rule, Lugard's memoranda typify the western canon, which shaped the legal thinking of British colonial officials in Northern Nigeria. These two disciplinary distinctive groups of legal writings will now be closely examined.

The eighteenth and nineteenth centuries marked a period of transformative political upheavals in *Bilad al-Sudan* (lit. "Land of Blacks; West Africa").[85] The period saw a series of *jihad* (holy war) waged by men of Fulani extraction across *Bilad al-Sudan* territories to reform the application of *shari'ah* (Islamic law or jurisprudence). The jihad would extend onto Hausaland in 1804, when Usman dan Fodio declared a "holy war" on the rulers of the pre-colonial Northern Nigeria region for their lax application of shari'ah. After securing victory in 1808, Usman dan Fodio formed the Sokoto Caliphate in the Hausa territories with the aim of establishing Islamic law therein on a firmer basis.

Usman Dan Fodio and other participants of the "holy war"[86] wrote extensively on various legal topics upon which the government of the Sokoto Caliphate will be based and effectively created a legal framework for the Caliphate. Most of the texts are interpretations of Islamic traditions and were widely circulated across all Kingdoms (renamed "Emirates" by the jihadists) of Hausaland. For the sake of convenience, the writings may be divided into three categories, corresponding to their chronological publications, which include the pre-jihad period (before 1804), jihad period (1804–1808) and post-jihad period (after 1808). Texts written in the pre-jihad period generally dealt with subjects such as *tawhid* (the indivisibility or oneness of God) and *fiqh* (Islamic jurisprudence) and were often related to the un-Islamic ways of Hausa Kingdoms. In the jihad period, the texts had a militant tone; they discussed and legitimized armed actions against Hausa kings who practiced and permitted un-Islamic acts. The themes of the texts in this category are centered on the qualities of leadership, according to the teachings of Islam. Lastly, texts of the post-jihad period dealt specifically with law, jurisprudence,

[85] *Bilad al-Sudan* is the Arabic phrase used to denote the "Land of Blacks" or West Africa. This phrase was used by the Arabic travelers, geographers, and historians who first wrote of the region's history. See A. D. H Bivar, and M. Hiskett, "The Arabic Literature of Nigeria to 1804: A Provisional Account," *Bulletin of the School of Oriental and African Studies* 25–1–3 (1962).

[86] Other prominent members of the "holy war" who wrote extensively are Mohammed Bello (a son of Usman dan Fodio) and Abdullahi dan Fodio (a younger brother of Usman dan Fodio).

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and administration of justice. [87] To summarize, the entirety of the aforementioned texts was constitutional in that they were expected to guide the title holders of the caliphate on how to govern their immediate realm. Utilizing the legal writings enables the historian of Northern Nigeria's colonial law to examine British colonial rule as a system of the retention of pre-colonial Islamic legal structures.

The structure of the court system during the Sokoto caliphate period, as detailed in the legal writings of the jihadists, would be retained by the British authority during the colonial period. The period of the "holy war" (1804–1808) saw the establishment of three grades of courts by Usman dan Fodio. These were an appeal court, emir courts, and *alkali* (Islamic judge) courts. The appeal court was the highest court, served the entire caliphate, and was headed by the Sultan of the caliphate.[88] The appeal court was followed by emir courts, serving the emirates of the caliphate, and comprised of judicial officials learned in Islamic law.[89] The British retained the structure of the emir courts of the Sokoto caliphate period when formulating the judicial council in the colonial period, though the jurisdiction of the latter court was determined and mandated by the colonial authority. The *alkali* courts occupied the lowest grade of courts during the Sokoto caliphate period. Headed by the *alkali* (Islamic judge),[90] the courts served districts of emirates and were often located in the home of the Islamic judge. The judicial role of the judges and instructions on how they were expected to dispense justice were clarified by Abdullahi dan Fodio (a younger brother of Usman dan Fodio) in his legal writings.[91] Upon the advent of colonial rule, the British authority would retain the structure and functions of *alkali* courts, and the courts would continue to be situated in the home of the Islamic judge.[92]

[87] See A. B. Yahya et al., *Selected Writings of Sheikh Othman bn Fodiyo,* vol. I (Gasau: Iqra'a Publishing House, 2013), xviii.

[88] Yushau Sodiq, "A History of Islamic law in Nigeria: Past and Present," *Islamic Studies* 31–1 (1992), 91, citing Hasan Gwarzo, "The Development of the Implementation of Shari'ah in Northern States," paper presented at a seminar organized by the Department of Islamic Studies in cooperation with the Department of Arabic and Faculty of Law, Bayero University, Kano, 23 March 1985, 6.

[89] Yushau Sodiq, "A History of Islamic law in Nigeria," 104 (n. 69).

[90] *Qadi* (Arabic) and *alkali* (Hausa) are oftentimes interchangeably used in Northern Nigeria. Both terms translate into Islamic judge.

[91] Abdullahi Bn Fodiyo, "A Guide to Judges," in Yahya, A. B. et al. (eds.), *Selected Writings of Sheikh Abdullahi Bn Fodiyo*, vol. III (Gasau: Iqra'a Publishing House, 2013). Note that the office of the Islamic judge was one of the most important in the pre-colonial Sokoto caliphate. See H. A. S. Johnson, *The Fulani Empire of Sokoto* (Oxford: Oxford University Press, 1967), 93.

[92] Frederick Lugard, "A Study of the African and his Country," in Hammerton, J. A. (ed.), *Peoples of All Nations J. A. Hammerton Photojournalist Account and Commentary Early Twentieth Century – origins circa 1920*, vol. 1 (London: Amalgamated Press, 1923), 573.

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Like the judicial role of the judges and instructions on how they were expected to dispense justice, the Islamic laws on land tenure applied in the Sokoto Caliphate were composed by Abdullahi dan Fodio in his legal writings. In his written work, Abdullahi dan Fodio clarifies the question of how a person may gain rights to land. He maintains that the legal right to use land could be acquired in the first place by permission from the *Imam* (community leader), provided the land is in the latter's sphere of influence; and in the second place, be acquired without the community leader's permission, provided the land is not currently in use or does not have a previous cultivator.[93] If land is acquired in "holy war," then the land is owned by the victorious state and the community leader – provided the latter is the custodian of the *jihad* (holy war). According to this line of reasoning, when the jihadists conquered the "*Habe*"[94] rulers of Hausaland in the 1804–1808 *jihad* (holy war), the conquered land that formed the Sokoto Caliphate was transferred to the jihadists and their descendants; and after the British colonial authority conquered the jihadists' descendants, ownership was transferred to the British authority. Abdullahi dan Fodio's classifications, as seen above, was beneficial to the land-ownership ambition of the British authority; and unsurprisingly, they became central to their thinking when formulating definitions of land ownership in Northern Nigeria and creating legislations to this effect.[95]

The second corpus of legal writings central to the colonial legal history of Northern Nigeria is Frederick Lugard's political memoranda to colonial officials in Northern Nigeria.[96] Being the most influential theorist and practician of British colonial rule in Africa, Lugard and his political memoranda have been studied extensively by most scholarly works on the field. However, there is limited scholarly engagement with the implication of these political writings in shaping the legal thinking of British colonial officials. For the historian of African colonial law, there is considerable scope to draw from the memoranda and its impact on the legal consciousness of the colonial officials. Though inexperienced in matters relating to law, there was a

[93] Steven Pierce, *Farmers and the State in Colonial Kano: Land Tenure and the Legal Imagination* (Bloomington: Indiana University Press, 2005), 96.

[94] The Hausa-speaking people are an association of two ethnic groups, the "indigenous" majority *Habe* who have occupied the territory for an unknown number of years and the nomadic minority Fulani who migrated to the territory from the sixteenth century. In the years leading to the *jihad*, the term *Habe* was used by prominent jihadists like Usman dan Fodio, mostly in derogatory ways, to describe the rulers of Hausaland. See Michael G. Smith, "The Hausa System of Social Status," *Africa* 29–3 (1959), 240.

[95] See NAK, SNP, Land Tenure and Land Revenue in Northern Nigeria, 162/1907, 1907, and Steven Pierce, "Pointing to Property: Colonialism and Knowledge about Land Tenure in Northern Nigeria," *Africa* 83–1 (2013).

[96] Lugard, *Memoranda by the High Commissioner*, and Lugard, *Political Memoranda*.

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multidisciplinary character of British colonial officials in Northern Nigeria during the first twenty years of colonial rule, when Lugard's memoranda was a guidebook (and occasionally described a District Officer's Bible) for the officials who were expected to multitask and oversee areas in which they were not experts. In 1905, for instance, the 400 British officials in the entire Northern Nigerian service were expected to legislate over military, legal, medical, and administrative affairs.[97] Thus, a critical assessment of British rule in Northern Nigeria could be an exposition of how it is problematic that these colonial officials, with limited legal expertise, were expected to supervise and oversee Africans in the application of Islamic law.

One area of law in which Lugard's memoranda had a profound impact is the abolition of the legal status of slavery in Northern Nigeria. When providing a rationale to ban slavery in Northern Nigeria, Lugard claimed in his memoranda that the legal principles regulating the slavery practice were not "universally" (i.e., wholly) applied in the entire region that would become the Northern Nigeria protectorate. He 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.[98] Accordingly, Lugard's response to the supposed inconsistency was to ban slavery altogether. In an attempt to interpret Islam's position on slavery, the British colonial official states,

> 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 human treatment, which is so usual in this country, is due to personal or national character, custom, public opinion.[99]

It is important to note here that slavery had persisted in the nineteenth-century Sokoto Caliphate. After the Fulani jihad of 1804-1808, slavery had been an accepted practice in the entire Hausaland. 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.[100] Thus, Lugard's assertion that

[97] Flora Shaw (Lady Lugard), *A Tropical Dependency: An Outline of the Ancient History of the Western Soudan with an Account of the Modern Settlement of Northern Nigeria* (London: James Nisbet, 1905), 481.

[98] Lugard, *Memoranda by the High Commissioner,* 298.

[99] Lugard, *Memoranda,* 298.

[100] See Jennifer Lofkrantz, "Intellectual Discourse in the Sokoto Caliphate: The Triumvirate's Opinions on the Issue of Ransoming, ca 1810," *The International Journal of African Historical Studies*, 45–3 (2012).

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the legal principles regulating slavery were not "universally" (i.e., wholly) applied, in the pre-colonial territories of Northern Nigeria, is not entirely true.

Like colonial legislations, legal writings tend to reflect colonial legal processes from the perspective of the European colonizers. This is demonstrated by the two different types of legal writings examined in this section. The accounts provided in the colonial legal writings are undoubtably lopsided towards the perspectives of the British authority. However, the legal writings of jihadists, provide a mixed result. While these writings are produced by Africans, and reflect the retention of some pre-colonial Islamic legal structures and practices during the colonial period, the legal texts were appropriated by the British to create a legal structure that reified the interests of the colonial authority.

Conclusion

Writing a colonial legal history of Africa presents a familiar problem faced by historians of colonial Africa: that of striking a balance between the perspectives of the colonizing power and those of the colonial subjects. Majority of the available sources are still colonial in origin. As the methods employed in writing the colonial legal history field continue to evolve, it is important to prioritize foregrounding the voices of Africans. I have shown in this article that while colonial legislations and legal writings are lopsided toward the perspectives of the British authority, case law in conjunction with African accounts on colonial rule provide some prospect to engage in a narrative that exceeds the familiar narratives of the colonial authority.

While the collection of court records cases examined are thinly documented, this article explores a scope to mitigate the lack of information by using other written sources – such as biographies of Africans – to fill in the gaps. An example referenced in the article is Baba of Karo's autobiography. The autobiography is an anthropological record of the Hausa people, compiled from an oral account given in Hausa by Baba (1877–1951), the daughter of a Hausa farmer and Quranic teacher, and translated into English by Mary Smith. By adopting the methodological approach of using gap-filling sources to analyze colonial cases, there is prospect to foreground African voices. The extent to which this prospect would yield positive results – as well as the reliability of the gap-filling African source – is contingent on key factors such as the means of production, the mediation entailed, and the process of translation.

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