INTRODUCTION

States' assertion of separation from religion – commonly understood as the thrust of the constitutional idea of secularism – is ubiquitous in the modern world. At the same time, however, religion remains a force, keeping its hold on the private lives of individuals and tenaciously maintaining its presence in the politics of individual states and the international legal order. The tension arising from the tenacity of religion and the ineluctability of claims of separation has heightened the need to understand how the modern state regulates religion and religious difference through its enactment of secular governmentality, to unveil the ambivalence that mode of governance entails, to identify the forms of empowerment and disempowerment it fosters, and to scrutinize how subjects contest its consequences.

Colonial Northern Nigeria provides a particularly unique opportunity to consider these questions. The meeting of the distinctive precolonial caliphate with Orientalist ideals in the late nineteenth century produced one of the most distinctive sites for the colonial governance of religion and religious difference. Empire's ostensible deference to Islam, manifesting in indirect rule through Muslim elites, its peculiar application of "Islamic" law in the public sphere (via criminal law), and extensive restrictions on Christian missionaries purportedly entrenched the precolonial caliphate. Yet, the colonial state insisted on its secularity. In unraveling this puzzle at the heart of colonial governance, this work presents the story of a sustained constitutional entanglement of religion and politics and illuminates its consequences for colonial and postcolonial subjects.

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Empire was entangled with religion from the onset. The origin of empire on the West Coast of Africa in 1841 was the product of an alliance between the British state and anti-slave-trade evangelicals. With the "sword of the steel" furthering the "sword of the spirit," imperial outreach was closely allied with Protestant Christian missions especially the Church Missionary Society of the Church of England (CMS) in the nineteenth century.[1] That alliance, which featured empire-backed CMS jurisdiction over Africans, would change to hostility between the colonial government and missionaries when formal empire commenced in Northern Nigeria at the turn of the nineteenth century. In founding colonial governance on indirect rule through Islamic institutions, the British administration separated itself from the missionary enterprise, asserting that this policy was necessitated by its secular approach to governance.

Colonies were "laboratories of experimentation."[2] It was the British Empire's experience confronting a dizzying array of religious faiths in its colonies, beginning in India, that led to its development of secularism as a statecraft technique of managing religious difference. The British colonial state considered church-state separation crucial to governing India.[3] This separation from the church was prompted largely by the experience of the 1857 Indian Revolt, which was widely interpreted as a rebellion against the anglicizing mission.[4] Beyond the fact that early colonialism featured a measure of cooperation with Christian missions, the imperial venture also professed a civilizing goal underpinned by Christian ideas.[5] The civilizing mission was based on two convictions.

[1] Emmanuel Ayankanmi Ayandele, *The Missionary Impact on Modern Nigeria, 1842–1914: A Political and Social Analysis* (London: Longmans, 1966).

[2] John L. Comaroff, "Colonialism, Culture, and the Law: A Foreword," *Law & Social Inquiry* 26, no. 2 (2001): 305–314.

[3] Peter van der Veer, *Imperial Encounters: Religion and Modernity in India and Britain* (Princeton: Princeton University Press, 2001), 22; Gauri Viswanathan, *Outside the Fold: Conversion, Modernity, and Belief* (Princeton, NJ: Princeton University Press, 1998). See also Catherine S. Adcock, *The Limits of Tolerance: Indian Secularism and the Politics of Religious Freedom* (Oxon: Oxford University Press, 2013); Nandini Chatterjee, *The Making of Indian Secularism: Empire, Law and Christianity, 1830–1960* (New York: Palgrave Macmillan, 2011).

[4] See Ilyse R. Morgenstein Fuerst, *Indian Muslim Minorities and the 1857 Rebellion: Religion, Rebels and Jihad* (London: Bloomsbury Publishing, 2017).

[5] See Ian Copland, "Christianity as an Arm of Empire: The Ambiguous Case of India Under the Company, c. 1813–1858," *Historical Journal* 49, no. 4 (2006): 1025–1054. See also van der Veer, *Imperial Encounters*. Copland argues that there was a degree of cooperation between empire and missions, deviating from the account of previous

The first was that "others" were capable of racial and religious "uplift,"[6] and the second was that these others could become "English in tastes, in opinions, in morals and in intellect."[7] The rebellion against the civilizing project inspired the colonial state's distancing from missions and, simultaneously, its adoption of Indigenous institutions as the vehicle for colonial governance. To be sure, notions of governing the "native"[8] through their institutions predates the 1857 revolt; as early as 1772, Warren Hasting's Judicial Plan had designed such a scheme.[9] Nevertheless, it was the 1857 mutiny that would catalyze these earlier proposals, marking a turn to indirect rule.

Theorists and historians of colonialism point out that the policy of adopting native institutions developed alongside the construction of the "native" as a legal and political identity.[10] With Britain's abandonment of its civilizing mission, it turned to liberal imperialism, premised on difference and simultaneously having as its goal, the construction and governance of difference.[11] Religious difference was, therefore, central to the liberal turn. Indeed, the famous 1858 Proclamation by

historians. See, for instance, Brian Stanley, *The Bible and the Flag: Protestant Missions and the British Empire in the Nineteenth and Twentieth Centuries* (Townbridge: Apollos, 1990).

[6] Chris Youé, "Mamdani's History," *Canadian Journal of African Studies* 34, no. 2 (2000): 397–408, 401; David C. Potter, *India's Political Administrators: From ICS to IAS* (Oxford: Oxford University Press, 1996), 47; Horst Gründer, "Christian Missionary Activities in Africa in the Age of Imperialism and the Berlin Conference of 1884–1885," in *Bismarck, Europe, and Africa: The Berlin Africa Conference 1884–1885 and the Onset of Partition*, eds. Stig Förster, Wolfgang J. Mommsen, and Ronald Robinson (New York: Oxford University Press, 1988), 100. See further Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Cambridge: Harvard University Press, 2012); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 2018).

[7] Thomas Babington Macaulay, Minute Dated February 2, 1835, cited in *Selections of Educational Records, Part 1, 1781–1839*, ed. H. Sharp (Calcutta: Superintendent, Government Printing, 1920), 107–117.

[8] The terms "native" as well as one I use later – "pagan" – are now regarded, at best, with ambivalence. I adopt them in this study in the vernacular sense in which they were employed by official colonial discourse and the dramatis personae in this book.

[9] This scheme had been designed for the East India Company. See Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018).

[10] Mamdani, *Define and Rule*, 9; Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, NJ: Princeton University Press, 2010).

[11] Mamdani, *Define and Rule*; Mantena, *Alibis of Empire*. See further Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge: Cambridge University Press, 2018). Liberal imperialism was not without critics

the English Crown ushered in late colonialism by declaring religious autonomy for colonial subjects:

> We declare it our Royal will and pleasure that none be in anywise favored, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.[12]

If the Indian mutiny inspired the state's distance from missions, Peter van der Veer points out that it was missionaries who advocated for the disruption of the state's ties with Indigenous religions. In response to what they perceived as the state's patronage of native religions, missionaries called for a separation of the state from these religions. Yet, it is important to note that this project was never intended to be a principled call for the disestablishment of all religions. On the contrary, the preference of missions was to be allied with the state and, failing that, to be free of restrictions in evangelizing to natives.[13] Indeed, missionaries remained fully committed to the establishment of the Church in England. Since Indigenous religions and religious institutions would continue to play a central role in civil and political life regardless of the claim of separation, the stage was set for altercations over the place of matters spiritual in the state. Regardless of these ambiguities, the classical requirements of liberal secularism – the assertion of religious freedom and of separation – were formally complete.[14] Invoked not only directly but also obliquely through a variety of ideas including neutrality, tolerance, and impartiality, secularism's essence – avowing the state's separation from religion and religious liberty – had come to be embedded in colonial thought and policy.

within the ranks of the colonial administration in India. To take an example, James Fitzjames Stephen (law member of the viceroy's council from 1869–1872) argued that the British, being members of a superior conquering race, should not "shrink from the open, uncompromising assertion" of that right by conquest to govern Indians whom he saw as "ignorant to the last degree" and "steeped in idolatrous superstition."

[12] "Proclamation by the Queen in Council to the Princes, Chiefs and People of India Published by the Governor-General at Allahabad," (1858). IOR/L/PS/18/D154 British Library, UK.

[13] Van der Veer, *Imperial Encounters*, 151. See Chatterjee, *The Making of Indian Secularism*.

[14] See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2015).

GOVERNING DIFFERENCE: COLONIALISM AND RELIGION IN NIGERIA

The colonial state's turn from its nineteenth-century alliance with Christian missions in Northern Nigeria emerged from this broader imperial context. Yet, Northern Nigeria was quick to attain notoriety in missionary circles. By 1910, seven years after the commencement of formal empire, the World Council of Missions would devote much attention to the territory at its inaugural meeting, declaring the British Protectorate as an unusually daunting place to be a Christian missionary.[15] British Northern Nigeria's infamy was rooted in the peculiar brand of indirect rule on which colonial governance was based, and the religious differentiation policy it engendered.

As in much of the British Empire after the Indian mutiny, colonial governance took the form of indirect rule in Northern Nigeria, co-opting Islamic institutions in that predominantly Muslim territory.[16] This was complemented by a policy of religion differentiation. The state apprehended religious difference through a "grid of intelligibility"[17] that hierarchized faiths. It classified the colonized population into Muslims and non-Muslims. The colonial ideal of a non-Muslim native was the "pagan." In the colonial imagination, this pagan was "uncivilized,"[18] "living under mob law or arbitrary will"[19] without discernible means of political or judicial administration. Hence, the state sought, where possible, to place adherents of diverse

[15] World Missionary Conference, *Report of the World Missionary Conference, 1910* (Edinburgh: Oliphaunt, Anderson, and Ferrier, 1910).

[16] According to the 1952 Census, Northern Nigeria had a population of 16,835,582 with 12,289,975 identifying as Muslims, 4,091,046 identifying as adherents of other Indigenous faiths, and 454,561 identifying as Christian. *Population Census of Nigeria, 1952–1953* (Lagos: The Census Superintendent, 1953). The 1963 Census, which was the last time religious affiliation formed an index in the census, placed the population at 29,763,276 with 21,342,866 Muslims, 2,880,112 Christians, and 5,540,302 adherents of Indigenous religions. *Population Census of Nigeria, 1963* (Lagos: The Census Superintendent, 1964).

[17] Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton, NJ: Princeton University Press, 2015), 25.

[18] Frederick John Dealtry Lugard, *The Dual Mandate in British Tropical Africa* (Edinburgh: W. Blackwood, 1922), 78; Frederick John Dealtry Lugard, *Political Memoranda Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative 1913–1918* (London: Frank Cass, 1970).

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

Indigenous religions under the administration of the newly colonized caliphate institutions.[20]

The state featured a tripartite residential organizational structure among natives. Type I areas had a predominantly Muslim population (emirates) and were administered by the state through emirs (Muslim chiefs).[21] Type II areas were those understood to have Muslims and other Indigenous faith populations and were administered through Muslim chiefs of a lower status than emirs. The third category, Type III areas, were referred to as "pagan" areas and administered through the "pagan" chiefs. Therefore, much of the territory was governed through Muslim rulers, an arrangement that extended the political authority of the caliphate political elites – the Masu Sarauta ("possessors of governance") – beyond the precolonial years. Likewise, local chiefs were far from equal; emirs were at the highest rung of the hierarchy and "pagan" chiefs at the bottom. This arrangement extended to the jurisdiction of law. While the state applied "Islamic" law (including Islamic criminal law) and Islamic systems of courts in Type I and II areas, "pagan" native law and courts operated, subject to several restrictions, in Type III areas.

This political and legal arrangement also formed the basis of the state's policy regarding Christian missionary proselytization. Missionaries were prohibited from proselytizing in Type I areas and much of Type II areas but were permitted in Type III areas, a policy for which local and global missionaries castigated the state. Indeed, these Christian missionaries and the local converts they secured through the curtailed

[20] I refer to religious groups other than Muslims as Indigenous in this book. This is not to signal the isolation of these groups from external (religious) influence prior to the encounter with the British imperial and Christian missionary agenda. Moreover, given that Islam's presence in Northern Nigeria dates to the ninth century and debatably earlier (since Islam arrived on the continent in the early seventh century), I use the Indigenous marker for non-Muslim faith communities to distinguish them from Muslims in the colonial governance project rather than to mark the nonindigenous presence of Islam in the territory. See Rabiat Akande, Wendell Marsch, and Ann McDougall, "The Making of the Islamic World: Islam at a Crossroads in West Africa," January 2021, in Ottoman History *Podcast* (podcast), January 2021, www.ottomanhistorypodcast.com/p/the-making-of-islamic-world.html.

[21] Emirs were the political heads of provinces in the precolonial caliphate all acting under the overall authority of the sultan/caliph with the seat of the Caliphate at Sokoto. The colonial government initially abolished the title of the caliph in 1903, designating the new chief of Sokoto an emir. Even when the title was eventually introduced, the jurisdiction of the sultan had been reduced to that of emirs save in ceremonial matters. See Peter K. Tibenderana, "The Irony of Indirect Rule in Sokoto Emirate, Nigeria, 1903–1944," *African Studies Review* 31, no. 1 (1988): 67–92.

proselytization efforts described British colonial rule as tantamount to "Muslim sub-imperialism."[22] The Northern Nigerian colonial policy had its immediate roots in the guarantee of noninterference that was extended to emirs at the commencement of formal empire in 1903. The guarantee, that the government would "not interfere with the Mohammedan religion," was hardly novel[23]; it had parallels across the empire, including in the Queen's 1858 declaration set out earlier. However, in Northern Nigeria, it was extended only to emirs and the Muslim population. The guarantee was also paired with a generally applicable religious freedom declaration: "all men are free to worship as they please," which also found precedent in the Queen's Proclamation.[24] In addition, the legal instrument that had ushered in formal colonialism on the African continent in general, the Berlin General Act of 1885, mandated European powers to protect "freedom of conscience" and guarantee "religious toleration" to all "natives, subjects and foreigners" in their respective colonial territories.[25] Defending itself against accusations of Muslim bias, the state would therefore insist that it was committed to "impartiality," "neutrality," and religious liberty.[26]

[22] This appellation was very common in missionary discourse. See, for instance, Church Missionary Society, Report of Sub-Committee of Group III of the Church Missionary Society on Difficulties with Nigerian Government, January 26, 1916. CMS/B/OMS/A3/CL/1916. University of Birmingham Cadbury Special Collections (hereafter Cadbury Collections).

[23] Issued by Frederick Lugard. See Neville Brooke, *Report of the Native Courts (Northern Provinces) Commission of Inquiry Laid on the Table of the House of Representatives as Sessional Paper no. 1 of 1952* (Lagos, Nigeria: Federal Government Printer, 1952), i. For a discussion of the distinction between formal and informal empire, see Dane Kennedy, *Britain and Empire, 1880–1945* (London: Routledge, 2014). See also Martin Lynn, "British Policy, Trade, and Informal Empire in the Mid-Nineteenth Century," in *The Oxford History of the British Empire: Volume 3: The Nineteenth Century*, ed. Andrew Porter (Oxon: Oxford University Press, 1999) 3, 101–121.

[24] Colonial Reports-Annual, No. 409, Northern Nigeria, 1902 (HM Stationery Office: 1903), 16.

[25] Article 6, Berlin General Act 1885. The Berlin General Act was signed at the Berlin Conference, a gathering where European colonial powers carved out their respective African territories and set out the broad contours of the legal design of their relationship as colonial powers in Africa.

[26] See Lugard, *Political Memoranda*, 594; Donald Cameron, *The Principles of Native Administration and Their Application* (Lagos, Nigeria: Government Printer, 1934), 13–14, 26. See Joseph H. Oldham to Gordon Beacham October 18, 1932, CBMS/IMC/271, School of Oriental and African Studies Special Collections (hereafter SOAS).

Indeed, colonial administrators would also insist that Muslim chiefs were "secular chiefs," through whom the state governed.[27] In doing so, the state was invoking the post-mutiny mantra of imperial secularism: the assertions of separation or distance from religious authority (while governing through it), and of the religious freedom of colonial subjects.

DEFINING, DEEPENING, AND HIERARCHIZING RELIGIOUS DIFFERENCE

Historians and scholars of Islamic law, alike, have tended to ignore the state's assertion of its secularity, insisting that it perpetuated the precolonial theocracy. Consider the opinions of John Anderson, professor of Islamic law at the School of Oriental and African Studies in London, and Joseph Schacht, Oxford academic and later Columbia University professor, two prominent twentieth-century Western scholars of Islamic law. In separate surveys commissioned by the Colonial Office, both reached a similar conclusion: that the state had elevated Islamic law and perpetuated the precolonial theocracy.[28] Anderson and Schacht have been hardly alone in this view. Even contemporary historians of colonial Northern Nigeria espouse this opinion. Take the example of Moses Ochonu's *Colonialism by Proxy*, a fascinating account of colonial rule in Northern Nigeria.[29] Ochonu argues that the colonial

[27] See G. J. Lethem, Memoranda: Political Propaganda in Nigeria, Colonial Office, September 29, 1927, K5521/4 PP MS 60/2/1-7, 5. See also George John Frederick Tomlinson and Gordon James Lethem, "History of Islamic Political Propaganda in Nigeria," Colonial Office, 1927. Jean Boyd Papers SOAS, London, PP MS 36; Lugard, *The Dual Mandate*; Lugard, *Political Memoranda*; Muhammad Sani Umar, "Hausa Traditional Political Culture, Islam, and Democracy: Historical Perspectives on Three Political Traditions," in *Democracy and Prebendalism in Nigeria: Critical Interpretations*, eds. Wale Adebanwi and Ebenezer Obadare (New York: Palgrave Macmillan, 2013), 177–200.

[28] James Norman Dalrymple Anderson, *Islamic Law in Africa* (Oxon: Routledge, 2013); Joseph Schacht, "Islam in Northern Nigeria," *Studia Islamica*, no. 8 (1957): 123–146.

[29] Moses Ochonu, *Colonialism by Proxy: Hausa Imperial Agents and Middle Belt Consciousness in Nigeria* (Bloomington, IN: Indiana University Press, 2014). See also Olufemi Vaughan, *Religion and the Making of Nigeria* (Durham, NC: Duke University Press, 2016); Adamu Mohammed Fika, *The Kano Civil War and British Over-rule, 1882–1940* (New York: Oxford University Press, 1978); Obaro Ikime, "Reconsidering Indirect Rule: The Nigerian Example," *Journal of the Historical Society of Nigeria* 4, no. 3 (1968): 421–438; Matthew Hassan Kukah, *Religion, Politics and Power in Northern Nigeria* (Ibadan, Nigeria: Spectrum Books, 1993). See, however, Auwalu H. Yadudu, "Colonialism and the Transformation of the Substance and

governance of Northern Nigeria through Muslim proxies was in pursuit of the goal of sameness: the creation of a homogenous Northern Nigeria modeled on the Muslim caliphate.[30] Although Ochonu stresses that the colonial idea of the caliphate was an "imaginary" and not based on actual precolonial Islam, he concludes, as Schacht and Anderson did, that the essence of colonial administration was the reification of Islamic institutions.

To be sure, Northern Nigeria featured one of the most extreme forms of indirect rule in the British Empire. Save in parts of the Aden Protectorate, only there did Islamic law apply not just as personal law, but also as criminal law. For this reason, as well as the state's restrictions on missionary proselytization, received accounts present this colony as a unique and extreme case of the valorization of Islamic law, typical of theocratic governance. Nevertheless, the state's claim to secularism was just as palpable, laying not merely in its invocation of the post-mutiny mantra of separation and religious liberty, but also in its deployment of the late-colonial technique of defining, deepening, and hierarchizing religious difference. Whereas the state formally invoked separation and religious freedom, in essence, everyday colonial governance entailed this threefold technique.[31] And, in spite of the tension between this technique of governance and the conventional elements of secularism declared by the state, I argue that the former is, like the latter, characteristic of secular governance.

Scholarship in other colonial contexts illuminate the defining effect of colonial secularism on religion. C. S. Adcock's work on colonial India, *The Limits of Tolerance*, draws attention to the central governing feature of secularism: it "defines and confines" religion.[32] Similarly, in *Constituting Religion*, a study of the Malaysian context, Tamir Moustafa argues that not only did colonial law "constitute" religion, the postcolonial liberal state also remains inextricably implicated in this project

Form of Islamic Law in the Northern States of Nigeria," *Journal of Law and Religion* 9, no. 1 (1991): 17–47; Abdulmumini A. Oba, "Islamic Law as Customary Law: The Changing Perspective in Nigeria," *International and Comparative Law Quarterly* 51, no. 4 (2002): 817–850; and Sarah Eltantawi, *Shari'ah on Trial: Northern Nigeria's Islamic Revolution* (Oakland: University of California Press, 2017).

[30] Ochonu, *Colonialism by Proxy*, 8–13.

[31] Although in tension with governance practice, these formal elements of secularism are nevertheless crucial for understanding secular governance. I return to this point below.

[32] Adcock, *The Limits of Tolerance*, 25.

of religion governance.[33] This project of constituting religion, in fact, produces religious difference. What results, as Saba Mahmood argues, is that the secular state becomes "not simply a neutral arbiter of religious differences," but in fact, it "produces and creates them."[34]

To render religions legible to colonial governance and its purposes, the state defined religion as well as religious difference. As noted earlier, the state classified religion into two: "Islam" and "Paganism." The "Pagan" hardly mapped onto the precolonial category of non-Muslims. Not only did this group encompass a broad range of Indigenous spiritual tendencies, but members of this class within the precolonial Islamic polity (the *Maguzawa*) had the status analogous to that of *majus* (Zoroastrians) in classical Islamic jurisprudence. As such they were entitled to jurisdictional privileges comparable to that of the *ahl al kitab* (People of the Book), which included judicial autonomy as well as a measure of political autonomy. The colonial classification of the *Maguzawa* as *kafiri* (pagan) altered this precolonial identity, and overturned the caliphal governance arrangement, stripping this group of its autonomy. In the process, colonial rule not only deepened Muslim versus non-Muslim difference, it also hierarchized it far beyond the precolonial years.[35]

Ostensibly allied with the state, Islamic institutions were nevertheless not untouched by the colonial processes of defining, deepening, and hierarchizing religious difference. The state defined Islam, constructing a vision of the religion that could coexist with colonial governance. This was effected through a two-part process: the remaking of Islamic law through an unprecedented expansion of the precolonial doctrine of *siyasa* (discretionary powers of political rulers), and the making of an ideal Muslim subject.

From granting political authorities limited juristic authority in precolonial times, siyasa came to be expanded so as to overshadow *fiqh* (Islamic jurisprudence). This process did not only alter the content of Islamic jurisprudence; already, important studies like Sarah Eltantawi's *Shari'ah on Trial* reveal the colonial transformation of Northern

[33] Moustafa, *Constituting Religion*, 158. See also Stephens, *Governing Islam*.
[34] Mahmood, *Religious Difference in a Secular Age*, 22.
[35] See Allan Christelow, "Persistence and Transformation in the Politics of Shariʿa, Nigeria, 1947–2003: In Search of an Explanatory Framework," in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-colonial Challenges*, eds. Shamil Jeppie, Ebrahim Moosa, and Richard Roberts (Amsterdam: Amsterdam University Press, 2010), 252; Mukhtar Umar Bunza, *Christian Missions among Muslims: Sokoto Province, Nigeria 1935–1990* (Trenton, NJ: Africa World Press, 2007), 7–13.

Nigeria Islamic law.[36] What is crucial to note and missing from existing accounts is the recognition that the expansion of siyasa, emerging as it did from a premise of Shariʿa governance, fundamentally recast the relationship between Islamic law and the state.[37] The state, in essence, now appropriated the power to define Islamic law. One of the central arguments of this book, therefore, is that the transformation of Islamic law in Northern Nigeria can only be apprehended by exploring the state's claim to secularity without losing sight of its utilization of caliphate institutions for the colonial enterprise. In their focus on the latter, works such as Eltantawi's tend to overlook the former – the state's assertion of secularism. Departing from this approach, this book engages both of these features of colonial governance by foregrounding the question: Who exercised the power to decide "Islamic" law and how was its exercise justified? Crucially, although Islamic law was invoked by *alkalai* (judge-jurists), emirs, and colonial administrators in deciding cases, the essence of precolonial jurisprudence had already been transformed by the reconfiguration of the precolonial constitutional balance between emirs and alkalai. At the same time, however, because the state continued to invoke Islamic law as the basis of governance – even while simultaneously asserting an ever-expanding executive authority over its content – it was able to claim fidelity to Islamic law and institutions while transforming its workings.

This assertion of colonialism's reform of siyasa wades into a debate over the relationship between siyasa and fiqh in premodern Islamic polities. On the one hand is the view, exemplified by Wael Hallaq, that regards premodern siyasa as compliant with the Shariʿa. Since siyasa remained within its constitutional boundaries, in other words, it did not encroach into the domain of jurists – the arena of fiqh.[38] In contrast, a burgeoning body of work insists that Hallaq's is an idealized view of precolonial governance and argues that the fiqh-siyasa distinction had started to break down long before the advent of

[36] Eltantawi, *Shari'ah on Trial*; Yadudu, "Colonialism and the Transformation of the Substance and Form," 17–47; Oba, "Islamic Law as Customary Law," 817–850.

[37] A notable exception is Brandon Kendhammer, *Muslims Talking Politics: Framing Islam, Democracy, and Law in Northern Nigeria* (Chicago: University of Chicago Press, 2016).

[38] Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2014).

colonial modernity.[39] While this work does not assume a naive view of the precolonial relationship between political authorities and jurists in the caliphate, it would nevertheless be a stretch to dismiss the precolonial fiqh-siyasa distinction as a mere "idealized cosmology."[40] Whatever the pull exerted on the sultan/emir-siyasa versus alkalai-fiqh balance by the realities of governance, deviations from the constitutional delineation of the jurisdiction was understood, by both precolonial emirs and jurists, as an exception.[41] This constitutional structure, I argue, was rewrought by colonial governance.

The state's construct of Islam was not limited to its transformation of Islamic law. The co-option of caliphate institutions that led to the remaking of that law also created a distinction between Muslims affiliated with the Masu Sarauta (Muslim political elites)[42] and those resisting the Anglo-Masu Sarauta alliance. The state's making and remaking of religious difference was therefore not limited to the Muslim versus Pagan dichotomy. Indeed, the political distinction between the Masu Sarauta's allies and their detractors would manifest as a theological difference, with the state sanctioning Qadiriyya Sufism, the theological predilection of the Masu Sarauta. In the process, the ideal Muslim subject was defined. Other Muslim groups were considered "dissident."[43] Of these "bad" Muslims, Mahdists, those who believed that the end of the

[39] See, for example, Samy Ayoub, *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence* (Oxford: Oxford University Press, 2019); Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2011); Guy Burak, *The Second Formation of Islamic Law* (New York: Cambridge University Press, 2015); Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015).

[40] Ayesha Chaudhry, *Domestic Violence and the Islamic Tradition* (Oxford: Oxford University Press, 2013). See also Moustafa, *Constituting Religion*.

[41] Umar, "Hausa Traditional Political Culture, Islam, and Democracy"; Mervyn Hiskett, *The Sword of Truth: The Life and Times of the Shehu Usuman dan Fodio* (Oxford: Oxford University Press, 1973); Mervyn Hiskett, "Kitāb Al-Farq: A Work on the Habe Kingdoms Attributed to 'Uthmān Dan Fodio," *SOAS Bulletin* 23, no. 3 (1960): 558–579; B. G. Martin, "A Muslim Political Tract from Northern Nigeria: Muhammad Bello's *Usul al-Siyasa*," in *Aspects of West African Islam*, eds. Daniel F. McCall and Norman R. Bennett (Boston: African Studies Center, Boston University, 1971), 63–86; Ibraheem Sulaiman, *The Islamic State and the Challenge of History: Ideals, Policies and Operation of the Sokoto Caliphate* (London: Mansell, 1987).

[42] Literally meaning "possessors of governance."

[43] Henry Willink, ed., *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them* (London: HM Stationery Office, 1958) (hereafter Willink Report) CO957/41.

world was imminent and that colonialism was a form of corruption that marked the end of the world, were the most repressed in the early colonial era. Members of the other predominant Sufi sect, the Tijaniyyah, came to be labeled as dissident not merely for their contrarian theological positions, but also for their intense political opposition when they formed the base for the Northern Elements Progressive Union party challenging the Masu Sarauta in the years leading to decolonization. As a result of these and other measures, the state assumed the prerogative to define Islam, and thus deepened religious difference and hierarchized faith practices – both within and outside of Islam.

Therefore, far from freezing precolonial Islamic institutions, colonial rule redefined both Islamic law as well as the ideal Muslim subject, and in so doing, invented an Islam amenable to the state. In essence, the colonial governance technique and the co-option of caliphate institutions on which it relied did not elevate any religion, not even Islam. Instead, as demonstrated above, it confined and regulated all religions.

SECULARISM'S ENTANGLEMENTS

The defining, deepening, and hierarchizing processes so integral to the state's governance of religion points to a central feature of secular governmentality sui generis: the de facto entanglement of religion and politics. This insight is not only in tension with the state's assertion of religion-separation, it is also at odds with the received wisdom on secularism. According to that wisdom, popularly encapsulated in John Rawls' *Political Liberalism*, the constitutional idea of secularism emerged as a response to conflict over opposing values.[44] In this account, it was the need to manage religious diversity that led to the displacement of religion from the public sphere, which consequently became "secular." As the constitutional structure that created this separation between the public, secular, and political sphere on the one hand and the private and religious sphere on the other, secularism became the answer to conflicts triggered by religious diversity.[45] Secularism was, however, not merely beneficial to the state in ridding it of religious conflict, it

[44] See Rawls, *Political Liberalism*.

[45] Ibid. See also John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980); and Donald Eugene Smith, *India as a Secular State* (Princeton, NJ: Princeton University Press, 2015). Within the liberal democratic tradition, the

was also favorable to religion since it freed it of state interference.[46] In the Rawlsian model, therefore, the separation of religion and politics is the core of secularism. It also yields the other element of secularism – the promise of religious freedom.

Led by Talal Asad's *Formations of the Secular*, a wave of critical scholarship challenges the separationist argument at the heart of the Rawlsian narratives, arguing instead that the entanglement of the secular and the religious is the defining feature of liberal secularism. This entanglement, it adds, is not merely rooted in the intellectual origins of the idea of secularism, it is also reflected in the actual constitutional organization of "secular" states. Asad's work finds the emergence of the categories of religion and the secular from specific historical, political, and legal processes in Western Europe and also asserts that it was these conditions of their emergence that framed them in opposition to each other.[47] This realization that the law both constitutes the secular and the religious as well as frames their mutual opposition is now a core tenet of critical scholarship on secularism.[48]

Since this constituting power of law culminates in varying constructions of the secular and the religious across space and time, it is hardly surprising that studies of the enactment of secularism in particular constitutional contexts have proven fashionable in the anti-Rawlsian

Rawlsian separation thesis has come under attack for being inaccurate in asserting that separation of religion from politics is necessary to liberal governance. See Alfred Stepan, "Religion, Democracy and the 'Twin Tolerations,'" *Journal of Democracy* 11, no. 4 (2000). For examples of these states, see Stepan, "The Twin Tolerations," 219–220. Charles Taylor critiques this as secular-religion binary narrative as the "subtraction theory." See Charles Taylor, *A Secular Age* (Cambridge, MA: Harvard University Press, 2007). In the view of this minority, "almost all of the countries with the best claim to this form of government lack the wall of 'separation' and many have state churches." Alfred Stepan, a prominent critic of the Rawlsian separation idea, argues that the leading empirical analytical models of democracy (citing Robert Dahl and Juan Linz) do not include strict separation. Stepan proposes, instead, the "twin toleration model," which is "the minimal boundaries of freedom of action that must somehow be crafted for political institutions vis a vis religious authority and for religious individuals and groups vis a vis political institutions," "Twin Tolerations," 213.

[46] Michael J. Sandel, "Religious Liberty: Freedom of Choice and Freedom of Conscience," in *Secularism and Its Critics*, ed. Rajeev Bhargava (New York: Oxford University Press, 1999), 600.

[47] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003).

[48] Asad, *Formations of the Secular*; Moustafa, *Constituting Religion*; Stephens, *Governing Islam*; Mahmood, *Religious Freedom in a Secular Age*; Winnifred Fallers Sullivan et al., eds., *Politics of Religious Freedom* (Chicago: University of Chicago Press, 2015).

theoretical tradition.[49] With the legacy of the relations of power inscribed by colonial governance, the postcolony has provided a fruitful ground for research. Contemporary debates over Hindutva in India's constitutional politics,[50] the place of Islam in Egypt and Malaysia,[51] and – since post-coloniality plagues both the former colonizer and colonized – French laïcité and its equivalents across Europe regarding the headscarf and other religious symbols[52] are only a few examples of the contestations that have captured scholarly attention.

Unveiling religious-secular entanglements in these contexts has revealed that secularism is far from neutral. Not a few anti-Rawlsian accounts have therefore arrived at the conclusion that secularism qua secularism is being deployed by states to entrench majoritarian beliefs and practices and marginalize religious minorities. Saba Mahmood writes of secularism "intensif[ying] … religious inequality," by its "valuation of certain aspects of religious life over others" with the consequence of the increasingly precarious position of religious minorities in the polity.[53] Homi Bhabha remarks: "India forces us to think, sometimes in tragic moments, of the function of religious thought within secularism … If you look around the world today, this is a very important issue; this particular kind of … religious orthodoxy erupting within secularism."[54] This critical tradition, therefore, unmasks secularism for its biases.

[49] Saba Mahmood argues that secularism "entails a form of national-political structuration organized around the problem of religious difference, a problem whose resolution takes strikingly similar forms across geographic contexts." See, however, Mahmood, *Religious Difference in a Secular Age*; Linell Cady and Elizabeth Hurd, *Comparative Secularism in a Global Age* (New York: Palgrave MacMillan, 2010).

[50] See, for instance, Manohar Joshi v. Nitin Bhaurao Patil All India Reports, 1996 SC 796 and the commentary it generated, including: Brenda Cossman and Ratna Kapur, "Secularism's Last Sigh: The Hindu Right, the Courts, and India's Struggle for Democracy," *Harvard International Law Journal* 38, no. 1 (1997): 113.

[51] Hussein Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012); Moustafa, *Constituting Religion*.

[52] See Lautsi and others v. Italy (Application No. 30814/06 IHRL 3688 ECHR, 2011); Dahlab v Switzerland (Application No. 42393/98, ECHR 2001-V); Sahin v. Turkey, (Application No. 44774/98), Council of Europe: European Court of Human Rights, November 10, 2005, available at www.refworld.org/cases,ECHR,48abd56ed.html, and commentaries such as Peter G. Danchin, "Islam in the Secular Nomos of the European Court of Human Rights," *Michigan Journal of International Law* 32, no. 4 (2011): 663.

[53] Mahmood, *Religious Difference in a Secular Age*, 15.

[54] Ibid. "Secularism as an Idea Will Change," *The Hindu*, December 17, 1995, XIX, in Brenda Cossman and Ratna Kapur, "Secularism's Last Sigh: The Hindu Right, the

The anti-Rawlsian approach is rightly marshaled to challenge the relations of domination that the modern secular state produces. Nevertheless, it leaves no room for acknowledging the ambivalence inherent in the idea of secularism through its dual imperative of separation and religious freedom. In asserting the separation of religion from the state, secularism calls on the state to curtail, restrict, or even expunge religion from itself. Tugging in the opposite direction, however, is the second classical element of secularism – the notion of religious liberty.

Legal theory is no stranger to the idea that conflicting internal imperatives are often embedded in legal concepts. Although that idea was first comprehensively articulated in the realm of the law of property,[55] it has come to shed light on the workings of legal concepts outside of that domain, including in the constitutional thought on secularism. Writing on secularism's dual imperative of separation and religious freedom, Marc Galanter points out that these imperatives are "a set of potentially incompatible principles which may conflict in concrete situations."[56] Although critical theorists are right to assert that the de facto entanglement of the state and religion and the reality of the politics of religious freedom undercut secularism's imperatives, these principles nevertheless remain crucial to understanding the working of secular governance. The imperatives, and in particular, the tension between them, are useful not just to state actors carrying out multiple and often inconsistent projects but also to subjects contesting the state. This book makes a case for paying close attention to the ambivalence of secular governmentality. Doing so not only reveals how participants in constitutional struggles navigate the inevitable entanglement of the "sacred" and the "secular" entailed in secular governmentality, it also illuminates the potentially unstable hierarchy of relations produced by secular governance.

Courts, and India's Struggle for Democracy," *Harvard International Law Journal* 38, no. 1 (1997): 113; Ran Hirschl, *Constitutional Theocracy* (Cambridge, MA: Harvard University Press, 2010). On the sacred underpinnings of modern secular law, see John L. Comaroff, "Reflections on the Rise of Legal Theology: Law and Religion in the Twenty-First Century," *Social Analysis* 53, no. 1 (2009): 193–216.

[55] Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *The Yale Law Journal* 23, no. 1 (1913): 16.

[56] Marc Galanter, "Secularism, East and West," *Comparative Studies in Society and History* 7, no. 2 (1965): 133–159.

NAVIGATING STATE-RELIGION ENTANGLEMENTS

The colonial enterprise was neither monolithic nor static. Differing conceptions of colonial administrators influenced colonial policy on state-religion relations, all justifiable under the banner of imperial secularism. To Frederick John Dealtry Lugard, the first high commissioner of Northern Nigeria, and his devotees, who had an Orientalist fascination with precolonial Islamic caliphate institutions, the success of native administration was premised on noninterference with Islam.[57]

The Lugardian emphasis on the administrative needs of indirect rule prioritized the religious freedom of the Masu Sarauta, the constraint of Christian missions, and the autonomy of Indigenous religious groups. The Lugardian emphasis on Muslim religious freedom was, however, in tension with the consequences of the state's co-option of caliphal institutions for governance. Notably, the Lugardian years witnessed the freeing of emirs' siyasa from the constraints of the Shariʿa, a move intended to introduce reforms at odds with precolonial jurisprudence. In its Lugardian manifestation, therefore, notions of state-religion separation legitimated not only regulating and restricting missions but also the state's regulation and transformation of Islamic law and institutions.

Direct and indirect rule, Mahmood Mamdani points out, are not mutually exclusive, but are rather "two faces of power."[58] The second dominant colonial position on state-religion relations, which came to be espoused by Governor Donald Cameron, took an anti-Lugardian turn.[59] Cameron and his enthusiasts – administrators who did not adulate precolonial Islamic institutions – argued that "neutrality" ought to be the highest principle rather than the Lugardian emphasis on religious liberty of the Masu Sarauta. In favoring a more direct variant of indirect rule, Cameron departed from the ultra-indirect rule trajectory of earlier colonial years and sought to de-emphasize the role of Islamic institutions, and thus elevated state-religion separation. The Cameron years, consequently, witnessed the gradual transfer of judicial siyasa powers from emirs to English judges and colonial administrators, with the consequent curtailment of fiqh. Cameron's particular form of state-religion separation was not free of ambivalence, however; the

[57] High commissioner of the Protectorate of Northern Nigeria, 1900 to 1906; and governor general of Nigeria from 1912 to 1914.
[58] Mahmood Mamdani, "Historicizing Power and Responses to Power: Indirect Rule and Its Reform," *Social Research* 66, no. 3 (1999): 859–886.
[59] Governor of Nigeria, 1931 to 1935.

transfer of siyasa to colonial administrators, intended to de-emphasize the place of Islam in governance, effectively heightened the state's entanglement with the religion since colonial officials now governed Islam as well as its relations with other faiths.

As the Lugardian preference for Muslim religious freedom receded, Cameron's policies gained traction, although always in tension. Cameron's approach was inspired by the view that the best African was Christian, and thus grew his commitment to easing restrictions on Christian missions and granting them religious liberty. Yet, the exigencies of native administration curtailed the implementation of Cameron's ideas. For one, the Cameron state, as in Lugardian times, continued to utilize caliphate institutions for the purpose of native administration, including over non-Muslims. Moreover, Lugardian policy continued to command loyalty in the rank and file of the colonial administration. Therefore, in the last three decades of empire (1931–1960), the coexistence – and tension – between Lugardian and Cameronian thought was unavoidable.

These dueling colonial policies on religion governance, all plausible under secular governance, set the stage for contestations over state-religion relations, struggles that most prominently featured Christian missionaries and the Masu Sarauta.

THE EARLY COLONIAL YEARS

From the inception of empire in the Lugardian years, Protestant missionaries campaigned against the state's co-option of Islamic institutions.[60] Seeking to reinstate their early nineteenth-century alliance with the colonial enterprise, they argued that "true empire building" was a joint effort of missionaries and colonial officials.[61] Thus, once it was clear that Lugard was intent on utilizing local institutions, missionaries campaigned for the abandonment of the caliphal Muslim Fulani elites preferred by colonial administrators, and sought colonial governance through intermediaries of Hausa ethnicity.[62] This move was rooted in

[60] Henry Farrant, Secretary of the Annual Meeting of Missions in Northern Nigeria to Joseph H. Oldham of the International Missionary Council, August 11, 1931, CBMS/270 SOAS.

[61] Herbert Tugwell to Lewis Nott, December 19, 1905, CMS G3/A3/010 in Ayandele, *The Missionary Impact*, 126.

[62] On the hyphenation of the Hausa-Fulani identity by the twentieth century, see John N. Paden, *Ahmadu Bello, Sardauna of Sokoto: Values and Leadership in Nigeria* (Zaria, Nigeria: HudaHuda, 1986), 595. See also Ochonu, *Colonialism by Proxy*.

the missionaries' unfounded conjecture that Hausas, unlike Fulanis, were merely nominal Muslims open to missionary proselytization and conversion to Christianity. When this campaign failed, missionaries called for a restriction of the co-opted caliphal native administration institutions (chiefs, courts, and laws) to apply to Muslims only.[63] Therefore, contrary to the Lugardian emphasis on religious freedom, missionaries insisted on state-religion separation. Insisting on the state's separation from the caliphal institutions was, however, far from a principled call for separation. Instead, what missionaries really contested was the "unchristian" separation resulting from their loss, to the Muslims, of their nineteenth-century power-alliance with empire.[64]

Once this missionary campaign failed and the colonial government began to impose extensive restrictions on missionary proselytization, the campaign shifted to demands for religious freedom, articulated in the classic Protestant formulation: "freedom of conscience."[65] The missionary call for religious freedom hardly cohered with the Lugardian emphasis on the religious liberty of the Masu Sarauta, the broader political elite class brought into power by the 1804 revolution that established the precolonial Islamic caliphate. Missionaries insisted that Lugard's guarantee, in order to be consistent with the "Western civilization" principle of "religious toleration," must be construed consistently with "freedom of conscience" and could not confer a special status on Islamic institutions.[66] This call for "freedom of conscience," in essence, advanced missionary calls for the state's separation from caliphal institutions.

For the Masu Sarauta, on the other hand, the overriding principle was the 1903 guarantee of noninterference in Islam. These elites took the guarantee as a commitment to the retention of precolonial caliphal institutions, and consequently subscribed to the Lugardian emphasis on religious freedom. In their view, this primacy of the religious freedom of

[63] CMS 1916 Report.

[64] Rabiat Akande, "Neutralizing Secularism: 'Religious Antiliberalism' and The Twentieth Century Global Ecumenical Project," *Journal of Law and Religion* 37, no. 2 (2022): 290. See World Missionary Conference, *Report of the World Missionary Conference Commission I: Carrying of the Gospel to All the Non-Christian World* (Edinburgh: World Missionary Conference, 1910).

[65] World Missionary Conference Edinburgh 1910 Commission VII Report; Church Missionary Society, *Report of Sub-Committee of Group III*.

[66] Church Missionary Society, *Report of Sub-Committee of Group III*. See, for instance, minutes of meeting of the Christian Council of Nigeria with Governor Graeme Thomson, October 21, 1927. CO583/181/5. National Archives United Kingdom (hereafter NA, UK).

caliphal institutions overrode claims of religious toleration by Protestant missionaries. Muslim elites, however, were divided over what Lugardian thought ought to mean for the fate of the Shariʿa. If emirs were content with its expansion of their siyasa powers, the alkalai, whose fiqh domain had begun to be curtailed, preferred an understanding of the Lugardian guarantee that granted the administration of the Shariʿa autonomy or distance from colonial governance. Nevertheless, alkalai remained impuissant critics of the colonial arrangement, and emirs' championship of Lugardian religious freedom – as well as missionary advocacy for state-Islam separation – marked the Lugardian years.

THE CAMERON ERA

The adversaries would switch positions in the Cameron years. From the early 1930s, when Cameron's ideas on native administration came to dominate the central colonial administration, emirs and alkalai began to invoke the guarantee of noninterference to call for the separation of Islamic institutions from the state. The thinking that underlay this shift was most comprehensively articulated in a 1938 fatwa issued by Annur Tingary, Bashir El Rayah, and Mohammed Swar El Dahab, three sheikhs of the Kano Law school, in which they called on emirs and elites to boycott the colonial government.[67] Arguing that Islamic law was an inseverable whole and a necessary foundation for Islamic governance, the sheikhs urged emirs and alkalai to abstain from cooperating with a regime whose overt reform project was at clear odds with Islamic law. The fatwa, in essence, asserted that service to the colonial regime amounted to complicity in its reform project and urged aloofness. Although this call ultimately failed, the state would take the hint and the most radical of Islamic law's transformation – the 1957 replacement of Islamic jurisprudence with an English penal code – would be presented in the language of Islamic law and with the active participation of national and transnational Muslim jurists recruited by the state.

For Christian missionaries, the transnational element would be decisive in influencing their discourse. By the late transwar period, Christian missionaries began to make their claims in the language of the human right to religious freedom. This turn to rights was inspired by

[67] Memorandum by Annur Tingary, Bashir El Rayah, and Mohammed Swar El Dahab, "Extension of Jurisdiction of Native Courts." Kano Prof. File #2182, 41–43, National Archives, Kaduna (hereafter NA Nigeria).

the work of the international ecumenical movement. For that movement, the late interwar to immediate postwar period was one of intense deliberation over the fate of Christianity and its missionary enterprise in a world plagued by two major threats: secularism and "Islamic orthodoxy." Faced with these threats, the ecumenical movement concluded that Christianity was in crisis.[68] Furthermore, ecumenical discourse viewed secularism not as the separation of state and religion, but as the de-Christianization of state and society.[69] Indeed, ecumenical thought during this period espoused the view that secularism inevitably led to the adoption of "false gods" to fill the void left by true religion.[70] Given this understanding, Islamic orthodoxy was far from contrary to secularism; it was complementary to it.

As a territory that was understood by missionaries as featuring both extreme Islamic orthodoxy and an espousal of secularism, Northern Nigeria, perhaps more than any other territory, embodied the unholy alliance of these two threats. In the vision of the movement, the solution lay in international legal protection for the right to religious freedom. The product was Article 18 of the Universal Declaration of Human Rights, brought into existence in 1948 through the direct efforts of the World Council of Churches. Among others, Article 18 protected the freedom of conversion and proselytization.

For missionaries in Nigeria and their emerging class of nationalist converts, postwar advocacy would hinge on the campaign to constitutionalize Article 18. In their doomed opposition to the missionary rights proposal, emirs invoked the guarantee of noninterference, arguing that the missionaries' constitutional rights proposal violated Lugard's assurance of state-Islam separation.

In the end, the product of these fierce contestations was the Independence deal on state-religion relations. That constitution deal featured three elements. The first was the replacement of Islamic criminal law with an English penal code, along with the abolition of emirs' siyasa. Presented to Muslim subjects as a product of sound deliberation among Muslim jurists, the reform was, in fact, set in motion

[68] See Terence Renaud, "Human Rights as Radical Anthropology: Protestant Theology and Ecumenism in the Transwar Era," *The Historical Journal* 60, no. 2 (2017): 493–518.

[69] Rabiat Akande, "Neutralizing Secularism"; Udi Greenberg, "Protestants, Decolonization, and European Integration, 1885–1961, *The Journal of Modern History* 89, no. 2 (2017): 314–354.

[70] Greenberg, "Protestants, Decolonization, and European Integration," 328–329.

by Christian missionary advocacy that fortuitously coincided with Colonial Office wariness of Lugardian claims of Northern Nigerian Islamic exceptionalism. The second element was the recognition of the Protestant-dominated non-Muslim bloc as religious minorities, a move that paved the way for the third element that ultimately sealed the constitutional deal. That third element was the successful domestication of Article 18 of the Universal Declaration, the postwar international religious freedom provision crafted by global ecumenists to protect the missionary enterprise.

POSTCOLONIAL CONTESTATIONS

Within seventeen years of Independence, the colonial struggle over state-religion relations resurfaced during Nigeria's first postindependence constitutional convention in 1977. The issue that rekindled the debate was the proposal for the establishment of a Federal Sharia Court of Appeal with jurisdiction over Muslims in personal law matters. It was at the 1977 Constitutional Conference that the struggle would, for the first time, be framed explicitly on the national terrain in terms of a debate between the forces of "secularism" (opposed to the court) and "anti-secularism" (championing the court).

For the successors to the missionary coalition, Christian groups now represented by the Christian Association of Nigeria, the battle cry was "secularism," understood as the separation of religion (in this case, Islam) from the state. In a shift from its advocacy for religious freedom at Independence, this group held up secularism as trumping Shariʿa proponents' religious freedom claims. The Christian coalition's advocacy for religious freedom at Independence had shifted to a commitment to separation. For proponents of the Shariʿa court, predominantly Northern Muslim political and intellectual elites, the overriding claim principle was religious freedom. This was, of course, a radical turn from these elites' impassioned opposition to religious freedom at Independence.

Unsurprisingly, these parties differed on the meaning of these ideas just as they had disagreed over them during the colonial years. Although the Shariʿa cum anti-secularism camp stood in opposition to separation, it argued that the Nigerian state was, at any rate, not separate from all religion as the Christian secular camp claimed. In an argument reminiscent of the colonial-era missionary critique of secularism as "unchristian separation," Shariʿa proponents argued that the

postcolonial state was merely separate from and hostile to Islam. Specifically, this group argued that Nigerian law's common law origins were inextricable from that law's Christian heritage. This was not a call to displace the Christian common law; rather, the group advocated that the Shariʿa be granted equal privileges. Ditto the invocations of religious freedom by the Christian coalition. Not only did the Christian coalition shift from its Independence position to argue that religious freedom was secondary to state-religion separation, it also insisted that the Shariʿa proposal was inconsistent with the idea of religious freedom. Specifically, the Christian coalition argued that the religious freedom of non-Muslims would, in fact, be infringed by the establishment of the court. This freedom of non-Muslims, the coalition argued, superseded the demands of the Shariʿa camp.

To be sure, parties to the postcolonial contestations had morphed from the colonial configuration. Beyond the expected cross-regional (Northern-Southern Nigeria) alliances inspired by postindependence constitutional politics, the makeup of the parties had changed in the intervening decades. On the Christian pro-secularism side, European missions were now visibly absent, replaced by Indigenous churches led by Christian converts. Further, indigenization also broadened the ecumenical coalition to now include the Catholic Church, a group that had been visibly absent from colonial struggles. The Muslim anti-secularism camp came to reflect a coalition beyond the monolithic Masu Sarauta representation of the colonial years to now include a new politically engaged intellectual elite class, among others. Expectedly, these new alignments produced tensions within the projects of each camp even though the parties insisted that the struggles were continuous from the colonial debates.

The 1977 constitutional convention did not mark an end to the struggles over state-religion relations. Although the Constituent Assembly decided against the Shariʿa proposal after pro-Shariʿa delegates walked out on the proceedings in protest, the Shariʿa demand and hence, state-religion struggles, never disappeared from constitutional discourse. Indeed, the Shariʿa proponents made a comeback in 1999 with an even more contested maneuver: the reintroduction of Islamic criminal law in Northern Nigeria.

CONTINUING ENTANGLEMENTS

The story of the relationship between religion and politics in colonial Northern Nigeria was therefore one of sustained entanglement, and

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struggles over the terms of that entanglement continue to haunt the postcolony. Accordingly, this book does not end with decolonization. I trace these contestations into the postcolony not to mobilize the past in service of the present, but rather, to affirm that postcolonial struggles are, to borrow Gayatri Spivak's words, "part of the unfinished nature of the past."[71]

The historical chronicle reveals a complex relationship involving both continuities and discontinuities. Not only have the contestants realigned their positions from the posture they inhabited at Independence, the debate has also evolved from the past by adopting the frame of secularism qua secularism. The significant reframing of the postcolonial debate aside, parties invoke state-religion separation to contest religious freedom as they did in the colonial years. Unsurprisingly, the change in the relations of power in the postcolonial state has altered the fealty of the parties to these principles just as their arguments transformed from the Lugardian to the Cameron years.

Despite the evolving arguments that its ambivalence engenders, the governmental technique of secularism, midwifed by colonial modernity, has continued into the postcolonial state. While its constitution articulates the classical state-religion separation element of liberal secularism,[72] the postcolonial state, like the colonial one, continues to be entangled with religion. The current religion governance project, which manifests as defining and confining religion, has encompassed even projects originally intended as a resistance to colonialism and uses techniques reminiscent of colonial governance. Most notably, the postcolonial Shariʿa agenda, intended to reinstate precolonial Islamic law, relies on secular governance techniques strikingly reminiscent of the colonial years, such as penal codes and colonial-type courts. Such governance projects, referred to by Brandon Kendhammer as "Shari'a statism,"[73] continue to deepen and hierarchize religious difference.

The story of the evolving arguments of postcolonial contestants therefore coheres with the ongoing narrative of the continuity of colonial

[71] Ebrahim Moosa, "Colonialism and Islamic Law," in *Islam and Modernity: Key Issues and Debates*, ed. Muhammad Khalid Masud (Edinburgh: Edinburgh University Press, 2009), 160. See Prathama Banerjee, "Re-Presenting Pasts: Santals in Nineteenth-Century Bengal," in *History and the Present*, eds. Partha Chatterjee and Anjan Ghosh (Delhi: Permanent Black, 2002), 242–273, 261; Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason* (Cambridge: Harvard University Press, 1999).

[72] 1979 Constitution: Section 10 (separation); and Section 35 (religious freedom). The 1999 Constitution: Section 10 (separation); and Section 38 (religious freedom).

[73] See Kendhammer, *Muslims Talking Politics*.

secular governmentality. But the former also serves as my critique of the latter as it occupies the imagination of postcolonial scholarship on secularism. Much of the critical accounts of secularism, cutting-edge as they are, pay inadequate attention to secularism's internal ambivalence and in particular, its consequent contradictory deployment. Apprehending this crucial feature and effect of secularism illuminates how subject-stakeholders deploy its conflicting imperatives to challenge the state and attempt to advance their agendas within it. This work argues, in sum, that critiquing secularism as a governmental technique interlinked with the rise of the modern state as a globalized form of political arrangement is compatible with recognizing that secularism, like all legal ideas, is not free of internal ambiguities and competing external deployments.

INHERITING AN IMAGINED PAST

History is a potent weapon in the hands of all sides in the postcolonial debate over secularism. Undoubtedly, the struggle over the terms and meaning of the entanglement between religious and political power in the colonial state continues to shape postcolonial constitutional debates. That colonial history has clearly come to be reimagined and reinvented by all parties differently.

Today, when the pro-secularism camp asserts that Nigeria is secular, it is invoking a particular interpretation of Nigeria's colonial past, in which secularism was absent from the colonial state and only acquired at Independence. In this understanding, the gift of secularism was the product of a long history of national and international missionary advocacy against the disempowerment of non-Muslims in a colonial state that had privileged Muslims and Islamic institutions. When this group asserts the state's secularism and resists attempts to reintroduce the Shariʿa into public institutions, it is forestalling a reversion to what it recalls as colonial Muslim sub-imperialism and disempowerment of religious minorities.

Like the pro-secularism coalition, the Shariʿa camp's stance is also an assertion about Nigeria's colonial past. Reacting against the assertions of the secularism camp that colonial rule meant Muslim sub-imperialism, the Shariʿa camp avers that the colonial state subjugated Islam and deprived Muslims of religious freedom. For them, the Independence package, especially the elimination of Islamic criminal law, was the final step in this process of displacing Islamic law and institutions and subordinating Muslims. This group maintains that the Independence deal, like earlier colonial moves, violated the 1903 guarantee of

noninterference. The postcolonial Shariʿa agenda is therefore a project to reverse this effect of the colonial experience whose indignities have allegedly survived Independence. By wielding claims of religious freedom to champion Shariʿa against claims of the state's secularism, this group is rejecting the Independence deal and, with it, the colonial project.

This framing of the postcolonial debate between secularism and anti-secularism is impervious to the colonial experience it invokes. The predecessors of the postcolonial Christian secularism camp, Christian missionaries, spent the colonial years feuding with a state that insisted on its secularity while co-opting Islam. They contested the colonial state's secularism, first, by advocating for state separation from Islam and later, in the postwar years, wielding religious freedom claims against the unchristian separation that marked imperial secularism. They not only conceived of religious freedom as being external to secularism, they also deplored the latter for robbing state and society of its "religious glamor."[74] That postcolonial secularism advocacy is spearheaded by the Christian Association of Nigeria today is, therefore, a striking reversal. The same discrepancy holds true for the pro-Shariʿa, anti-secular group, as well. Considering the co-option of Islamic institutions by the "secular" colonial state, Masu Sarauta invocation of secularism's imperatives to advance their agenda in the colonial years and that group's fierce opposition to the religious freedom project during Independence negotiations, the postcolonial oppositional framing of the Shariʿa project in opposition to statist secularism is astonishing.[75] The binarization of the "sacred" and

[74] Report of the Oxford 1937 Conference of the International Missionary Council's Life and Work Movement.

[75] For examples of a few of the several scholarly interventions that take the binarism of the debate at its face value, see Andrew Ubaka Iwobi, "Tiptoeing through a Constitutional Minefield: The Great Sharia Controversy in Nigeria," *Journal of African Law* 48, no. 2 (2004): 111–164. See also Austin Metumara Ahanotu, ed., *Religion, State, and Society in Contemporary Africa: Nigeria, Sudan, South Africa, Zaire, and Mozambique* (New York: Peter Lang, 1992); Toyin Falola, *Violence in Nigeria: The Crisis of Religious Politics and Secular Ideologies* (Rochester: University of Rochester Press, 2001); Matthew Hassan Kukah and Toyin Falola, *Religious Militancy and Self-Assertion: Islam and Politics in Nigeria* (Aldershot, UK: Avebury, 1996); Vincent O. Nmehielle, "Sharia Law in the Northern States of Nigeria: To Implement or Not to Implement, the Constitutionality is the Question," *Human Rights Quarterly* 26, no. 3 (2004): 730–759; Johannes Harnischfeger, *Democratization and Islamic Law: The Sharia Conflict in Nigeria* (Frankfurt: Campus Verlag, 2008); and Rotimi T. Suberu, "Religion and Institutions: Federalism and the Management of Conflicts over Sharia in Nigeria," *Journal of International Development* 21, no. 4 (2009): 547–560.

the "secular" in constitutional discourse belies the sustained entanglement of law, religion, and empire in the colonial years, and the enduring legacy of that entanglement in the postcolony.

The quest for equality has remained the unarticulated crux of postcolonial struggles, just as it underpinned colonial debates. Its assertion of the equality of subjects notwithstanding, colonial governance was founded on hierarchizing religions, allowing substantive inequality to prevail. Not only did the state create a hierarchy between an Anglo-Masu Sarauta version of Islam and its others, it also recalibrated relations among Muslims with different theological leanings by infusing them with political and legal significance. In constituting the postcolonial state, the elimination of Islamic public (criminal) law and constitutionalization of Protestant human rights sent a signal that ecumenical Protestants had not only won hearts at the Colonial Office, but more significantly, that they had also won the fierce battle for the soul of the postcolony. The casualty, of both the colonial processes and its Independence resolution, was equality.

Tragically, the colonial technique of defining, deepening, and hierarchizing religious difference already predetermined the form and futility of resistance mounted by subjects. For missionaries resisting the subordination of non-Muslims (specifically, Protestant Christians), emancipation called for contesting the "secular Islamic" state through a hardly neutral notion of religious freedom that intended to invert rather than dismantle the colonial hierarchy. For the "bad Muslims," those Muslim minorities whose subordination was hidden by the state's alliance with Islam, resistance via an internal critique of the colonized caliphal institutions was doomed to fail from its inception. And, for those Masu Sarauta opposed to the colonial reform of caliphal institutions, resistance meant invoking empire's guarantee of noninterference to challenge a religion governance project that was itself integral to late imperial secularism. Nostalgic about the precolonial past but now steeped in colonial privileges and mired in colonial statist consciousness, these elites were left to feebly resist the state's secular project while simultaneously affirming its premises.

This book proceeds in three parts. Part I unearths the emergence and workings of secularism as a colonial technique of governing religious difference. With a focus on the two most contentious religion governance questions faced by the colonial state – the mission question and the fate of Islamic law – the two chapters comprising Part I uncover the ways through which the state defined, deepened, and hierarchized

religious difference. Over the course of three chapters, Part II lays out the three elements of the Independence Constitution deal: the emergence of religious minorities as a political identity, the abolition of Islamic public law, and the constitutionalization of the right to religious liberty. Part II asks: what was the consequence of the colonial legal design described in Part I and the struggles it set in motion for the constitutional law and politics of decolonization? Part III examines the legacy of the colonial governance of religion for postcolonial constitutionalism. Through the lens of the constitutional proceedings of the first postindependence constitutional conference in 1977 and with highlights from other constitutional moments since then, the chapter unveils how and why the postcolonial struggles have inherited the complex colonial experience as an essentialist debate between secularism and anti-secularism. The concluding chapter reflects on what the unfolding of the career of imperial secular governmentality – in its colonial and postcolonial form – reveals about the complex connections between law, faith, identity, and power.

This book tells the story of the entanglement of law, religion, and empire in Northern Nigeria and traces the contestations set in motion by that entanglement into the postcolonial state. The Northern Nigerian story is unique, but the clash between the tenacity of religion and the inescapability of secular modernity, however, is ubiquitous. The account that follows is therefore crucial not only to understanding the tragedy of Nigeria's constitutional deadlock, but also to apprehending global postcolonial struggles over religion and religious difference.