



ISLAM IN YORUBALAND

HISTORY, EDUCATION & CULTURE

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CHAPTER 15

The Nigerian Constitution and the *Shari'ah* Question in South-western Nigeria

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Introduction

It is important to state from the onset a few words about the use of the term '*Shari'ah*' in this chapter. Linguistically, the term has been described as a path that leads to water or a resort for drinkers. Gibb (1968:64) linked this literal reference to the technical description as used in the *Qur'an* in chapter 45:18¹ as the 'path' or 'highway of divine command' in Islam. In popular parlance, *Shari'ah* is interpreted in English as Islamic law. However, Islamic law academics and experts know that the phrase 'Islamic law' and '*Shari'ah*' are not synonymous, given that the latter is wider in scope than the former (Baderin, 2009; Kamali, 2008). Again, the description of *Shari'ah* as the most eloquent and illustrious expression of the Islamic ideology (Gibb, 1968:72; Amoloye, 1986:16) appears to be apt in the sense that *Shari'ah* comprises, according to Q45:18, the path of divine commandments in all matters including law. Thus, *Shari'ah* is wider than the term 'Islamic law', not to mention the even more constricted constitutional expression as 'Islamic Personal Law' in Nigeria. With this brief remark as a background, the reader is invited to understand references to *Shari'ah* in this chapter to include the mention of Islam, Islamic law or Islamic personal law.

History of *Shari'ah* in Nigeria and the South-west

The history of *Shari'ah* in Nigeria is inexorably linked to the advent of Islam in Nigeria as a religion and way of life. As Sodiq (2017) rightly notes, Africa

came into contact with Islam in Ethiopia as far back as 615 CE. This is former Abyssinia where Prophet Muhammad sought refuge with King Najashi (Negus) for some of his disciples from persecution in Makkahh (Sodiq, 2017). It is reported that Islam remained in Africa since this period in one form or the other and spread to other areas in Africa including Nigeria through trans-Saharan trade (Sodiq, 2017; Clarke, 1982). By the time of colonialism around the 17th century, there was a full-fledged Islamic legal system in the then Northern Nigeria and Islam was recognised as the state religion (Sodiq, 2017). Notably, the efforts of 'Uthmān Ibn Fūdī and his followers that resulted in the establishment of the Sokoto Caliphate also resulted in the establishment of a highly organised state apparatus and institutions based on *Shari'ah* (Smith, 1979). Even though a lot of time had passed between the time of Sheikh Ibn Fūdī and his direct successors, the colonial authority still found the Northern Nigeria administering *Shari'ah* much to their admiration and commendation. One such colonial official, Clappertonⁱⁱ was constrained by the reality of the systematic legal administration and maximum security he met in the Sokoto Caliphate to note that 'a woman could carry a basket of gold on her head from Sokoto to Adamawa without but molested (Amoloye, 2000). Even though the colonial administration acknowledged the 'flourishing and prosperous indigenous Islamic polity, [its] meteoric rise was abruptly aborted by the encroachment of British colonialism' (Amoloye, undated:268).

For South-west Nigeria, there are different accounts regarding the advent of Islam in that region. According to Johnson (1921), 'the Yorubas originally were entirely pagans. Mohammedanism which many now profess was introduced since the close of the eighteenth century.' Gbadamosi (1978:4), however, challenges this position and instead asserts:

The date of entry of Islam to Yorubaland cannot be fixed with precision. It was unannounced and unplanned; and, for the most part, the first Yoruba Muslims had to worship privately and secretly. What is fairly certain is that in the seventeenth century, mention was made of Muslims in Yorubaland. Towards the close of the eighteenth century, the position of Islam was already such that the Yoruba were propagating Islam as far afield as Port Novo and Dahomey. The evidence shows that by 1840 there was considerable degree of Islamisation in Yorubaland.

However, contrary to the successful establishment of an Islamic state under a caliphate in Northern Nigeria, available historical evidence shows no similar unified system in Yorubalandⁱⁱⁱ (Gbadamosi, 1978). What is on record is that by the time of colonialism, a considerable number of the political authorities in civilian and military terms (such as Oba, Balogun, Osi Balogun, Are-Ona-Kakanfo) in the various kingdoms constituting Yorubaland were in the hands of Muslims (Gbadamosi, 1978). Additionally, political heads of stronghold Muslim townships made considerable efforts towards the official institution of *Shari'ah* as state law in their own communities. For example, it is documented that in Iwo under Oba Momodu Lamuye, who died in 1906, *Shari'ah* was administered (Amoloye, 2000). In like manner, in Ikirun Oba Aliyu Oyewole, the 7th Akirun of Ikirun, established a *Shari'ah* court in 1910 (Amoloye, 2000).

Earlier developments are also recorded for such societies as Iseyin, where in 1881 there was a resident mallam in the palace as the King's priest named Noo (Gbadamosi, 1978) and in the period 1871-85 in Ibadan, a Muslim by the name Momodu Latosisa was the supreme authority as Are-Ona-Kakanfo (Gbadamosi, 1978). The seat of the colonial government in South-west Nigeria (as part of the then Western Nigeria) was Lagos. This fact notwithstanding, the Lagos Muslim community put forward a petition to the Governor of Lagos in 1894. The petition demanded that Muslims 'should be made subject thenceforth to Islamic law and custom, and that they should be judged in regard to their civil rights and grievances according to the law and usages of their faith' (Gbadamosi, 1978:69). Even though the petition failed, Gbadamosi (1978:68-69) is right in noting that the petition still constituted a significant 'index of the extent that Muslims were willing to stretch themselves for their religious faith' as well as being 'a clear indication of Islamic consciousness and Muslim solidarity and growth.'

As noted earlier, in the Northern colonial protectorates *Shari'ah* was entrenched in the system of public administration and adjudication and not merely a private/personal affair. During colonialism, this protectorate was administered with the indirect rule regime and a complicated system of appeal was created to act as a watchdog on the workings of the existing Islamic legal system (Orr, 1965). Also, the jurisdiction of the existing *Shari'ah* courts was curtailed in such areas as criminal law, commercial law, tort, etc. (which some

writers have described as the systematic abrogation of *Shari'ah* in areas incompatible with the interest and agenda of the colonial authority (Coulson, 1964) and restricted to Muslim personal law to keep the very large Muslim population cooperative (Clarke, 1982). This process was made easy through the machinery of the repugnancy and incompatibility tests. For example, the *Native Courts Proclamation of 1906* declared *Shari'ah* as part of native law and custom. Therefore, any aspect of native law and custom that was in the view of the colonialist repugnant to natural justice, equity and good conscience or that was incompatible with the colonial laws was deemed to be void to the extent of such repugnancy or incompatibility. This state of affairs continued until 1960 when Nigeria became independent.

Shari'ah in the Nigerian Post-Independence Constitutions

Under the 1960 Constitution, there are five schedules and two of those schedules - the second and third schedules - contain some provisions on *Shari'ah*. The second schedule contained the constitution of Nigeria. Section 112 (1) of that constitution states that an appeal shall lie from the decision of the Sharia court of appeal to the Federal Supreme Court (as it then was) as of right on:

- a. questions as to the interpretation of this constitution or of a region;
- b. whether the human rights constitutional provisions have been contravened;
- c. or on any other matter as may be prescribed by law in Northern Nigeria.

The third schedule houses the constitution of the then Northern Nigeria. By section 4 of that constitution, a Legislature was established for the region to consist of Her Majesty, a House of Chiefs and a House of Assembly. Section 5 (1) (c) provides that the House of Chiefs shall consist of an adviser of Muslim law who can be removed by the Governor on the advice of the Premier. Section 52 (2) provides for such system of Muslim law as may be prescribed in any regional law and as applied subject to the provisions of any such law. It goes further to define questions relating to Muslim matters as those comprising questions of marriage in accordance with that law and its dissolution, family relations, guardianship, gift, succession, etc., where the parties are Muslims.

Section 119 of the 1963 Constitution replicates the above stated provisions of section 112 of the 1960 Constitution. It is important to note that no mention was made of *Shari'ah* in the constitutions of Western Nigeria in both the 1960 and 1963 constitutions. In the 1979 Constitution the term 'Muslim law' in the earlier constitutions was changed to 'Islamic Personal Law'. The relevant sections of the 1979 Constitution on *Shari'ah* are *in pari materia* with those of the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN). The 1999 CFRN recognises *Shari'ah* as a source of law in Nigeria. These constitutional references are mainly contained in Chapter VII, Parts I and II entitled 'The Judicature', which provides for the establishment of federal and state courts. Specifically, sections 260-264 provide for the establishment, composition and jurisdiction of Sharia Court of Appeal for the Nigerian Federal Capital Territory, Abuja. Similar provisions are also contained in sections 275-279 in respect of the establishment, composition and jurisdiction of a Sharia Court of Appeal for any of the remaining federating units 'that requires it'. Of particular importance is the extent of jurisdiction conferred on the Sharia Court of Appeal either of the Federal Capital Territory or of a state. Thus, according to the provisions of section 277 of the 1999 CFRN, which is *in pari materia* with those of section 262 of the same Constitution regarding the Sharia Court of Appeal of the Federal Capital Territory:

- 277 (1) The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.
- (2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide-
- (a) any question of Islamic personal law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
 - (b) where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding

- marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;
- (c) any question of *Shari'ah* Law regarding a *wakf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
 - (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind, who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
 - (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

Nigeria is a federation comprised of 36 states. Thus, as far as the establishment of a State Sharia Court of Appeal is concerned, the implication of the constitutional provision in section 275 is that it is theoretically possible to have up to a maximum of 37 of this court type in the whole of Nigeria. In reality, however, 19 Sharia Courts of Appeal operate in 18 Northern Nigerian states and the Federal Capital Territory, Abuja. As an illustration, Kwara State has a Sharia Court of Appeal. According to section 13 of the Sharia Court of Appeal Law of Kwara State (Cap.S4, Laws of Kwara State, 2006), the scheme of interpretation of *Shari'ah* is stated as being according to the *Mālikī* school of thought. This same section further provides in its paragraph (d) that in the process of adjudication, the court will also have regard to 'natural justice, equity and good conscience according to Islamic law. Perhaps, this section may be interpreted as empowering the courts to give consideration to the views of other schools of thought of the *Hanafi*, *Shāfi'ī* and *Hanbalī* schools where relevant.

Prior to the year 2000, the application of *Shari'ah* in Nigeria was limited to Islamic personal law aspects of civil matters only. However, some federating units in the Northern region of Nigeria, pioneered by Zamfara State in 1999, extended the scope of the application of *Shari'ah* within their states to matters of public law, covering such areas as Islamic criminal law.

Shari'ah and South-west Nigeria: Constitutional Implications and Challenges

Amongst the constitutional provisions cited above, of particular importance in this section is the import of Section 275 for South-western Nigeria. This is the fact that it is constitutionally possible to establish in any state of Nigeria a Sharia Court of Appeal. For the avoidance of doubt, the provision of Section 275 is that 'there shall be for any State that requires it a Sharia Court of Appeal for that State.' As noted earlier, this provision makes it theoretically and constitutionally possible to have up to 36 Sharia Courts of Appeal in Nigeria, with the Sharia Court of Appeal of the Federal Capital Territory, Abuja, being the 37th court. But only 19 Sharia Courts of Appeal operate in 18 Northern Nigerian states and the Federal Capital Territory, Abuja. No such court type has ever been established anywhere in Southern Nigeria despite the significant Muslim population both historically and presently.

At this juncture, the question that begs its answer is: why is this so? In the first place, it has been discussed that from the time of colonialism till date, Muslims in this region have always aspired to be governed in accordance with *Shari'ah*. The stumbling block appears to be the procedure. What is clear from the constitutional provision is that a Sharia Court of Appeal will be established by an act of the State House of Assembly. This is problematic as the constitution appears to have given the power in a very important matter to only a few who may not necessarily represent the yearning and aspirations of the general population. As Zubair^{iv} rightly argues, the establishment should have been made dependent on identification of the needs, yearnings and aspirations of the people in a particular state. To him, a House of Assembly is not a sound instrument for the identification of public opinion which is best gauged and assessed through a referendum. The challenge, however, may be how to effectively and successfully initiate, organise and carry out such referendum, given the often non-strategic and reactionary approach of Nigerian Muslims generally on such matters, not to talk of the collective systemic dysfunctionality of public institutions in Nigeria.

Despite the seemingly impossible and herculean task of bringing about the institution of *Shari'ah* as envisaged in the constitution in any state in South-western Nigeria, Muslims in the region have continued to aspire to be so governed. Recall an earlier remark in this chapter in respect of the 1894

petition of the Lagos Muslims to the Governor of the Colony of Lagos on the official recognition and institution of *Shari'ah*. Makinde (2017) records that similar petitions were also filed with the colonial authority in 1923 and 1948. The aspiration of the Muslims has led to the establishment of Independent Sharia Panels which are not the creation of any law and which are therefore unconstitutional. Such panels presently function in Lagos, Oyo and Osun States where people voluntarily submit themselves to their jurisdiction (Makinde and Ostein, 2011). As Zubair again notes, 'their operation is very much peaceful now but may become dangerous'.

Observations and Suggestions for Future Developments

As already noted, the constitutionally recognised aspect of *Shari'ah* in Nigeria is Islamic personal law, except for the ingenuity of the Houses of Assembly of the *Shari'ah* implementing states in Northern Nigeria that have widened the scope of jurisdiction to other areas using the provisions of section 277(1) 1999 CFRN quoted above. Even before the widening of this scope, in the constitutional references to the first court of superior record to sit on appeals on matters of 'Islamic Personal Law' from the lower courts, the word *Shari'ah* is used in the description of the court as Sharia Court of Appeal. Yet, Islamic Personal Law is a very minute aspect of *Shari'ah*. Was this deliberate by the then Muslims or just a question of uninformed choice? It is here conceived that it is a fantastic stratagem if it was deliberate; if it was uninformed, then perhaps it is divine intervention. How can there be a *Shari'ah* court system fully funded to only administer only a fraction of its full capacity in jurisdictional terms? Perhaps if the nomenclature had been 'Islamic Personal Law Court of Appeal', then the Houses of Assembly of the Northern states would have had some constitutional handicap in the expansion of the jurisdiction of the court if the name already circumscribes the extent and limit of its jurisdiction.

The efforts of concerned Muslims so far towards the full institution of *Shari'ah* in Northern Nigeria and for civil matters, at least in South-western Nigeria, are highly commendable, being on record for posterity. A humble but important observation, however, is that in such efforts there appears to have been little appreciation of the fact that the institution of *Shari'ah* is an intellectual process or activity, not a mechanical one. It should be a process of reformation rather than of enforcement. This non-appreciation has led to the

kinds of arguments adopted so far by the Muslims who are sincerely working towards the institution of *Shari'ah* as well as the reaction so far by other Muslims who are either presently less concerned or overtly cautious and ambivalent, not to talk of the erroneous perceptions of some non-Muslims. To start with the latter, the typical perception of some uninformed non-Muslims and Muslims is that *Shari'ah* is a prohibitive, intrusive and coercive legal system which is incompatible with the present dominant world ideology of *laissez-faire* or individual freedom and autonomy which underpins the democratic nature of modern nation-states. To give an instance of such perception by a non-Muslim in Nigeria, Ordu contends:

Muslims(sic) society is more of communist society comparable to the theories of Karl Marx, and not compatible to the Western free Democratic Economy. Islamic law dictates the system of life across the spectrum, including financial transactions, dress codes, marriages, individual movements, and it functions in a closed system . . . The Islamic system dictates the dress codes, the fellowship between the females and their counter parts, the type of food, the prayer schedules, financial transactions, and so on. Islam believes in the system of restrictiveness and Sharia is the legal vehicle to control and dominate various individuals in an attempt to bring people into compliance with the Islamic laws. [On the other hand,] [d]emocracy is the world of freedom to choose right or wrong. The classical school of criminology says man is a "freewill agent" having "intrinsic choices of right or wrong" and is capable of making his or her own decision. {Parenthesis added}. (Ordu, 2015:70)

Thus, rather than being perceived as *directive* towards material and spiritual success (Q45:18), *Shari'ah* is viewed as an archaic system of beliefs that *restricts* choices and *limits* human development (Ordu, 2015). The mechanical nature of most of the efforts so far, with utmost respect for the sincerity of the concerned persons, has typically assumed two strands of argument. These are the right to religious freedom and the assertions of discrimination.

Both arguments are self-defeating and do more harm to the whole process for the fact that so much is lost by way of the level of legitimacy that is accorded by opponents to the two positions. It is humbly posited that the issue of *Shari'ah* and its official institution is more than just the fulfillment of

religious right or protection from discrimination. For if this were so, the Federal government would then be obliged to erect legal apparatus for any identified religious or non-religious ideology in the country. That would be fairness and justice; anything less would be the opposite. The situation may also be remedied with solutions that simply adorn existing apparatus with a semblance of 'Islamic' garb to quench the cries of discrimination. Even if there is a constitutional basis to the religious right ideology on the official institution of *Shari'ah*, it does not make the arguments unassailable. The current author is of the opinion that once Muslims are pushed into this argument, then in the same spirit of rights, they must honour and respect the rights and sentiments of others. It appears to be one of the singular reasons why the constitutional and institutional development of the Islamic legal system has been stunted. When Muslims speak in terms of rights, it would seem that the idea of *Shari'ah* at any rate is a constitutional concession. Although it is true that *Shari'ah* is a constitutional legal source, it neither originated in any of the 'pre' and 'post' independence constitutions nor was it their creation. There is difference between recognition and origination or creation. If people of other faiths want their legal systems as they would be entitled to, such apparatus would be created from the constitutional right to freedom of religion because they have never existed. For *Shari'ah* as a legal source in Nigeria and the basis of a legal system, it predated not only the Nigerian constitution, but Nigeria itself as a body-politic. Nowhere in the history of the periods leading up to the creation of Nigeria did we hear of any legal system other than Islamic law courts and customary law courts. No other religious faith had a public system of administration before and after the advent of Nigeria. However, *Shari'ah* in the Nigerian legal system is a historical legal source and its pre-colonial public administration is part and parcel of the Nigerian cultural, political, legal and ideological heritage. It is a source that predates every other legal source in Nigeria, with the exception perhaps of customary law. This is clearly evident in the earlier discussion of the history of *Shari'ah* in Nigeria in this chapter.

Thus, for non-Muslims in Nigeria to accuse Muslims of an Islamisation agenda or to begin to wonder as to how Muslims cleverly crafted *Shari'ah* provisions in the 1999 CFRN, as Ordu (2015) marvels, is a naïve betrayal of being out of touch with clear, available and overwhelming historical evidence. Any dispassionate historian or academic should rather question the continued

influence and constitutional relevance of the received English law –namely the Common Law of England, the doctrines of Equity and Statutes of General Application in force in England on 1st of January 1900- which are colonial gifts unconnected to the Nigerian indigenous legal history.

It is normal for people to fall back on a set of time-tested ideals and principles when everything else fails. For example, in the United States of America, clear indication that the Church is trying to align public administration with its ideals is evident in the support of American Christians for the allegedly religious Vice President, Mike Pence.^v Additionally, biblical references made by the White House Press Secretary, Sarah Sanders,^{vi} to defend a highly controversial policy on border control was only frowned at by biblical experts who wanted the Bible to be quoted and applied correctly. Even though the American population is not entirely Christian, there were no charges by non-adherents of a plan to evangelise the country. The American society is multicultural and multi-religious and should therefore not adopt any religion as state religion, yet no one has denied the place of Christian ideals in the shaping of the Anglo-American legal history. It is just a matter of if everything else fails, you return to that which expresses itself to be divine and capable of providing solutions to all problems.

In my view, the above is also what Muslims in Nigeria and more particularly in the South-west desire. They aspire for a system that has historical pedigree of success in all spheres of public administration and in the promotion of good governance for the welfare of the people. Perhaps it is necessary again to go back in history to understand the non-adherent perception of the Islamic governance in some of the pre-colonial Nigerian regions of Northern Nigeria when *Shari'ah* was administered as state religion and law. According to Sir Charles Orr's almost graphical description:

Pagan tribes in every conceivable stage of civilization inhabit the country on either side of the great Benue river Farther in the interior pagan tribes of a much lower type are to be found. Many are cannibal, and in many no clothing whatever is worn by either sex. Here we begin to get an idea of what primitive man was like. Absolute insecurity is the day-to-day reality, which of necessity dominates the actions and habits of the people. There is practically no cohesion, no organization. [However,

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the] conditions of the northern part of the Protectorate, away from the valleys of the great water-troughs, were totally different. Two great Mahomedan empires, Bornu and Sokoto. . . [form] a striking contrast to that of the pagan tribes. In place of hidden huts, we find great walled cities containing a dense population; in place of the naked pagan, we find the cultivated follower of Islam, clothed in flowing robes; in place of the witch doctor, the grave and learned judge, well versed in Koranic law and jurisprudence; in place of superstition and pagan rites, mosques and schools; in place of ignorance, knowledge; in place of disintegration, cohesion. (C. Orr, 1965:54)

Unfortunately, the by-product of making the process of institution of *Shari'ah* at present a mechanical rather than an intellectual process has resulted in Muslims becoming mere imitators, in contravention of the following instruction by Prophet Muhammad that – 'Do not be an imitator' (Zubair, 2018). Thus, in the Northern states that have established a semblance of an Islamic legal system, the court system is not *Islamic* for the reason that the appellate system is contrary to the dictates of *Shari'ah*. Even in the private initiatives in South-western Nigeria, Makinde and Olstein note that the interior of the office of the Independent *Shari'ah* Tribunal mimics the conventional English court. In their words:

Given the legal backgrounds of its judges (and of the leaders of the SCSN chapter that appointed them), it is not surprising that the Lagos ISP has imported many formalities from the English law that they have studied, practiced for such a long time, and understand very well. At the judges' official swearing-in at the Abesan Central Mosque in Ipaja Estate, the upper floor of the mosque was occupied and configured like a conventional English court with witness boxes and some other court paraphernalia (Makinde and Olstein, 2011:933)

This accounts for why there are counter arguments by governments in the South-west that the establishment of a legal system based on *Shari'ah* will constitute mere expending of state funds to duplicate legal systems. As we currently have it, the Court of Appeal and Supreme Court sit on appeals from the Sharia Courts of Appeal and the High Courts and Customary Courts of Appeal in a unified manner rather than establishing parallel systems. This will be so because Muslims were demanding for a court system patterned along the

lines of the existing ones in Nigeria that are already bedevilled with delays in the administration of justice due to heavy caseloads and other bureaucratic bottlenecks. The question is, why have Muslims never argued that application of *Shari'ah* does not require the elaborate and complicated review system called appeals? That while it is possible for the judge to overrule an earlier judgment by self (something impossible under Common and Statutory law courts), the judgment cannot be reviewed as appeal but maybe set aside by the head of the Islamic state if the head is not the *Qāḍī* in the first place, as some of the classical Islamic sources indicate.

The moment Muslims allow the non-Muslims to refract Islamic ideals through non-Islamic binoculars, a lot, if not the most important value, is lost in the vision transfer. Using non-Islamic arguments to justify the establishment of Islamic institutions, textually, will mean to place something upon nothing. But the problem is, how prepared are Muslims for the pristine Islamic legal system? Do Muslims currently trust themselves enough to appoint someone as a *Qāḍī* in a community and make their decisions final, only subject to appeal to Allah? This is the Islamic position, otherwise such a person should never have been appointed as a *Qāḍī* in the first place. Thus, the mechanical approach stands in the way of critical engagement with the idea of appropriate methodology that is also in accordance with *Shari'ah*.

It is here conceived that the approach to the institution of *Shari'ah* so far in Nigeria is, for the most part, not the outcome of fresh engagement with the principles of Islamic law on the matter. 'Fresh' in the sense of an appreciation of the peculiar challenges of the contemporary Nigerian context in order to generate peculiar 'Nigerian' solutions but within the principles of *Shari'ah*. In the current author's opinion, even in the *Shari'ah* implementing states of Northern Nigeria, what you find is an application of Islamic law in such a way that is not responsive to the challenges and the needs of the contemporary context. Little wonder that there was an uproar in the world, not only in Nigeria, when in a poverty-stricken context of Zamfara State, as with all other Nigerian federating units, a dividend of *Shari'ah* implementation was not an admirable improvement in the general living conditions but the amputation of a thief's hand only few months into the process (Makinde and Ostien, 2011:931).^{vii} This observation should not be taken as an agreement with the so-called modernists and opponents that Islamic criminal law is out of touch

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It is here conceived that the approach to the institution of *Shari'ah* so far in Nigeria is, for the most part, not the outcome of fresh engagement with the principles of Islamic law on the matter. 'Fresh' in the sense of an appreciation of the peculiar challenges of the contemporary Nigerian context in order to generate peculiar 'Nigerian' solutions but within the principles of *Shari'ah*. In the current author's opinion, even in the *Shari'ah* implementing states of Northern Nigeria, what you find is an application of Islamic law in such a way that is not responsive to the challenges and the needs of the contemporary context. Little wonder that there was an uproar in the world, not only in Nigeria, when in a poverty-stricken context of Zamfara State, as with all other Nigerian federating units, a dividend of *Shari'ah* implementation was not an admirable improvement in the general living conditions but the amputation of a thief's hand only few months into the process (Makinde and Ostien, 2011:931).^{vii} This observation should not be taken as an agreement with the so-called modernists and opponents that Islamic criminal law is out of touch

with modernity. Far from it, *hudūd* (capital) punishments in *Sharī'ah* admit of no contrary positions but there are governing principles and circumstances that would command the admiration of any dispassionate observer. At any rate, it is on record that the second caliph in Islamic political history, 'Umar, suspended the punishment of amputation for theft due to famine, which was causing people to steal out of hunger (Williams, 1994).

The point being made is that the *Sharī'ah* approach is not to seek to apply the law merely by the establishment of public institutions. This approach is based on western political theories of modern state ideology, where strong institutions are expected to create strong individuals. Thus, at present, most people would generally agree that the difference between official corruption in developing societies, such as Nigeria, and the developed societies, such as the United Kingdom or the United States of America, is the presence of strong institutions not because the people are scrupulous. Ultimately, however, strong institutions can only be sustained by a population consistently aligned to the value underpinning such institutions. This ultimate weakness is why the *Sharī'ah* approach is different. If we refract again the history of the development of the Islamic state of Madīnah, which was also a multi-religious and multicultural context, by the Prophet Muhammad, we will find that the human consciousness was to such an extent that the reception of a state based on the already established Islamic ideals was inevitable. Islam is a very practical religion; it is a vehicle not only of abstract spiritual success (which for Muslims is the ultimate goal) but also of perceivable material development, which is the concern of non-Muslims. For non-Muslims and perhaps some other Muslims in South-western Nigeria, one must perceive the material existence of the fantastic consequence of the institution of *Sharī'ah* and one immediately wants to be a part of the system that works. If we take the example of non-interest banking, some of the chief proponents are non-Muslims and they do not care that it is the Islamic way; they care about the wonderful results.

But how far have Nigerian Muslims demonstrated that *Sharī'ah* works in their private lives to be able to convince others that it can work in the public domain? It may not be surprising that the first set of individuals that would be skeptical about the public implementation of *Sharī'ah* would be Muslims themselves due to mutual suspicion and mistrust. For example, despite the

elaborate principles under *Shari'ah* to govern the sustainability of the marriage institution, as the basic unit of human existence and the fact that it is presently within the jurisdiction of the Sharia Court of Appeal, there is high incidence of marriage breakdown in Muslim communities. For instance, in the 2008 Annual Report of the Sharia Court of Appeal Kwara State (Kwara and Kogi States are the two North-central states closest in geographical terms to the South-west), out of the 23 cases decided and reported, about two-thirds were connected directly or indirectly to failed marriages. At present which is a decade thereafter, there has been no significant change in the nature of cases that go on appeal before that court. There are so many issues that are outside of the public regulations that require serious reflections and engagements to fashion out sound and workable theories based on Islamic textual authorities. There is the need for Nigerian Muslims and most especially in the South-west to rethink current strategies and articulate new well thought-out modalities. In *Shari'ah*, obligations are addressed directly to the legally competent individual (*Mukalla*) and there is also the doctrine of individual accountability (*Ihtisab*), resulting in the individualistic but also communitarian feature of Islamic law. The learned scholar, Ibn Qayyim, has in fact taken the position that the establishment of the caliphate or public institutions is not a condition precedent for the application of Islamic law (Kamali, 2008). It is expected that when Muslims live in accordance with Islam, its ideals will percolate all spheres of the society from bottom to the very top.

It is arguable to say that perhaps it is a blessing in disguise that the present constitutional apparatus in existence in the Northern states is not being automatically extended to South-western Nigeria. The challenge has given the opportunity of robust reflection towards the crafting of methodologies for sound and sustainable application of *Shari'ah* based entirely on the way envisaged in the Islamic textual sources. As has been said, the course of action for the institution of *Shari'ah* in South-western Nigeria should thus be viewed as an intellectual process. If we agree that the process is an intellectual and inevitably academic one, there is the question of trained personnel to carry out the reform process. Notably, South-western Nigeria is very much blessed. For example, the first professor of Islamic Law in the whole of West Africa is a *Shari'ah* graduate of the Islamic University of Madinah and an indigene of Ibadan, Professor Abdulqadir Zubair, currently of the University of Ilorin.

And for all the states comprising the South-west, there are numerous trained scholars beyond the shores of Nigeria and within in the field of *Shari'ah*. All that is needed is robust considerations of how the already noted skilled manpower can be fully utilised to fashion out workable ideals for private Muslim life in preparation for the ultimate reformation of the Nigerian Muslim society. There is, at present, a dearth of literature that particularise principles of *Shari'ah* for the peculiar challenges of the Nigerian context.

The second point on the matter is the teaching and learning of *Shari'ah* itself in the citadels of learning in South-western Nigeria. In all the universities that offer law programmes, only the Lagos State University appears to have *Shari'ah* content. How do we encourage and network for capacity building in these areas? Even in the law degree programmes of Northern Nigerian universities with *Shari'ah* content, the curriculum requires serious revision. From the personal experience of the author as an Islamic law lecturer for over a decade, most of the courses are taught in ways that *Shari'ah* is understood as a utopian concept, a lost glory that is not capable of being a living concept in our contemporary life. The methodology does not advance the process of instructing the students to navigate a society with a declining value system, where the idea of selfless service to humanity and consideration for the welfare of others (as ordained by Allah for Muslims in injunctions such as Q3:134, Q76:8-10 and Q74:6-7, amongst many others, as well as Prophetic traditions) has given way to selfish materialism, inordinate capitalism and excessive acquisition of wealth, despite the provisions of the Qur'an such as Q83:1-6, Q102: 1-8 and Q104: 1-9, amongst many others.

Conclusion

Muslims in South-western Nigeria should not confine the spiritual observance of *Shari'ah* to aspects of worship such as the five daily prayers and fasting in Ramadan. Equally important aspects of *Shari'ah*, such as ensuring equity and justice (Q57:25), accountability and fair dealing (Q83:1-6), and honouring obligations and contracts (Q5:1) have nothing to do with whether a Muslim is under a 'secular', a non-Islamic or even an Islamic society or not. Regardless of the context, nothing can stand in the way of a Muslim spiritually obeying the dictates of *Shari'ah* even if in legal terms only an aspect of it can be enforceable. After all, the Qur'anic instructions and the Prophetic traditions are addressed to the legally competent individual (*Mukallaf*) on the basis of

individual accountability before Almighty Allah and not collective reckoning. Q23:101, Q70:10-14 and Q80:34-37, amongst others, are very clear on this.

- ⁱ 'Then We have put you on a way (*Shari'ah*) of Our commandment. So follow it, and follow not the desires of those who know not.'
- ⁱⁱ In his reports published in 1829 as 'Journal of a Second Expedition into the Interior of Africa'.
- ⁱⁱⁱ Now 'South-west Nigeria, which is the focus of this chapter.
- ^{iv} Professor Abdulqadir Zubair is the first professor of Islamic law in West Africa. He currently lectures at the Department of Islamic Law, University of Ilorin, Ilorin. This author interviewed him on 6 September, 2018, at his residence in Ilorin for his perspectives on the topic of this chapter.
- ^v See the perspectives of Michael D'Antonio, the author of the book 'The Shadow President: The Truth About Mike Pence' on the US Vice President as a strong personality expected to infuse the Trump administration with Christian ideals. This was the summary of his interview by Christiane Amanpour on a Cable News Network live broadcast on 4 September, 2018.
- ^{vi} She said: 'It is very biblical to enforce the law', justifying the White House policy on separating migrant children from their parents. Cable News Network live broadcast on 15 June, 2018.
- ^{vii} '[A] great outcry broke out after Zamfara State announced late 1999 that it was going to implement Sharia and then did so, cutting off the first thief's hand in March 2000. The din in Nigeria and abroad was deafening.'

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