

SHARIA AND OTHER LEGAL CONSIDERATIONS¹

Heraclitus [of Ephesus] spoke in the 6th century BC of a common wisdom that pervades the whole universe, “for all human laws are nourished by one, the divine.”

Heraclitus²

Mawdudi saw Muslims not as people who followed the religion of Islam, but as everything. “Everything in the universe is ‘Muslim’ for it obeys God by submission to His laws.” The only exception to this universe of Muslims were human beings who failed to follow Islam.

“Abul A’la Maududi”³

But unification or fusion [of the two legal systems] is impossible. Professor Rahamda I. Doi accepts that since colonialism Anglo-Mohammedan and Franco-Mohammedan legal systems have co-existed with conflicts. He says, “The sharia and the Western Common Law cannot be fused together completely nor will it be allowed by the ulama of

Islam and well-meaning Muslims.”

Olu Awogbemila⁴

The central problem in the relations between the West and the rest is...the discordance between the West's...efforts to promote a universal Western culture and its declining ability to do so.

The West, and especially the US, which has always been a missionary nation, believe that the non-Western peoples should commit themselves to the Western values of democracy, free markets, limited government, human rights, individualism, the rule of law and should embody these values in their institutions.

What is universalism to the West is imperialism to the rest.

Samuel P. Huntington⁵

Before even getting into the sharia discussion, I need to emphasize two items. The first is a repetition of an important issue, namely, that all opponents to sharia have to give due recognition to the central role sharia plays in the life of Muslims. Sanusi reminds us that the demand for it comes naturally to Muslims, while the Dutch scholar Peters affirms that it is based on a deep religious consciousness that cannot easily be erased. For this reason, though Haruna Dandaura opposed sharia, considered it political and thought to detect early on that it was already fizzling out, he warned that it is dangerous to deny it to Muslims.⁶ So, though it may be abused, badly applied, politicised and all that, Christians must realize that when they oppose it, they attack something near to the heart of pious Muslims and at the centre of the faith. That may never be done lightly without very good reason. And it certainly should not be done on basis of faulty perspectives or wrong understanding or information about historical developments. Unfortunately, much of the Christian theoretical and/or principal opposition to it *is* based on exactly a weak foundation.

The second item is a denial. Patrick Sookhdeo of Barnabas Fund, writes of some British convert to Islam who blogs under the name of “Indigo Jo,” that he is “pro-sharia, i.e., a radical Muslim.”⁷ I reject this equation. In the Nigerian situation, as this chapter will show, not every proponent of sharia is “radical,” at least not in the popular sense in which Sookhdeo employs the term, namely militant or fundamentalist. It is unfortunate that, scholarly as he is, Sookhdeo sometimes employs “folk English” that ignores or bypasses necessary distinctions. Indigo Jo may be both pro-sharia and a “radical,” but the one does not necessarily follow from the other. You can be pro-sharia without being radical [militant fundamentalist]. We have them in Nigeria. Two prominent examples are Sanusi L. Sanusi and Lateef Adegbite. At the same time and after this disclaimer, it *can* be said that Sanusi and Adegbite are both! This affirmation is based on the more basic meaning of “radical,” which is derived from the Latin “*radix*,” or “root.” Both of these Muslims are deep thinkers and tend to go to the root or *radix* of an issue. By my definition, it is a compliment to be called “radical,” for it means you think things through to their roots and do not engage in popular superficialities. Usually, people described as “radical” in popular language are not radical at all. Moderate Muslim scholars and other leaders⁸ reject these so-called “radicals” or fundamentalists precisely because they do *not* consult the root sources of Islam.

▲ THE CONSTITUTION FACTOR _____

You may remember from Volumes 6 and 7 that the constitutional angle attracted a lot of heated debate.⁹ Most Christians consider the Zamfara sharia flagrantly unconstitutional. Most Muslims insist that it was/is in tune with the Constitution. Some Muslims have so much contempt for the secular Constitution that they did not care and merely shrugged their shoulders. If the Constitution

does not fit sharia, amend it! For them it was not a matter of the sharia fitting the Constitution but *vice versa*. As the Christian Yusufu Turaki put it, such questions do not arise in Islam. “Sharia cannot be placed side by side with or under any human constitution. Sharia is always above and supreme.”¹⁰

There were a few other voices and issues. I have suggested earlier that the issue should not be decided on basis of the majority factor. I now suggest, along with the highly placed Southern Muslim leader and lawyer Lateef Adegbite, that it should not be decided on basis of the Constitution either. To him it was a “supra-legal”—my term—issue that goes beyond the legal.¹¹ In addition, we have overheard arguments in Volume 6 that the secular legal system is heavily weighted on the “Christian” side and will give additional weight to that in this chapter. In short, Common Law does not provide a level playing field or neutral starting point. While we need to continue our adherence to the Constitution as is for the meantime, we should realize that confining the discussion to the current Constitution would unnecessarily confine the issues. We need to be free from such restrictions for these discussions.

*I would like to see the constitutional factor discussed afresh by a new and smaller representative group of wise people, perhaps called the “Committee of the Wise.” These would not be run-of-the-mill politicians but women and men known for their wisdom, integrity, broad vision, extensive experience and wide sympathy. During the course of their assignment, they would be completely shielded from all vested interests, including religious, tribal, political and governmental influences. Totally independent and totally free to consider all the options, including the parameters offered in this book, but **excluding** everything to do with fundamentalists and extremists.*

Once the time has come to begin designing a new, more pluralistic constitution based on the findings and decisions of the Committee of the Wise, a group of highly respectable legal personalities could be assigned to design it under the supervision of the former. A small international group of legal specialists in religious constitutional issues could be invited to serve as consultants.¹² This is a project designed for and by people who have only the common good in mind, who enjoy the confidence of the people and respect for each other.

I realize of course that an entire series of CA's has been held over the last three decades to deal with the Constitution. Even right now there are on-going efforts along this line carried out by our federal politicians, but these were and are largely politicians with political and religious vested interests. This Committee would be a much different and smaller body that would review the Constitution and make recommendations for improvements, this time based on an accurate knowledge of the development of law, both Common and sharia, as well as on *wholistic* religion, genuine democracy and pluralism. From a wholistic perspective, religious issues in the Constitution go far beyond the few articles dealing explicitly with religion and secularism. They are embedded throughout as unexpressed assumptions. Along the way the committee would also consider the suitability of the wholistic worldview I have offered throughout this series and the political formula based on that worldview and developed in these chapters. Negatively, they would eliminate and replace the secular myths of objectivity and neutrality with a more wholistic perspective than is currently embedded in the Constitution. Their work would be done *out* of the public limelight in a relaxed atmosphere without pressure from any quarter.

▲ RELIGIOUS BACKGROUND TO NIGERIA'S LAWS

Both Christians and Muslims have always openly affirmed the religious background of sharia. That's one fact about which there has been no disagreement! But that is also a major reason—not the only one—Christians have consistently rejected it ever since the first CA of 1978. Already then they wanted a secular constitution and legal system that eliminates all traces of religion. This was true not only of secularized university graduates but even of the church. All the ecclesiastical organizations clamoured for a purely secular legal system free from religion in the vain hope of neutrality. An early statement from NKST in Benue State said that it was the *religious* nature of sharia that made it objectionable. “We are aware of the highly codified nature of the sharia law, but we still contend that this...does not make it non-religious, because the laws are still injunctions from the Qur'an and Islamic theology.” I point out immediately that such objections are based on the narrow view of religion associated with dualism.¹³ It is a reduced, distorted and unacceptable dualistic version of Christianity. I have gone through great pains to explain this dualism, especially in Part 2 of Volume 5 and Chapter 3 of this volume. I trust you have read those materials and seriously considered the issues by now. It is this distorted version of Christianity and how it is leading Christians astray in the legal area that is at the centre of this chapter.

The fact is that Common Law also has a strongly religious background—Christian religion, of course—as Muslims have repeatedly insisted on for solid historical reasons.¹⁴ Christians have vehemently *denied* that connection and have even asserted that the claim is based on ignorance. Byang wrote that this claim “is either an exhibition of stark ignorance or a mischievous utterance aimed at provoking Christians.”¹⁵ *I assert that it is not the claim but the rejection of the claim that is based on ignorance and that it is*

encouraged by the secular dualistic worldview Christians have inherited. Secularism blinds people to the influence of religion on culture; it goes out of its way to deny and belittle it. In addition, the anger in the air prevents everyone, Christian and Muslim, from objectively weighing each other's claims.

The Muslim assertion about Christian background does not rest on a few obscure authorities in one country. Experts from various times and places affirm it. Back in 1910, a time when there really was no Christian Church in Northern Nigeria to speak of, a Kuyperian Dutch legal expert, H. Verkouteren, published a 55-page booklet in which he clearly delineated the influence Christianity has exerted on Western law by adducing examples from many social sectors. In his day it was a popular subject of discussion.¹⁶ Even famous figures like Voltaire admitted to such influence—yes, Voltaire, no friend of Christianity. At the end, Verkouteren cautioned his readers never to break the bonds between Christianity and the legal system or justice, for it is only *that* relationship that makes proper justice possible.¹⁷

In the 1960s, the American Kuyperian Rousas J. Rushdoony wrote,

Law cannot be explained, it cannot be defined, without reference to religion. Law is concerned with matters of justice, authority, duty and obligation, all matters of religious concern and inescapably involved with matters of "ultimate concern." Ostensibly, in our secular culture, religion has been separated from law, and law is now purely a matter of sociological concerns, oriented to social needs and progressively scientific criteria rather than to religious dogma. Actually... our law is thoroughly religious and is directly a product of religion.

The separation of religion from law that people are talking about today is rather the separation of *Christianity* from law. The Christian religion has been replaced by the faith or worldview of

secularism, no less a religion or belief system, since it, too, deals with “ultimate concerns.”¹⁸

We have already met Hebden Taylor, a British Anglican Kuyperian.¹⁹ A prolific writer, his *summa* is a 600-page tome entitled *The Christian Philosophy of Law, Politics, and the State*. Here he wrote that though dictionary definitions of law seldom include reference to religion, law cannot be explained or defined without reference to religion. In fact, “Christianity has for centuries been the major impetus to legal codes, and Western law has been a manifestation of changing and developing currents of Christian philosophy and theology.” Following Dooyeweerd, Taylor affirmed that the Christian faith has especially influenced Western law by changing Western perceptions of mankind’s nature and destiny. It consequently “played a tremendous if unacknowledged part in changing Western man’s idea of law and justice. The same factor “revolutionized the conceptions of law and justice inherited from Graeco-Roman civilization.”²⁰ A large part of this book is devoted to describing that relationship between Christianity and Western law.

We have here two affirmations that play a large part in the development of Taylor’s argument. First, by definition law and religion *always* go together; they cannot be separated. Secondly, in the West the development of law has traditionally been deeply influenced by the *Christian* religion. Humanism, secularism and their forebears in the West have led to attempts to separate law and religion.

Harold Berman, who died at 89 in 2007, was an icon in American legal academics. According to Douglas Martin, “his most influential work was *Law and Revolution* (1983)... He argued that the 11th-century rise of papal authority with its own canon law jump-started modern law. The journal *Constitutional Commentary* said in 2005 that the book had become ‘the standard point of departure for work in the field.’ The *American Political Science*

Review said, “This may be the most important book on law in our generation.”²¹

So, again this emphasis on the religious origin of modern law, this time from an international legal icon whose judgement has become the standard. American law, Berman wrote, has English law as its parent. “Its institutional and doctrinal foundations were laid in the late eleventh and twelfth centuries in the monasteries and universities and in the ecclesiastical and royal households of Western Christendom.”²² Berman began his Lowell Lectures on Theology delivered at Boston University with the affirmation “that law and religion are two different but interrelated aspects, two dimensions of social experience—in all societies, but especially in Western society.” “We have heard too much about the separation of law and religion and not enough about their fundamental unity.” Then he explained his wholistic perspective on both law and religion that coincides with the basic perspective of this series: “I am speaking on law and religion in the broadest sense—of law... and religion as society’s intuitions of and commitments to the ultimate meaning and purpose of life.” He even wrote an article under the title “The Religious Sources of General Contract Law: An Historical Perspective.”²³ When law and religion are conceived *narrowly*, “*the links between the two dimensions are broken [and] society becomes demoralized*”—and is that not exactly what has happened in Nigeria? “*Eventually such demoralization may yield to widespread demands for radical change*”—and does the call for sharia renewal not reflect that? Again, “*unless people believe in the law, unless they attach a universal and ultimate meaning to it, unless they see it and judge it in terms of a transcendent truth, nothing will happen. The law will not work—it will be dead.*”²⁴ Berman was a specialist in Russian law. His knowledge about Nigeria was probably zilch, but his study of law in general led him to what became prophecy for Nigeria!

Berman went on to observe what was already common knowledge, namely that legal and religious systems in the West had

broken down due to the replacement of their old foundations with new ones. An important feature of the new “is the presupposition that law and religion are wholly separate aspects of life—that the way we run our society need have nothing to do with our deepest intuitions and our deepest commitments.... Behind this radical separation of law and religion is a dualistic mode of thought that has recurrently threatened the integrity of Western man during the past nine centuries”—and is that not what Western colonialists and missionaries brought to Nigeria? ***“The overcoming of these dualisms is the key to the future,” he declared—which is exactly what this series is all about.***²⁵

In fact, Berman argued against those who think law can exist merely “on the basis of the proper political and economic controls and a philosophy of humanism. History..., including current history, testifies otherwise: People will not give their allegiance to a political and economic system, and even less to a philosophy, unless it represents for them a higher, sacred truth. People will desert institutions that do not seem to them to correspond to some transcendent reality in which they believe.” Intellectuals, he continued, “feel betrayed by this; they continually anticipate that people will develop a new style of consciousness, secular and rational like their own, but they do not realize that their own belief in political and economic systems and in a humanist philosophy is equally transrational and equally self-interested—it is the religion of the intellectual.”²⁶ No doubt, since Berman wrote these lines, postmodernism and contemporary world events will have brought about a change of mind in this respect on the part of many of these blind-folded “intellectuals,” depending on how stuck they were/are on their secular perch.

So, here we have an international, inter-cultural and inter-religious convergence of scholars from different nations, all insisting on the close mutual dependence of law and religion on each other and all rejecting the dualism that supports their separation.

Nigerian Christians who continue to insist on this separation need to do a re-think and accept the facts, even if these facts undermine some of their strongest reasons for opposing sharia. Insistence on the convergence of law and religion is not a trap hostile Muslims use to trick Christians; it is affirmed by fellow Christian experts from widely different backgrounds. At the same time, given the secular type of education offered in Nigeria, one can forgive Christians for not being aware of these connections or even for denying them. Even Berman already 25 years ago wrote of the disconnect between Western law and its religious foundations that had occurred “during the past two generations.”²⁷

Nevertheless, that historical foundation is there and cannot be denied. Muslims have a strong case when they insist that Common Law is not religiously neutral but has a strong Christian background. Even beyond the pale of personal and family law, they have long been governed by what is largely a Christian legal system.

Actually, the relation between Common Law and religion may go even deeper in a surprising direction. Viewing it globally and historically, Syed Rashid revealed that Joseph Schacht, a German Orientalist whom Muslims do not consider their friend, asserted the far-reaching influence of sharia even in medieval Europe where strands of it were incorporated into the culture and legal systems. Various branches of the ancient church “did not hesitate to draw freely on the rules of Islamic law.”²⁸ Ibrahim Ado-Kurawa, the Kano Muslim scholar so prominent in some of the earlier volumes of this series, came away from a seminar in the UK with a similar startling claim. It is possible, he wrote, that “*the history of Islam in Britain pre-dates the British Empire with the earliest Islamic influences dating back to King Henry who imported Islamic Law from Muslim Spain and modified it into English Common Law.*”²⁹ This was, he wrote, “quite interesting to me and I had to ask the contributor for the source of this information, which he readily gave. He also added that most of the English barristers are aware of this fact but

they never make it public.”³⁰ This is too tentative a thesis to pursue in the present context, but it has some interesting implications about the Muslim claim with respect to the religious background of Common Law. The deepest part of that background could be their own!

*Study Guide 14 – Law, Religion, Culture*³¹ (Appendix 105)

**▲ IMPLICATIONS OF THE CHRISTIAN
BACKGROUND OF COMMON LAW** _____

Having established the Christian background to Common Law, we run into serious problems with respect to the mainstream Christian attitude towards sharia. Until now, Christians have felt free to impose an alleged neutral, religion-free Common Law on Muslims and simultaneously to reject the religion-based sharia. But now that Common Law turns out to be as religious as the sharia, the Muslim complaint about having a Christian-based law imposed on them can no longer be ignored as an ignorant or evil scheme. Muhammad Bashir Sambo’s question is right on. He asked Christians who called for “the expunging of sharia from the Nigerian Constitution to show cause why they do not call for the expunging of the High Courts, which apply Christian-inspired English Common Law, which...is a religious law.”³²

Why, indeed! It will no longer do for Christians to object to sharia on the grounds of its religious nature and then seek to impose their own religious system on Muslims! It is not a case of religion versus secular neutrality; it is a case of two religions that share many social ideals but that also have their real antithetical moments.

Both of these must now be taken into consideration when the serious dialogue of the future begins. This amounts to a shift in parameters. The Christian denial of the Christian background to Common Law, understandable as it may be, threatens to make nonsense of their case. Christians must acknowledge the Christian input into Common Law and come to terms with the parameter shift this demands from them.

Humanism and secularism are not allies of Christianity, but that is precisely where the Nigerian Christians get their inspiration for this alleged separation of law and religion. It is not that they have consciously embraced Humanism and its secular spirit. Nigerian Christians have unknowingly bought into that Humanistic-secular spirit, because they have inherited a reduced version of Christianity that prevented awareness of Christian philosophy and its relationship to Western cultural developments. Christian graduates have been taught little about Christian scholarship and have imbibed a very secular spirit during their university days. Awareness of the profound body of Christian scholarship, especially as embodied in the Catholic and Kuyperian traditions, could have led them in their spiritual and academic developments. Hence they had no defence against Humanistic cum secular arguments.³³ *The purpose of this book is not to attack my Nigerian brothers and sisters; it is to help free them from their secular bondage by exposing both its roots and its effect on them.*³⁴ I also want Muslims to be aware of deeper dimensions of the Christian faith than they may have observed so far.

It should be clearly understood that when Humanism and secularism replaced Christianity in Western thinking, this switch did not constitute a move away from religion, but a move from one belief system to another or from one faith perspective to another. Humanism cum secularism are not non-religion, but *another* reli-

gion. It is, moreover, an intolerant and exclusive religion, a notion that we have already explored earlier.³⁵ *So, Nigerians now find themselves with a choice between three religious legal approaches—Christian, Muslim and secular.*

For now, let us simply remember the affirmations of the above Christian legal writers. Christianity has deeply affected Western law. Humanistic secularism has led to the separation of Christianity and Western law, but Christians should not buy into that perspective. It is a separation of *Christianity* and law, but not separation of *religion* and law, for even secularism is a religion or belief system, though it does not have church buildings. It allows only a reduced version of other religions, privatized and personalized. Most of the Nigerian Christian *principial*—in distinction from *principal*—arguments against the shari’a are based on this reduced secular version of Christianity. As I have argued before, *the underlying issue in all of this is the nature of religion.* We are faced here with an impoverished version of the Christian religion that deprives them of a more mature response to the Muslim challenge.

With religion always undergirding legal systems, I agree with Murray Last, an emeritus professor at University College, London, that the reinstatement of sharia “is not only good religion; it is supremely sound politics.”³⁶ It is wrong and unrealistic to separate them, while their healthy interplay is good and necessary. It is only when rogues enter the arena with illegitimate agendas or secularism with its distorted view of religion that the relationship also becomes illegitimate and distorted. Unfortunately, human nature being what it is, that is the case all too often. And that is why there is the need for the democratic device of checks and balances.

**Study Guide 15 — Law, Secularism, Impositions
(Appendix 105)**

▲ LAW AND CULTURE _____

Not only do I argue, on basis of solid authority, that law and religion are and should always be closely related, but the same holds true for law and culture.³⁷ Lamin Sanneh appeals to the 14th-century classical Muslim scholar Ibn Khaldun, who asserted that “no laws, religions or institutions can be effective unless a cohesive group enforces and imposes them and without solidarity they cannot be established.” Again, “unless religious laws derive their sanctions from social solidarity, they will remain totally ineffective.” Sanneh also appeals to more recent Western leaders of thought to insist that the law “depends on a broad consensus concerning the fundamental constitutional axioms upon which laws and rules are based *without a controversy about ‘belief’ in each round of rule making.*” There should be no disagreements “about the fundamental axioms and their source in religion and tradition.”³⁸

During the Nigerian sharia ruckus, it was argued that Western secular law does not work among Muslims; it is not understood and confuses people. It is not relevant. Ibrahim Sulaiman was especially scornful of its workings among his people. He expressed the greatest contempt for the legal profession in which Muslims were trained to operate secular law. An anonymous writer asked the rhetorical question, “Has there been any nation in history which flourished under thoughts, ideas, institutions and political culture which are not only alien but hold in contempt the history, culture and convictions of a great majority of its people?” Governor Sani of Zamfara State was acutely aware of this prerequisite. He insisted on the cultural appropriateness of his move. The re-introduction of sharia in a Muslim society “is a clear reflection of our people’s culture.” Any objective,

critical or honest person “knows that sharia is an integral part of Muslim life,” no matter what country he lives in.³⁹

Christians similarly affirm the need for close affinity between law and culture. They agree with Muslims that the imposition of a legal system alien to the spirit of a people is counterproductive and ineffective. Support for the need for such solidarity on the part of Lamin Sanneh has already been indicated above as has the strong insistence on the same by Danjuma Byang. For Wilson Sabiya also “law is an expression of the needs and values of a particular society.” In the case of sharia, it is the law of “an Arab society which flourished some twelve centuries ago. That society is long dead.” How can we in this day duplicate that experience in Nigeria?⁴⁰

The problem is that Christians and Muslims *both* regard each other’s legal system as alien and, therefore, not culturally acceptable. Yes, Byang agrees with Muslims that “we all hate foreign domination.” All Nigerians want “to eliminate every form of Western imperialism and neo-colonialism.” But then he becomes erratic and once again falls into the contradictions so common to the victims of Christo-secular dualism. He wants to retain Common Law, an alien product of the colonialism he wants eliminated, and charges that Muslims unilaterally want to “substitute the foreign form of imperialism with an indigenous one, which is not really indigenous after all.” I am sorry, but I am lost! Even apart from the question about foreign or indigenous, the effects are the same. “Someone’s legitimate rights are being trampled upon. He is being forced to abide by injunctions that are repugnant [and alien] to his value system.” A question: Is the secular system not both alien and repugnant to Muslims? *Are we reduced to choosing between two “repugnancies” with the winner taking all? Is that Byang’s solution?*

The need for cultural affinity of a legal system is thus affirmed by a wide range of people from both camps, but this awareness brings the advocates of the *literal* interpretation into a tight spot.

Culture is forever changing. Literalists, what do you have to say? Surely the 19th-century culture of Danfodio varies greatly from that of 21st-century Nigeria, let alone the Arab culture of the Prophet! If law has to fit a culture, it has to change along with the culture. How, then, can Danfodio's version of sharia be appropriate for today—let alone that of even earlier centuries?

Literalists, you need to make this understandable for the rest of us. That may well be a greater challenge than you suspect. What seems to be clear to you, is muddled for the rest of us—and not simply because of some mindless “shariaphobia” on our part! Muslims pride themselves on their rationality. This time you will need it, lots of it!

The principle of law reflecting culture houses another problem. In the discussion about literal and liberal readings of the sharia in Volume 6, it has been noted that law and cultural traditions often get mixed up with each other, so that purely local traditions become elevated to the status of sharia. Any attack on such a tradition is then easily seen as an attack on sharia itself with the possibility of the charge of apostasy.⁴¹ Upon returning from a British seminar, Ado-Kurawa reported there were Muslims in the UK from many different countries and cultures. He saw many instances of national groups elevating their local traditions to the level of sharia. This becomes obvious especially when different nationalities adhere to contradictory customs. It is easier to see this in a foreign context than in your own. Ado-Kurawa had his eyes opened abroad.

So, where does all this leave Muslims in terms of law and culture? *You cannot have it both ways: a stagnant unchangeable sharia that must at all times fit an ever-changing society.* A stagnant codified sharia will evoke resistance even from the faithful, once conditions have changed. Though it will hardly do for me, a Christian, to tell

Muslims what is true for them, in a situation where your divisions are endangering the nation, others have a right to address the issue, since it affects us all.

*Therefore I declare that in this situation the more liberal historical interpretation might be more appropriate. Muslims, you have the responsibility before the nation to ferret out this confusion before you go any further with sharia. Your internal contradictions at this front could wreak havoc upon all. If you don't put your house in order and set some clear **moderate** goals that we can live with, do not get upset if we Christians intrude, for your internal affairs have great external ramifications. Your business is becoming our business!*

But allow me a wager: Experience with Christian divisions leads me to the expectation that Muslims cannot overcome these deep divisions and differences of opinion among each other any more than can Christians. *But if you cannot overcome them, you must learn to live with them in a responsible way as part of the reality of both life and religion.* There was a time Christians could not live with other denominations and fought wars with each other. Eventually, they got tired of it and became tolerant enough to live with each other. Their divisions are still there and greatly weaken them. The situation prevents them from solving certain social problems or even from addressing them as churches. Instead, they work on them at political fronts by joining political parties that support causes closest to their hearts. Sometimes they establish political parties of their own to push their causes. At other times they create various para-political organs to attempt the same. So they try to persuade people through publications and other media and, finally, through the voting system. Sometimes you manage to persuade people; sometimes you don't. Sometimes you win; sometimes you lose.

But if you don't want to shed blood or create chaos, these are the only avenues open to all of us. *Don't force; persuade!* That's the democratic way and the only way, a way of determined struggle without guarantees.

The Muslim belief that everyone is Muslim by birth and nature and that it only takes proper reasoning for people to return to their Muslim senses, should convince Muslims that the democratic way of persuasion will lead to inevitable success. Muslims, I challenge you to believe in the alleged rationality of your own religion. Be Muslim. Be reasonable and persuade. Democracy could be on your side!

▲ DISTORTED LEGAL SYSTEMS

Historians present conflicting pictures of justice and sharia conditions around 1900, the year the British declared the Protectorate of Northern Nigeria. Some idealize that situation, while others paint a dismal picture of grave injustice. However, there is general Muslim agreement that Lord Lugard, the first colonial Lieutenant Governor of Northern Nigeria, set into motion a process that deeply undermined Islam and led to serious deterioration of the Muslim spirit. He reduced the scope of sharia, introduced the repugnancy concept and inserted the virus of secularism. The eventual result was an unhinged and deranged Muslim society that gradually degenerated into historic depths of vice and immorality. Emirs and other Muslim authorities were bought over by the colonialists and betrayed the people. The mind of the elite was distorted away from Muslim values and enslaved to Western concepts.⁴²

By the time the sharia controversy heated up in the 1970s, the administration of sharia had already seriously deteriorated. What is the sharia that Christians opposed so vehemently as described in

Volume 7? Critics from all persuasions, including Muslims, recognized it was a sharia badly distorted by colonial secularism, by unqualified judges and by corruption.⁴³ Arbitrariness, personal ego, power and anti-Christian sentiment combined with ignorance, especially at the lower level, marked the system. By the time the Zamfara-style sharia made its debut, sharia governments were all faced with a totally inadequate sharia establishment and underqualified judges. The whole system needed revamping.⁴⁴ These were considered *serious* shortcomings and called for *serious* reactions on the part of Muslim authorities: outright dismissal or upgrading of incompetent judges and delay by governors in carrying out sentences. That was and is the sharia court system that has harassed Christians over the decades. Christians should realize that they were harassed by a system put in disarray, according to Muslim writers, by the imposition of secularism. This was the sharia at its worst, but it is the only one they have experienced. They have never seen a proper sharia system in place. When Christians berate sharia, it is that distorted sharia they berate.

Christians and Muslims look at this negative situation very differently. Muslims insist that the problems arose from ignorance, incompetence and corruption of an impeccable system, while Christians charge that these problems arise from the nature of sharia itself. The sharia Christians complain about, according to Muslims, is not the true sharia; it is the deformed sharia of colonial vintage, made even worse by corruption and incompetence. It is good to remember this situation when we read about Christian complaints over sharia courts. *They don't do themselves a favour by ignoring this important point, but neither have Muslims done much so far to prove their point.*

When the new sharia regime began, various participating states made every effort to reform the system by upgrading the training and by either dismissing or suspending corrupt and unqualified sharia judges.⁴⁵ But it takes a while to turn a ship around.

Christians report continued harassment and oppression by sharia judges on a wide scale.⁴⁶ Muslims can boast all they want about sharia justice, Christians have neither seen nor experienced it, neither BZ nor AZ.

*There must be a clear and widespread demonstration by the Muslim leadership and the general ummah that they will do everything in their power to stop the sharia shenanigans that even Muslims complain about.⁴⁷ At the moment there is massive doubt among Christians that Muslims even **want** to achieve that or can. Until they do, you cannot expect Christians to have any sympathy for it or render it any support. Muslims, the ball is once again in your court.*

If Muslims want Christians to have confidence in the sharia and in the Muslim promise that it will not affect Christians, it is up to Muslims to demonstrate that the administration of sharia has been cleaned up and, secondly, that it will indeed not affect Christians. The operative word here is *demonstration, persistent, ongoing demonstration*.

There is even the problem of corruption of the *new* sharia. I am not talking about the continuation of the old style corruption, which is indeed continuing and has hardly been nipped in the bud. Muslims themselves have two complaints about the new. The first is that it is applied only partially. Musa Ibrahim, a law student at BUK, is one of many who lament the emphasis that people place on the *punitive* aspect of sharia. That aspect, he argues, represents only one-seventh of sharia, while the entire sharia has “seven faculties” or aspects. Yet people judge a sharia government only by the number of amputations and lashes as their benchmark. This is “fundamentally wrong.”⁴⁸ The second complaint aired by Muslims themselves is that even this already reduced punitive version of sharia is applied only to the poor

called *talakawa*, Kuyper's *kleine luyden*, the low middle class and peasantry. This twofold reduction of the broad sharia has exposed Nigerian sharia to global derision and provides legitimacy to the Nigerian Christian rejection.

*The **challenge to Muslims** here is to clean up their sharia act and demonstrate its alleged beauty. They must make it so attractive that Christians are drawn to it by jealousy! That Christians begin to call for it, that they recognize its superiority over the lawyer-dominated commercial system of justice with its interminable delays and its unconscionable expense.⁴⁹ The **challenge to Christians** is to recognize that they have only experienced a distorted version, not the real thing. How about giving Muslims a chance to operate it on Muslims alone, according to the mainstream promise, for five more years—let's say, till 2015—and see whether the alleged splendour of this sharia flower has come to blossom. Give them a clear deadline. During that time, Muslims concentrate on cleaning and polishing it up to the real standard. **Let them create a showcase so that by 2015, Christians and Muslims can discuss where to go with it from there.***

As contemptuous, angry and hateful as Christians may be with respect to sharia, there is also reason to respect it. Viewing it globally and historically, Syed Rashid considered it “arrogance to assume that the fourteen centuries of accumulated Islamic learning have nothing of contemporary relevance.” He turned to Joseph Schacht, who stated that sharia is “one of the most important bequests which Islam has transmitted to the civilised world. It is a phenomenon so different from other forms of law that its study is indispensable in order to appreciate adequately the full range of possible legal phenomena.”⁵⁰

Sharia may not come up a winner when put in the ring with modern democracy, but it deserves more respect than cheap categorization as primitive. Yes, Nigerian Christians have studied it and know much about it, but their historical experience with it has led to so much anger that it has prevented them from studying it with an open mind and respect. A system with such a long history and so much influence even in Common Law deserves at least a calm, collected and respectful scrutiny from them before they decide to chuck it altogether.

Furthermore, there is also a distortion problem with the *Common Law* system. Mahmud Tukur described for us how it works for the ordinary person. Actually, it does not work *for* them but *against* them in every way, as he spells out for us in great detail till it makes one marvel at the patience and endurance of the people to tolerate it.⁵¹ According to Tukur,

...the majority of the ordinary Nigerians know and understand that they get speedy justice and fairer treatment in these systems [sharia and native] than under the cumbersome and unsuitable "civilised" law. The colonial "injustice" system slowly churns out its measures in dribs and drabs, subject as it is to endless adjournments, sessional ceremonies, appeals, lost documents, lack of equipment, incomprehension, insensitivity, vanished witnesses, arranged judgements, misappropriation, etc.⁵²

Common Law obviously did/does not resist or prevent the growing brutalization of society.⁵³ That being the case, why do Christians so enthusiastically and uncritically endorse the colonial system, when they are fully aware of all of its shortcomings? Every one is painfully conscious of its corruption and inefficiencies. The reason, of course, is that though they have a mild

resentment for colonialism, their semi-secularization coupled to their hatred, fear and anger with respect to Islam and sharia trumps it all.

▲ DOUBLE IMPOSITION; DOUBLE REPUGNANCY —

Byang derides “some people”—Muslims—who “want the political system to adopt their value systems, to the utter disregard of the value systems of other citizens. They want our [system] to be based on their own religious principles, which often conflict with the principles of other fellow citizens. And of course, they want everybody to suddenly change their religion and embrace theirs.” He describes the Muslim judiciary with contempt as an expression of “their whims and caprices.”⁵⁴ *But when he insists on a secular arrangement, is he not doing exactly the same thing: applying secular “whims and caprices?”*

Byang was young and bright when he wrote his book. I have respect for him, his abilities and achievements, and I hope that my critique will not damage our mutual respect. But he serves as an example of two problems that bedevil even the brightest among Nigerian Christians. First, there is their inheritance of semi-secularism that blinds them to the full nature of religion and worldview. I have claimed earlier that Christians who flirt with secularism always end tangled up in contradictions. That is the nature of syncretism. Byang is a very clear example. Secondly, he shares the spirit of anger that hovers over all of Nigeria and keeps people from thinking straight and objectively. Brother Byang, you have to work your way out of these contradictions—and as you do, please bring the rest of the community with you.⁵⁵

This becomes even more of a problem when there are two legal systems, both of which are berated as foreign imperialist impositions by one party or the other. Wilson Sabiya argued that when Muslims reject Common Law as an imperialist imposition, they

forget that their own is also an imperialist imposition. The fact that sharia preceded Common Law in Nigeria does not make it less imperialistic! He concluded, "We cannot...see the rationale of replacing one imperialistic law with another. Nigeria has no privileged group who are free to import foreign laws and force it down our throats as indigenous."⁵⁶ *But Sabiya does not go so far as to acknowledge that Christians are also imposing an alien system.*

Christians hold that imposing sharia amounts to the imposition of foreign culture and religion. It does not speak to them and only evokes revulsion. To use that old controversial term, it is repugnant to them. But why? Because it is *inherently* repugnant to them or because of its close association with Islam, a religion with which they are currently at odds? Certainly, the current standoff increases its repugnance among them. Muslims need to understand that and cannot ride roughshod over that reaction without expecting strong resistance.

And indeed, even in the core North, sharia was historically a foreign import that some adopted voluntarily and others under force. But over time that has *become* an indigenous law system for the Northern Muslim community. Historically it was foreign, but now it must be considered indigenous. It has laid its stamp indelibly on the people of the core North. *Muslims do well to remember this foreign origin when they argue the foreign nature of Common Law. If their foreign law has become indigenous, why do they deny others the right to appropriate as indigenous another foreign system more to their liking and less repugnant?*

When we weigh the two issues together—the religious nature of both systems and their alien imported status—you cannot but conclude that *both religions are committing the same offence. Both seek to impose their own adopted alien belief system on the other.* Muslims have a strong case when they insist on the Christian nature of Common Law. They have long been governed by what is largely a Christian legal system. *They have had the Christian tradition imposed on*

them. It will not do for Christians to object to sharia on the grounds of its religious nature and then seek to impose their own religious system on Muslims! Two wrongs do not make a right. If you deny Muslims the right to impose theirs on you, what gives you the right to impose yours on them? It is not a case of religion versus secular neutrality; it is a case of two religions that share many social ideals even though they also have equally real antithetical moments. Both of these must be taken into consideration when the serious dialogue of the future begins. The Christian stance, that is, denial of the religious background of Common Law, imposition of the alien law of their choice on others and rejecting the Muslim imposition, understandable as it may be, severely weakens their case and threatens to make nonsense of it. Christians must come to terms with the entire situation and rethink their case.

But the same holds true for the Muslim insistence on sharia, quite apart from the question whether they intend to impose its application on Christians or not. Theirs, too, constitutes an impo-

Clearly, the above shows that, unless Christians take a distance from the distortions of their semi-secularism, cleanse themselves from their dualism and practise a more wholistic form of Christianity, they will continue to flounder between bewildering contradictions that render them powerless and that earns them the disrespect from Muslims.

Similarly, Muslims must somehow get it through their heads that, as much as they love their religion, when they force it down an unwilling people's throats, they only create repugnance, revulsion, resistance, anger and a whole lot more barriers to the advance of their religion. Have they forgotten the lessons of history? When they were slavers, the MB people hated them, but when they ceased the practice under the force of colonialism, millions of MB people became Muslims. 21st-century Nigerians have so far shown the

opposite tendency. Muslims have only succeeded in raising barriers of hostility towards their da'wah plans. Christians are on very high alert and have raised the threshold. The Zamfara-inspired sharia campaign is self-defeating from the da'wah perspective. The pre-colonial hostility to Muslims has been revived by a people much more alert and sophisticated than their ancestors.

sition of an alien worldview, regardless of its truth value. Even if it has become indigenous to them, it is alien to Christians. *So are we now left to choose between double imposition and double repugnancy? Imposition vs imposition. Repugnancy vs repugnancy!*

Apart from all the issues in this section, there is the surprising admission on the part of some Muslim experts that, really, the provisions of the Common Law and of sharia are fairly close.⁵⁷ So, now the question forces itself upon us: Why then all the fuss? In a nation with two huge but very different populations, you should be happy when the law is *close* to your standards. You can never expect it to meet yours perfectly. Some compromise cannot be avoided in our pluralistic situation, something that is hardly foreign to the history of Islam, but that the more militant tend to reject.⁵⁸ That being the case, people have good reason for suspecting that something else is at stake.

*That "something" is sometimes identified by Christians as the Muslim "**plan**"⁵⁹ that would render sharia simply a phase in the Nigerian da'wah project. I really suspect that to be the actual case. And if it is, then a case can be made for Christians to **seriously** hold back the flood by opposing **every** Muslim effort. Unfortunately, such an approach will undermine the democratic values of pluralism, tolerance and multi-religion. Of course, in the long run so will the Muslim da'wah plan. **Are we really condemned to both groups constantly obstructing each other?***

Study Guide 16 – Law and Imposition (Appendix 105)

▲ CULTURE CHANGE VS STATIC INTERPRETATION OF SHARIA

If law has to reflect the values, beliefs and culture of the citizenry, then the idea of an unchanging eternal set of codified laws would seem to be out of the question, an issue that Zamfara-style sharia advocates seem not to have considered. What happens when cultures change? Can you hold to a sharia interpreted literally in the same way through the ages? It would appear that here you have a serious inconsistency on the part of advocates of the literal sharia, who do mostly insist that law must reflect culture. But when sharia Governor Sani c.s. insist on this principle, they appear to be thinking statically, only in terms of this present moment, in order to score a point; they are not thinking of the constantly changing flow of history that is anything but static.

Kuyperians have long acknowledged that there can be no unchangeable codified law that is applicable in all human situations. Hebden Taylor wrote, “The acceptance of unchangeable legal rules is nothing less than an under-estimation of historicity, or the value of man as a culture forming creature.” His reasoning is similar to that of the dynamic liberal Muslim interpretation of sharia that takes the historical human contribution to a divine process seriously and recognizes that the basic norms inherent in sharia need to be applied anew in every age.⁶⁰ Taylor continued, “The world is subject to continuous change; new social structures emerge...; new views break through. These new social structures demand new legal systems. Changes in the historical situation... demand the application of new legal principles.”

Here is where the Kuyperian parts ways with secular thinking. When we do adopt new laws to conform to new situ-

ations, “we do not logically deduce these from the historical givens...” as the secularist tends to do, but we discover them from divine norms. Muslims might say from the sharia. Kuypereans do not simply cook up new structures that have no basis in creation and history as Liberals and secularists tend to do and disregard time-proven traditions.⁶¹ Divine norms and the creation order do not change, but they do require “different formulations” at different times.

*Every period and every place calls for specific legal institutions, which may differ from the legal rules that may apply at other places and...times. Only in this way can we do justice to the element of historicity, to the principle of development, which is one of the tasks of man, created in responsibility, to have dominion over the earth and to subdue it. Convincing proof of this is given by the fact that, if this requirement is not fulfilled, positive [codified] law can fall into disuse, can even become an injustice, when it is no longer the correct embodiment of a legal norm.*⁶²

Rushdoony insists that Christians need first of all to recover a wholistic sense of religion, aspects of which I have outlined in Volume 5, Part 2. All of life must be seen as religious, including law. We need an approach to law that is based on *God's* sovereignty over all of human life, not on *human* supremacy. Everything in creation, humans, plants, animals, inanimate beings—“everything created is subject to the laws of God.” Drawing upon Herman Dooyeweerd, Rushdoony stated that one should not “conceive of the notion of [God's] law in a purely juridical or moral sense. God's laws are not confined to the Ten Commandments. They must be seen primarily as universal ordinances... encompassing creation in all its aspects.... Their ontological character is guaranteed by the fact that they are not founded in the subjective consciousness, but are created by

God.”⁶³ That is to say, that the basic norms are not the product of mere human whims, but of God Himself. They have their own objective existence, as Herman Bavinck, a contemporary of Kuyper, argued at length almost a century ago.⁶⁴

There are at least two things to be learnt from the above Kuyperian discussion. The first is the fluidity of concrete positive laws. Yes, their base is nothing short of God’s own creation ordinances. Those do not change, but their application does change with changing times and circumstances. There are no fixed unchanging positive laws. Fixed positive laws eventually become oppressive as the situations they support change. Slowly a situation develops where the people no longer feel comfortable with their legal system and a disjunction between law and culture develops, the very situation I have warned against. From the point of view of Islam, we are back in the neighbourhood of the liberal interpreters of a dynamic sharia who argue the same way.

The second lesson here is that

Christians need to recover or develop a deeper and more comprehensive perspective on the law of God in order to better represent Him in their dialogue with Muslims. They depend too much on secular theories. They must destroy the straw man that Muslims have created with respect to Christianity’s allegedly anemic view of God’s law and of religion in general.

Christians must be able to stand tall when Muslims argue that the entire human race along with all of creation is under sharia. They can only do so by rejecting their semi-secularism that has bequeathed them such an anemic version of God’s law. As it is, Christians on the whole cannot stand up to Muslims in any intellectual discussion on this subject, for they simply have not been equipped to deal with such subjects.

When in the process of devising laws, we must learn to think and argue from the platform of creation ordinances from which to develop flexible positive law that fits the culture where it is applied. In a Christian-Muslim context there is no need to hide the religious background of our political activities. Openly discussing them leads to greater mutual understanding and potentially can lead to more effective and intelligent compromises that will have longer staying power.

Again, I am not berating my Nigerian brothers and sisters. Rather, I am bemoaning the superficial version of Christianity they have inherited.⁶⁵

In this section I have in essence argued for the *liberal dynamic* interpretation of sharia. In previous volumes I have demonstrated the negative consequences of the *literal static* approach. Many Nigerian Muslims are aware of these consequences and describe “the applied sharia as exceedingly strict, unbending, legalistic.” They disapprove of such a rigid application.⁶⁶

Paul Marshall, a major Kuyperian writer and also a global specialist in current sharia developments who frequently advises American government officials on Muslim issues, conducted extensive sharia research in Northern Nigeria. It is unfortunate that he concentrates exclusively in his reports on the practical effects of the literal sharia applied in this country. His Nigeria reports are worth reading as solemn warnings against the literal interpretation. That, in fact, is the reason I discuss his report at all. But be aware that he has restricted his comments to that literal version; he writes nothing about the liberal dynamic one. This can easily be forgotten so that the reader interprets his report as a tirade against any type of sharia. American officialdom is an important part of his target audience, who, working under heavy time pressure, can very easily make that mistake and develop their policies on that basis. His report can easily lead to the impression that the oil interests of the

US are best served in squashing the sharia campaign.⁶⁷ He could better advise the US to give strong positive support to moderate leaders and liberal sharia interpreters, as did his boss, Nina Shea. She advised US officials to “offer...substantial support and assistance” to moderates who resist “extreme sharia rule” as well as “vigorously defend persecuted religious minorities...who bear the brunt of...charges growing out of extreme religious intolerance.”⁶⁸

Even today, Nigerians, both individuals and representatives of churches, mosques and other organizations with influence on the US government should seriously encourage the US and other Western powers to pursue such an approach vigorously. These governments should not forget that, while literal sharia movements receive generous financial support from Muslim oil countries, moderate Muslims in Nigeria and Christians have no such well to draw from. Christians may have their missionary friends and supporting constituencies in the West, but their financial support is miniscule compared to that of Muslim oil countries. Besides, these mission funds are directed elsewhere, not to this sharia struggle.⁶⁹

***Study Guide 17 – Law: Permanence and Change
(Appendix 105)***

▲ LEGAL PLURALISM _____

Legal pluralism may be defined simply as the acknowledgement of “the existence of differing legal systems in the world” or, in the context of this series, within Nigeria. Actually, according to some Wikipedia articles, the Nigerian situation is quite typical of former colonies, particularly of those with a sizable Muslim population. Muslims have traditionally been open to a restricted kind of legal pluralism, allowing minorities to operate their own laws

within a limited scope. They actually boast of their historical legal pluralism and love to contrast it to previous centuries when they were more tolerant than the nations of Christendom.

Ibrahim Sulaiman offers us an Islamic recipe for a pluralistic legal system for Nigeria. Two negative points and one positive. Negatively, upheavals and violence are the natural results of preventing religious groups from maintaining their laws, as is the case when the full sharia is denied them. In addition, Nigeria needs to commit herself "to abolish all aspects of imposed laws which are inconsistent with our fundamental values, norms and the demands of our faith. In fact, the entire colonial legal enterprise must be abolished and be replaced with our authentic and legitimate laws." It apparently has not occurred to him that sharia is also imposed, albeit a century or two earlier. Positively, in Muslim-majority areas the sharia must be allowed full scope and it must have precedence over every other legal system in the country. Those other systems must be accorded recognition in accordance with their number of adherents. That sounds magnanimous, but this is all predicated on basis of an assumed but unproven and doubtful majority of Muslims. Sulaiman cannot envision permanent minority status for Muslims. Elsewhere he advises that Muslims will not rest till they have achieved majority status. So, a restricted legal pluralism with Muslims calling the shots and limited legal freedom to minorities. Sulaiman also suggests junking the current secular system and starting anew by open negotiation with Christians. Wherever you scratch Sulaiman a bit, you will find him always thinking in terms of Muslim majority, a tendency that should cause no surprise. When you read enough Muslim discussions about sharia, you will discover the truth of Sookhdeo's statement, "It [sharia] was created in a context in which Muslims held political power, and thus lacks [detailed] guidance for Muslims living as a minority under non-Muslims."⁷⁰ The one general guideline is to accept the secular government under which they live but work towards a Muslim victory.

It is not anytime soon that Sulaiman c. s. will convince Nigerian Christians to accept what amounts to a kind of dhimmi status. Today's definition of pluralism has gone far beyond this restricted type based on majority. Especially with reference to the federal situation, I have rejected this numbers game earlier in Chapter 8 and refer you there. The mentality underlying the numbers game will only obstruct honest negotiations for the future. Attempts to hide it will fail; the mentality will definitely rear its ugly head and poison the atmosphere.

Many Nigerian Christians reject legal pluralism in favour of a single secular system. From the first CA on, Christians argued that pluralism will create disunity in the country.⁷¹

Wilson Sabiya wrote, “We must introduce a uniform personal law for the purpose of national consolidation.”⁷² Danjuma Byang rejected legal pluralism for a couple of reasons. One is the Nigerian Christian experience with the BZ sharia. He wants nothing to do with it. Another is the experience of Sudan where it has been attempted but has not worked there, even though Muslims are in the majority. That being the case, it definitely will not work in Nigeria, since Muslims are in the minority according to him. Furthermore, there is no basis for it “where there is harmony and mutual respect for one another’s value systems.”

But here is the rub. Such harmony and mutual respect do not exist in Nigeria. All the previous volumes of this series scream it out. We have already overheard Ibrahim Sulaiman explaining that Nigeria’s “social tensions and upheavals” are the result of Nigeria’s lack of harmony and respect. The latter can develop only when the laws of *all* religions are recognized. Furthermore, Byang has insisted, as have Muslims, that a legal system must be indigenous to the culture where it operates. An alien legal system does not work. He wanted Nigerian “moral and value systems”—note the

plural!—“incorporated into the legal system to ensure that the laws are indigenous to us all.” His use of the plural here indicates that Byang is well aware of the plurality of Nigeria’s “moral and value systems.”⁷³ How then can he ignore its implications so blatantly? This plurality means that sharia will not work for Christians and Common Law will not work for Muslims, since both are alien to Christians and Muslims respectively. All of Byang’s logic should have driven him towards legal pluralism, but dualism, bad experience and subsequent anger have prevented him from following his own logic. Again, we run into the contradictions that naturally come with the Christian dualistic framework.

In Nigeria’s situation of radical multi-religion, legal pluralism is mandatory. Byang’s own position demands it. The alternative is for all groups but one to be governed by an alien legal system. Nigerian Muslims rightly complain that this has been their lot with Common Law. Nigerian Christians reject sharia to avoid the same for themselves. So why can we not understand each other’s mutual resistance? Are these not parallel situations? The goose and the gander!

But there are some other considerations. In a democracy, the majority chooses the legal system, an event that usually takes place at the dawn of a nation’s history and from there it continues to evolve, but always according to majority dictates. In a modern democracy, human rights demand that minorities have their rights spelled out and protected; they cannot simply be overridden. Nevertheless, the majority makes the decisions and the minorities are expected to honour those decisions or, at least, to obey them, even if grumbling and under protest. Muslims, whether they are majority or minority, have had an alien system called Common Law imposed on them by colonialism. Though it was originally also alien to Traditionalists and Christians, the latter have learned

to live with it and now insist on its continuation, even over Muslims. Christians have not sympathized with the lot of Muslims who are uneasy under the alien system, even though Christians agree that an alien imposed legal system will not work. That being the case, what gives Christians the right and even the audacity to demand opting out of the law of the majority in sharia states? Remember the goose and the gander once again.

*If the majority rule is the democratic norm, why is this norm abrogated by Christians in sharia states? I know, the reason is the myth of the neutrality of the secular system, but by now I trust that you, my readers, have rejected this myth and realize that both systems have developed under the guidance of religion. **If in Muslim-majority states, you do not accept the imposition of Muslim law on yourself and your people, why do you expect Muslims to accept yours in Christian-majority states or, for that matter, nationally? What is the meaning of democracy?***

Muslims generally advocate pluralism to make room for sharia and argue that Islam has always practiced it. The reference is, of course, to the traditional *dhimmi* arrangement under which Christians are allowed to follow certain aspects of their own religious law in a situation prescribed basically by Muslim authorities. Both Islam and secularism allow adherents of other belief systems freedom of religion as defined not by adherents but by Muslim or secularist authorities in power. Christians usually end up being allowed to express their religion only within the walls of private lives and church, but definitely not in the halls of government or in the open marketplace. Though that arrangement may have included a degree of tolerance that was greater than that which Christians allowed Muslims in the past, by modern standards it can no longer pass for pluralism.

Besides, apart from the Common Law, what do Christians have to offer in terms of legal pluralism? The Muslim attitude is somewhat confusing in this respect. On the one hand, they argue that Common Law has a Christian background. On the other, when it is to their advantage, they will assert that, apart from Canon Law, Christians have no alternative legal system of their own and thus have nothing to offer. Common Law, some argue, is based on ancient Roman Law and has no foundation in Christianity. In fact, "Christianity does not have a legal system of its own."⁷⁴ Given the Nigerian Christian confusion at this front, the Muslim confusion is no surprise.

The sooner Christians and Muslims together clear up the fog surrounding religion and Common Law by acknowledging historical influences and relationships, the sooner they should be able to negotiate their way towards a legal system that gives free scope to religious input without secular prejudice, provided negotiators proceed with goodwill.

One of the questions these negotiators will have to sort out is just what it is sharia advocates are after. Are they simply after a legal system that includes certain Muslim requirements? For example, Zamfara State Government placed certain sharia provisions into the Common Law system. That is how many Christian laws crept into the Common Law over the centuries, but without reference to their original source. There was no declaration or other strong point made about it being a Christian or Biblical law. Would that process satisfy sharia advocates? For some it might, but, I am sure, not for the majority, for they have in mind more than just a few laws. Their goal is nothing less than the Islamization of the country.

*If the sharia campaign is at bottom part of the effort to dip the Qur'an in the Atlantic, to place an overtly Muslim stamp on the system, then we have a problem on our hands that requires the input of those wise people and other experts I have mentioned earlier. I would advise Muslims not to go that route but to be satisfied with what reasonable negotiations can be expected to yield in multi-religious and pluralistic Nigeria. **In the long run, this will earn them more respect—and more converts! It is the wiser course for da'wah and a more effective jihad without enemies. It does not get better than that!***

Muslims, remember! You need to *showcase* your religion, not force it. Take it from an experienced missionary and missiologist.

▲ CANON LAW

Canon Law is part of the legal pluralism issue. A perusal of the subject in Volume 7 will fortunately indicate that the proposal to adopt Canon Law in response to sharia did not get much traction among Christians, but it nevertheless evoked considerable discussion among them.⁷⁵ Though I respect the motivation that led to the proposal, namely to respond to sharia in a religiously wholistic manner, it was still based on the very dualism canon law advocates were at pains to reject. It comes from the almost instinctive secularly motivated identification of Christianity with the church institute and its methods. They have “*churchified*” Christianity. I have previously shown at length that Christianity is much wider than the church and is meant to embrace all of life. There is the church *institute*, remember, as well as the church *organism*.⁷⁶ Like many other Christians, Canon Law proponents can hardly conceive of a Christianity of so-called “lay people” that would have significant things to say to the world of politics and economics, even *structural*

things, without the involvement of the church institute with its clerical hierarchy. The Kuyperian tradition especially has produced an entire library on topics of this nature not only, but also a myriad of societal structures where, after much legal struggle to be sure, it was allowed scope of operation, especially in The Netherlands, Canada and, to some degree, in the US. It usually has to buck semi-secular religious and fully secularized political and other establishments to achieve its aims. In view of previous discussions, there is no need for further detailed treatment. I do encourage Nigerian Christians to examine the Kuyperian alternative, especially its expression in Canada, where at the moment it is probably the most vigorous and intense and where it is making significant contributions to the life of the nation.⁷⁷

So, Canon Law is not the way to go. Good Canon Law can make for good churches, but it is not suited for solving social problems.

▲ ADEQUACY OF PENAL CODE _____

Suggestions that there is no need for the sharia revival since the Penal Code already contains most sharia provisions, have evoked much impatient annoyance among militants ever since the first CA of the 1970s, but especially during the AZ days. It was not really a matter of whether all the issues were adequately covered in the law. Sharia protagonists want the full sharia incorporated and are not interested in the question of the adequacy of the secular Penal Code. They want divine, unchangeable law, not human law subject to change. They want to do away with the insult and affront of secular human law trumping sharia. Auwalu Yadudu let it be known that it could not be tolerated that sharia exists “at the mercy and under the shadow of Common Law,” that it is not “an autonomous and self-regulating system,” but is defined in terms of Common

Law. *At bottom it is not a legal issue but a religious rejection of human law, particularly of secular Common Law.* This was made worse by the fact that this human law was imposed on them by the hated colonialists, who had rejected the sharia as “repugnant.” Now the secular, colonial Penal Code was rejected as repugnant. Repugnancy has come full circle.

Some sharia governors actually took some sharia provisions and codified them as Common Law to make them legal, but that could be done only with some issues, not with those declared illegal by Common Law.⁷⁸ As far as the militants were concerned, it did not really touch their real concern.

Christians occasionally remind Muslims that their revered Sardauna accepted the reduced sharia. So why should Muslims reject it? However, according to Tanko Yusuf, who worked closely with him, he was not the tolerant Sir Ahmadu that Christians uphold as an example to Muslims; he fooled people into thinking so.⁷⁹ When Christians uphold him before Muslims as the paragon of Muslim virtue and tolerance whose example they should follow in his support of the Penal Code, they are twisting the facts. It is no secret that the Sardauna accepted it unwillingly under threat, not to say blackmail.⁸⁰ He made a major *compromise*. It was the best he could get at the time. The important part of this story is not that he accepted the Penal Code but that this revered hero made a *serious concession* at a very crucial point. In contrast to the Sardauna, sharia proponents often sound as if they can be satisfied

In fact, throughout history Muslims have often made concessions and lived with them with a degree of satisfaction⁸¹—and who can expect more than that in this world? This history should encourage Christians and restrain Muslims when they negotiate a new modus vivendi. Compromise is not as foreign to Muslims as some of them suggest.

only with 100 percent of their demands without compromise or concession.

▲ GOVERNMENT FUNDING RELIGIOUS COURTS AND LAWS

The issue of government funding of religious courts was a contentious one, especially since only Muslims are thought to have religious courts. The practice meant, in effect, that Muslims were receiving more of the national cake than did Christians. That was, of course, the reason Christians eventually insisted on their own government-funded pilgrimages. It was their way of ensuring a greater share of the national cake. But it remains strongly in Muslim favour, since many more Muslims go on the pilgrimage. Again, Danjuma Byang did not think it unconstitutional “if government finances religious institutions,” as long as it supports all equally. But after all was said and done, Byang thought it economically, socially and politically unwise to have government-funded religious courts for every religion in the country. He really did not want Nigeria to move towards religious courts, not even in order to create equality of recognition, access and expenditures. Christians would prefer a situation where government disengages itself from funding Islamic or any other religious courts.⁸² You are also reminded of the view of E. O. Alemika of Unijos, again typical of mainline Christian thinking, namely to separate religious courts from the government judiciary. Each religion should devise means by which to guide its members to live by its religious laws. And then his challenge to Muslims: *Islam is weak if it needs the government to regulate the religious lives of its members.*⁸³

I recall John Onaiyekan’s helpful comments from Volume 7. The question is not whether Christians or Muslims are to be guided by their religious laws. Of course they should. “The question rather is whether these religious norms must be imple-

mented and enforced by legal instruments of government, precisely as religious law.” At this point Onaiyekan steers the discussion towards the topic of secularism, since that underlies the sharia issue.⁸⁴

*These comments lead to the question why these sharia provisions, either at federal or state level, in so far as the citizenry can agree on them, cannot be codified to fit into the current legal system as a few sharia governments did with some sharia provisions. Why can this not be done wholesale? What is the problem with that? Do they then cease to be the sharia of God? Are they then suddenly transformed into a **human** word? That is exactly what was done with Common Law: Christian concepts were codified and incorporated into the normal legal system of the West. **If Muslims still recognize these as Christian laws, why can they not recognize sharia laws codified into Common Law as Muslim law, as interpretations of God’s law?***

Muslims and Christians must seriously discuss these issues, but that will be impossible if either has a hidden agenda of imposing their system on the other or if their minds are still burning with anger.

Let us question a little more. Why can sharia provisions not be incorporated into our Common Law? The sharia forbids murder. That is said to be the word of Allah. Now the Common Law also forbids murder. Does this now suddenly cease to be the word of Allah and become only the word of man that a Muslim may ignore? *At what point does it cease to be the one and become the other?* Muslims deny that the prohibition against murder in the Common Law is religious law in one context, while in another context they recognize Common Law as infused with religion, the Christian religion. They also frequently insist that the Old Testament laws are similar to those of sharia. In addition, they like to think that

Western law in its early developmental stage was influenced by Muslim law. When you add all these connections and relationships and bring them into a relationship with sharia and Common Law, then the sharp distinction many Muslims insist on between the two becomes very difficult to uphold. It seems it is all connected through centuries of interaction between the various forces that have led to the development of both sharia and Common Law. Yes, I speak of the *development* of sharia without denying that it has been revealed in its original form to Prophet Muhammad. God can speak to whom He wishes. Muslim historians have long acknowledged that sharia underwent further development over time. That has not generally been seen as a threat to its divine origin—until fundamentalism reared its head and began to ignore or even reject the human or historical aspect of sharia. The Wahabist version of this fundamentalism is not of recent vintage; it has been with us for some centuries.

One of the underlying issues here is the relationship between divine and human action. Muslims and Christians may well wish to discuss this together and see where it leads them. When a divine word or action is appropriated by humans, does that spell the end of the divine? Does the one cancel or exclude the other? When God reveals His law in one age and culture and pious people study this law over the centuries and prayerfully consider how this law applies under new circumstances, can their conclusions be recognized only as purely human? Or can we recognize the hand of God in this process and continue to honour the updated version as a human approximation of His law? Must we dismiss and even despise such legal development as purely human and therefore not worthy of Islam?

The Christian theological term to describe this relationship between divine and human activity is “*concurrence*.” Allow me to adduce the theological reflection of a few prominent Kuyperian dogmaticians of repute on the subject. Their basic approach is that

God works in and through His creation in general as well as through the human race. God and creation do not work separately, each doing His own part. The oft-translated Louis Berkhof of Calvin Theological Seminary, describes the doctrine thus: “The same deed is in its entirety both a deed of God and a deed of the creature.” “There is interpenetration here, but no mutual limitation.”⁸⁵

Interpreting one of his predecessors, Herman Bavinck, a contemporary of Kuyper, Gerard Berkouwer writes, “The entire creature is dependent on God, but receives, through the working of God, the possibility for its own creaturely activity. God...maintains things in such a state and works in them in such a way that they themselves cooperate as second causes.” He also quotes from the New Testament: “Work out your own salvation with fear and trembling; for it is God who works in you both to will and to work...” (Philippians 2:12-13). “God’s activity does not exclude or annul human enterprise.” The Bible “nowhere suggests that God’s work is limited by human activity or that God’s activity negates human enterprise.” “God’s work does not blot out human activity, but defines and contains it.” The theological term “concurrency” “means nothing more than a rejection of all *identification* of or *dualism* between divine and human activity.” “Divine activity is simultaneous, coincident with human activity.” Again he refers to Bavinck, who “emphasizes that there is no division of labour between God and man.” “The product is in the same sense wholly a product of the first [cause—God] and wholly a product of the second cause” [man]. Christians and, I believe, Muslims confess “God’s providence over the entire flight of history. Providence does not remove the seriousness of history [i.e.mankind]; it charges history [mankind] with responsibility.”⁸⁶

Then there is Gordon Spykman, the German-American theologian who modeled his *Reformational Theology* after the philos-

ophy of Herman Dooyeweerd, both of them being spiritual heirs of Kuyper. He describes concurrence as a “way of elucidating the Creator-creature relationship. It excludes all notions of competition, fifty-fifty co-operation, half-and-half complementation, or mere supplementation. God by His Word works in, with and through the currents of history to prompt the elicited yet uncom-pelled response of human communities.”⁸⁷

The doctrine of concurrency has much foundation in the Bible as the above theologians have shown. And all of it is undergirded by the promise of John 14:26 and 16:13 in the New Testament that after the ascension of Jesus, God will descend in yet another form called Holy Spirit, who “will teach you all things” and “will guide you into all truth.” This doctrine allowed Christians to courageously acknowledge the work of God through them as they have through the centuries struggled to apply His laws to new situations. Their foundation is in the Bible, the Word of God; their application is based on that foundation but it has been codified anew in each age to fit new situations. When the Holy Spirit, through a combination of the Word of God and historical forces that include economics and politics, has moved Christians away from slavery, then the earlier laws of slavery in the Bible need either to be abrogated or adapted. The new codification is then gratefully acknowledged as Christian law in the new circumstance.⁸⁸ Hence, through the centuries, Western law has been thought of as Christian law, even though its form in later ages does not always follow the letter of OT laws. That is the partial answer to the question of many Muslims why Christians do not follow the OT laws. They follow its spirit, not its letter.

It is the *partial* answer, not the whole. To the degree that Humanism, Rationalism and secularism have replaced the Christian spirit in the West, to that extent the law has also gradually absorbed a spirit that does not always conform to Biblical norms, a process that has accelerated over the past decades.

Gradually, Western Christian law is mixed with laws from other orientations. That is the other part of the answer. This story also shows clearly that Nigerian Christians cannot simply dub Common Law as secular. It is largely Christian with an increasingly secular component. Christians have to become more aware of the doctrine of concurrence and the relationship between Biblical law and codified Western law. They need a wider vision of divine activity in human history. And Muslims should ask themselves how *they* view the relationship between divine and human activities. If the two are to dialogue about divine and human laws, they need to come to terms at the concurrency front, or, at least, to understand each other there and find a way to cope with the difference.

John Onaiyekan argues that, with a few exceptions, our laws already adequately cover all the ills Muslims complain about. If they are not obeyed or applied now, what guarantee is there that they will be obeyed and applied under a government-recognized sharia?⁸⁹ These comments lead me to the consideration that if it is a matter of obeying God's law rather than man's, God's law is already in place whether in the Constitution or not. What will change if somehow they appear in the Constitution twice—once as they are now and the second under the rubric of sharia? Evidence based on numerous reports recorded in Volumes 6 and 7 has it that corruption, violence and all the other vices that were supposed to vanish under sharia are still being practised on a wide scale. It is not the further incorporation of sharia into the legal system that will do the trick. ***It is not the legal system that must change but the hearts of people as both Muslims and Christians have indicated in the previous two volumes.*** In Christian terms, the ultimate change needed is to be born again, but experience is showing that even Humanists and other secular people can have enough respect for the law to obey it, even when they disagree with it.

Mainstream Muslims, of course, have let it be known: sharia *uber alles*. There is no backing away from it. Both parties have pushed themselves into a corner with their strong demands. With these extreme opposites, how can we come to an agreement that is mutually satisfying and in which neither will lose face? For one thing, most Christian argumentation is based on dualism and on ignorance of the background and nature of their own law. So, apart from shedding their anger and suspicions, Christians have to adopt a different way of thinking that is less dualistic and that recognizes the religious background of Common Law. They need to discuss these issues within themselves *before* they embark on dialogue with Muslims. They need to agree among themselves on some new perspectives that are wholistic, fair and realistic.

Muslims, on the other hand, have to shed a load as well. Anger. Sense of superiority and right. They need to take into consideration that in most Muslim countries, if they have sharia on the books at all, it is a restricted sharia. In addition, many Muslim governments abuse the sharia by using it as a political tool. It is very obvious that over the centuries the kind of sharia demanded by Governor Sani has not fared well in history. It has gone accompanied by much repression in most countries.

Nigerian Christian objection to sharia is based more on their years of experience with it, as made clear in previous volumes, than on principial criteria. Yusufu Turaki has said it plain: We don't care about your grand ideas as long as we experience the negatives of sharia. Muslims have to acknowledge all of that, if they expect to live amicably with Christians.

But Christians do have to hear the accusation of Muslims that Common Law constitutes the imposition of the Christian religion upon them, though perhaps in a diluted way and not quite so in your face as sharia. That is historically true and must be admitted.

Muslims have as much right to reject the imposition of the laws of another religion as do Christians. Christians must shed their secular blinders that have prevented them from recognizing that history. So, both need to confess to each other the sin of imposing their religion on each other. Both need to let bygones be bygones and start afresh, taking each other's problems and fears into serious consideration. Both have to think together in a wholistic way. You can no longer deal with each other in terms of wholistic Islam versus semi-secularist Christians, for these two tend to talk past each other.

▲ APOSTASY AND BLASPHEMY LAWS

In the previous volumes we have heard about strong Christian objections to sharia because of the apostasy provision which is, according to traditional Islam, the death penalty, at least for adult male converts from Islam. Various folders on the *Companion CD* contain files about the result of conversion⁹⁰ and you are invited to search through them. The picture you receive is not pretty. I also encourage you to get hold of Mohammad Asrar Madani's *Verdict of Islamic Law on Blasphemy & Apostasy*, a book published in Canada and still available, in which the author insists several times that all the traditional apostasy laws are still to be implemented everywhere. Salman Rushdie is a "blasphemous dog of humanity" who has lost his right to life. The *fatwa* against him remains in effect. The sharia death sentence for blasphemy and apostasy stands. *Punkt!* Madani lists four authorized forms of punishment for blasphemers and apostates: (1) To be killed without mercy; (2) To be crucified; (3) Hands and feet to be amputated; (4) To be imprisoned for life or exiled to a distant place. Madani recalls ancient tales in which these offenders were executed on the spot by private individuals, the very procedure Governor Sani recommended. "...Other Muslims who hear such blasphemy and apostasy are

duty-bound to kill the guilty person as soon as they are able to do so.” A father is shown supporting the killing of his blasphemous son. Madani insists that these punishments have never been revoked and thus remain in effect.⁹¹ In this fundamentalist interpretation of Islam, “there are clear rules and regulations to check every kind of unseemly conduct and mischievous behaviour. The Islamic sharia shows no leniency to those whose evil and malicious conduct tarnishes the dignity and honour of the entire Muslim *ummah*.” Please notice with me that to his literal rigid interpretation the rules are “clear” and leave no room for “leniency.” Nothing complicated. No mitigating circumstances to be considered. A theft? Amputation! Adultery? Death regardless of circumstances. Furthermore, the important offences are against “dignity and honour of the entire Muslim *ummah*”! Not against anyone’s safety, security or rights. We are in the environment of the fundamentalism that often is the basis of militancy. In so far as there is that connection, I advocate throughout this book that it be criminalized in Nigeria and, of course, appropriately punished. *After all, militancy is a poison, a virus, against which sharia is to protect the people.* Madani’s defence of his stance by comparing it with abrogated Old Testament laws and outdated Western laws from more cruel days, only makes his position look all the more pitiable.⁹²

Over against that, I have earlier taken notice of various Nigerian Muslim writers who strongly oppose such a literal and mechanical approach to sharia, with Sanusi as their most prominent spokesman.⁹³ There are non-Nigerian writers, both Christian and Muslim, who express themselves in similar vein. A short article on that subject, published by Barnabas Fund, reads as follows:

Reforming the Apostasy Law: A Way Forward

Today, a small but growing number of liberal, reformist Muslims no longer accept that converts from Islam should be executed or punished. They are calling for a new interpreta-

tion of the Qur'an and hadith to better fit the modern world. An important concept in Islamic history is ijihad (literally "exertion"). The word is used to describe a process of debate in which Islamic scholars were engaged in the classical Islamic period to resolve all unclear teachings and traditions in an attempt to reach a final orthodox position on each issue. By the end of the ninth century Islamic sharia was considered to be fixed. Most Muslims believe that the "gate of ijihad" was closed at that point, i.e. that there is now no further room for debate on these issues.

However, a small number of reformist Muslims are today calling for a new ijihad. In July 1999 the Malaysian group Sisters in Islam protested against attempts by Parti Islam se-Malaysia, an Islamic political party, to get a bill through the Malaysian parliament to impose the death penalty for apostasy. In an open letter they spoke of the need to "open the doors of ijihad" to allow for the removal of apostasy as a crime from the sharia.

More recently a Christian/Muslim dialogue meeting, hosted by the World Council of Churches, issued a statement in October 2002 affirming "the freedom of the individual to adhere to the religion of his or her choice."

In August 2002 the Islamic Research Academy of al-Azhar University in Cairo (the world centre for Sunni Islamic theology) announced its view that Muslims who convert to another faith should be given a lifetime's opportunity to return to Islam, i.e. the death penalty should never be imposed.

Whilst such announcements are welcome news for converts, there is still a long way to go. The findings of the Islamic Research Academy are considered to be only opinions and do not carry the weight of fatwas (Islamic legal judgements). Furthermore, the decision is highly controversial and many other al-Azhar scholars have objected to it.

*Nevertheless, it seems that today, at the beginning of the twenty-first century, the time is right for a new debate on the Islamic teaching of apostasy. It is time for the death penalty and other traditional punishments for apostasy to be challenged, and the human right of every Muslim to “change” their religion, if they so wish, to be respected.*⁹⁴

Paul Marshal is probably second only to Patrick Sookhdeo of Barnabas Fund in his vigorous exposure of persecution of Christians. He ended a speech he delivered to the first annual “Religious Freedom Day on the Hill” in Washington, D. C., as follows: “These laws and vigilante violence are not some marginal quirk afflicting only cartoonists and converts. They are a fundamental barrier to open discussion and dissent, and so to free societies, within the Muslim world. Hence, removing legal bans on blasphemy and apostasy is an indispensable first step in creating the necessary space for debate that could lead to other reforms.”⁹⁵

Seyyed Hossein Nasr wrote that Muslim Fundamentalism and related phenomena “represent a complete break with traditional Islamic teachings—not a conscious development from them or of them. Of all the possible ‘Islams’ one could choose from, these are the least representative of its traditional teachings and classical heritage, for they have no scriptural, historical, or intellectual foundations. As such, they cannot provide sustainable solutions for Muslim people still rooted in their faith traditions.”⁹⁶ Nasr’s is only a Foreword summary of what other authors in this bundle amply demonstrate.

The world would breathe a lot easier if the doors of ijtiḥād were re-opened and the more dynamic approach to both Qur’an and ḥadīth adopted that I, in tune with liberal but orthodox Islam, have advocated throughout these chapters.

Though it is perilous for an outsider to suggest changes in another religion,

Could an ijihad-based sharia, fused with a de-secularized and more Nigeria-oriented common-sense inspired version of Common Law, help Nigeria solve her religious violence? It might provide her with the tools to criminalize the culture and organization of militancy not only, but also help us get rid of controversial issues like apostasy and blasphemy.

The writers and agencies referred to in the preceding paragraphs are only the tip of the iceberg; there are many more Muslims supporting such a move. Islam appears to have room for such dynamic re-formation or re-statement. Nigerian Christians and Muslims should capitalize on it.

In fact, quite a number of Nigerian Muslims themselves are already recommending it. Muhammad Asad is a strong advocate for it as are Ali Ahmad of BUK and Abdulsalam Ajetunmobi in the UK.⁹⁷ This approach gives the sharia a different direction and should make it more palatable to both orthodox Muslims and Christians, provided some other conditions be met as well. An important condition would be criminalization of militancy along with all of its organizations and the freezing of their accounts. That would, of course, require a less cumbersome legal system than has paralysed the West in *its* struggles with these phenomena.

Governor Sani's solution of privatization of execution, a thinly disguised euphemism for murder, is not an acceptable alternative solution and must be rejected outright.

▲ **INSET: IN DIALOGUE WITH PHILIP OSTIEN** —

I claim without hesitation to have done more research and writing on the Nigerian Christian-Muslim scene from a Christian perspective, than anyone else. I also claim to have done more research and writing about Christian-Muslim relations from the Kuyperean perspective than anyone in the entire world. Those are big claims! But Philip Ostien⁹⁸ has done more in-depth field research into the sharia complex from his Unijos perch from the perspective of a secular legal academician than anyone I know, and done so very thoroughly and commendably. Though of secular orientation, his ideas and interpretations do not always fit the secular box. He is his own man, an independent thinker. We all owe him a debt of profound gratitude for his in-depth high-level efforts, even though we may not always agree in all details.

Of course, he was the major point man for the 2004 sharia conference at Unijos. In addition, apart from the materials referred to in the above endnote and a very helpful general history of sharia, he wrote a history of sharia development in Nigeria under the title “An Opportunity Missed by Nigerian Christians.”⁹⁹ Be sure to check out that endnote, for it will give you good reason to respect his opinions—without taking them all for gospel truth!

In his introduction to the last mentioned paper, he argues that Christians are responsible for having unleashed the turmoil of the past few decades. Allow me the following extensive quotation: Christians

own responsibility in the matter. The Settlement of 1960, under which the Muslims made large concessions but also won certain perquisites in return, was working to the general satisfaction. In the constitution-making process of 1976-1978, however, in the fight over the proposed Federal Sharia Court of Appeal, Christian intransigence wrecked the Settlement of 1960 and produced instead the Debacle (for Islamic law) of

1979. But this Christian victory was pyrrhic, and the battle itself was ill-advised. By fighting and winning it the Christians missed an opportunity to settle with the Muslims the place of Islamic law in Nigeria on reasonable, honourable and stable terms, instead sowing the seeds... of twenty years of Muslim discontent that helped bring on the Revival of Islamic law of 1999. Indeed, I will argue, but for the Debacle of 1979, of which the Christians were the authors, the Revival of 1999 would not have happened and we would not be witnessing the implementation of sharia in northern Nigeria today.

I reproduce Ostien's statement because it contains an important kernel of truth. Christian leaders raised a lot of hype among their followers throughout these decades, sometimes unwisely and unnecessarily so. More than once they had the opportunity to respond to Muslim moves with quiet negotiation behind the scenes, but they chose to "rev up the ante" by negative responses and harsh public statements. They sometimes forced Muslims to the wall so that they also responded harshly. That is the part that Ostien describes—but it is not the entire truth and therefore his conclusion is doubtful. If Christians had been more cooperative, would the sharia revival have happened? I am not about to engage in a "what if..." debate. He ignores the reasons for Christian belligerence. This was not just a bitter debate; it is/was a war for survival. These reasons have all been discussed extensively in this series, so that I will mention them only briefly here:

- The 1999 Zamfara move was part of the global Muslim revival. It did not stand on its own. Without Christian resistance it probably would have been attempted earlier.
- The memory of pre-colonial Muslim slave raids is still fresh.
- The Muslim resistance to undoing British-imposed internal colonialism has convinced Christians that the Muslim talk of peace, justice, equality, etc. is a sham.

- Christians were on their guard against sharia in the 1970s due to so many cases of corrupt impositions of sharia on them.
- Christians remain on their guard due to so much Muslim harassment of Christians, including abductions of girls and women, false arrests and imprisonment, persecution of converts, destruction of church buildings, etc.
- Christians are justifiably convinced of a Muslim plan to Islamize the country and turn them into *dhimmis*.

I disagree only with the last words of the last point. Muslims in Nigeria would not turn Christians into *dhimmis* any more than they did the Hindus under their rule in India. There are just too many Christians in Nigeria for Muslims to pull this off. They are not incapable of compromise, at least, *tactical* compromise.

But why, if I disagree with Ostien's thesis, do I draw your attention to his charge that Christians initiated the sharia war? Two reasons. One, he is in effect holding Christian leaders accountable for their fanning the fires of hate and violence. Though his emphasis is one-sided, for Muslims did as much of that if not more, we Christians *must* be aware of the irresponsible role some of our leaders have played occasionally. We must hold some of our leaders responsible for their posturing over the years and call them to account. The second reason is that Ostien's paper has been published internationally and therefore needs an international response. This discussion is that response.

Ostien also wrote a paper "Ten Good Things about the Implementation of Sharia..." in which he listed ten positive things about the revived sharia. First, he lists some items of concern, one of which is the typical secular—"modern grain" as he calls it—objection to taking religion out of the private into the public realm.¹⁰⁰ I have inveighed enough against this perspective throughout this series to require anything more than a simple rejection. Of course, that "modern grain" is rapidly being ground into the dust by postmodernism, while both Kuyperians and Muslims

have long ago unmasked the delusion it represents. Secondly, Ostien finds that Christians have “some historical justification” for being “fearful of misapplication of Islamic law to them.” Amen. So they have!

But then he lists and discusses “Ten Good Things” about sharia. I list them here and refer you to Appendix 70 for the details. While I italicize his words, I add comments of my own in ordinary script. The point here is that this is an analysis by a secular legal philosopher who has done deep and wide-ranging research into the revived sharia and finds that the development represents positive steps significant enough to warrant recognition and respect. He writes that there are “reasons for thinking that what the twelve northern states are doing on the whole represents progress for them and for Nigeria, despite the constitutional dissonance it creates, which still remain to be resolved.” Here then the “ten good things:”

- *It teaches a lesson in applied federalism that Nigerians need to learn. Federations are made for people of fundamentally differing views. ...a good example of the different states as “laboratories of democracy,” each seeking the local political accommodations that suit it best. Nigeria needs to see more of this, not less.*

Indeed.

- *The implementing states have conceded the supremacy of the federal Constitution and laws.*

Ostien provides examples of Governor Sani and others making such concessions and takes them seriously. His is a questionable trust. Sani has also said the opposite. And surely the weight of Islam, including the Nigerian version, goes counter to this concession. Based on my previous volumes, I regard it as a mere temporary political ploy that will be disregarded as soon as the coast is clear.

- *The implementing states have powerful motives for acting carefully, judiciously, and strictly according to the law. And we must*

allow that many of the Muslims in power in these states are sincerely religious, upstanding, moral, and patriotic persons, who want to see their governments working properly according to the law—for a change—as a testimony, among other things, to the benefits of implementing sharia there. Accordingly, we can expect them, for example, to avoid misapplication to non-Muslims of laws meant only for Muslims....

Volumes 6 and 7 are monuments to misapplication and to alleged insincerity of sharia governors. Nevertheless, I agree with both Ostien and Sanusi in their defence of the sincerity of many sharia proponents.

- *The steps taken are a victory for democracy as well as for federalism. They have not been imposed by dictators acting unilaterally from above.... They have been enacted by democratically elected executive and legislative officials responding to the unquestionable desires of the vast majority of their constituents at a relatively local level. This again is unique in the modern political development of Islam.*

Right on!

- *The Muslim majorities of the implementing states are reclaiming their heritage, and reclaiming their right to develop it themselves. This is an understandable and healthy reaction by a colonized people whose autonomous development within their own ancient and eminently respectable tradition was arrested, or shall we say hijacked, when the British took them over in 1900.*

This is also a major theme in my series.

- *The steps taken already represent very significant developments in Islamic law.*
- *The steps taken will help defuse any tendency to violent Islamic fundamentalism. This will not entirely eliminate the radical fringe, but it will reduce and contain it.*

This remains to be seen. Few Christians have that expectation.

- *The steps taken will help eliminate political illusions and encourage realism.*

Experience so far shows that inflated expectations from sharia are unrealistic and that standard political and legal provisions are still needed. It should soon be recognized that sharia is not a magical panacea. It remains to be seen whether Muslims have the patience to see it through. For Nigerian Christians the point has already been proven: Sharia is an illusion.

- *The steps taken may actually result in better government. When people are operating a system they themselves have put in place, and believe in, and see themselves as being responsible for, they tend to do a better job of it.*

I have the same expectation, but so far volumes 6 and 7 do not support it. Is more time needed?

- *The steps taken may result in more fairness towards non-Muslims in the implementing states. ...having reclaimed their own heritage and recognized their power to control and develop it themselves, the Muslim majorities of these states may now be in a position to be more generous to others not of their own faith than they have been up till now.... That the governments of the twelve states are becoming more “Islamic” need not imply that they will become less open or less fair to their non-Muslim constituents; the result could be just the opposite.*

History has indeed shown that Muslims have at times been more tolerant and open than Christians, but those levels are inadequate by today’s standards and situations. We cannot reject the possibility that Islam can muster the tolerance and openness needed for today’s Nigeria with its many millions of both religions, but the signs of this happening do not yet exist. While we now witness the opposite, we must pray and work—*ora et labora*—for and towards such a development, seriously and with positive hope.

Of course, it could be argued that if Christians were less belligerent and more cooperative, Islam could have developed the space for tolerance and openness. What if Christians in sharia states were to become cooperative and help Muslims work out a mutually acceptable scheme? This would require a radical turn-around for both sides! Should it not be tried? It should make for a more peaceful transition to sharia but would be possible only if there are no hidden agendas.

Allow me to return to his first “good thing” for a moment. Here he strongly emphasizes and encourages legal pluralism. He takes his home country, the USA, as an example:

...they think nothing of different states enacting widely different laws. Louisiana operates a “civil law” system borrowed from the French, the other states are “common law” jurisdictions. Some state legislatures are unicameral, as in Nigeria, some are bicameral. In some states judges are elected, in some they are appointed by the governors. Here you can drink beer, or smoke Indian hemp, there you cannot; here the theft of \$100 will attract a fine or a short jail term, there it could attract a sentence of 10 years imprisonment; here they still inflict the death penalty, there they do not. With the reintroduction of principles drawn from Islamic law in some northern states we are beginning to see more of this sort of thing in Nigeria. Indeed, the measures being taken differ significantly from state to state—in legislative approach, in many substantive details, and above all in the scope of “implementation of sharia” attempted....

Of course, even my adopted Canada has various sets of laws: French in Quebec, British in all the other provinces and territories, apart from the two sets of Aborigines, namely First Nation, for-

merly called “Indians,” and the Arctic Inuit, formerly known as “Eskimos.” Ostien’s point should be considered seriously. Legal pluralism does not need to threaten the unity of a nation; neither is it a recipe for legal chaos. In fact, it may well *prevent* legal chaos where a people are governed by an alien legal system that may suit another region within the same nation. Without it, the nation’s federalism is little more than nonsense.

In the middle of this inset I take the liberty of adding the sixth and last item to my ever-expanding formula with the term “*federalism*,” so that it now reads “***equality of status, access and rights; critical solidarity; independence; shural/consensus; complementarity; federalism.***” One definition of “federalism” is “the distribution of power...between a central authority and the constituent units.”¹⁰¹ Federalism means that the states have a certain degree of latitude to adopt laws fitting to their own population, an arrangement that suits a multi-ethnic, multi-cultural and multi-religious country with sharply delineated variations.

Ostien makes the following comments in the conclusion to his paper “Ten Good Things...” that will not only take Nigerian Muslims by surprise but probably annoy them as well:

It remains an open question, throughout the world, to what extent it is possible to reconcile a population with a large proportion of devout Muslims to Western ways of government and of thinking about government.¹⁰² This paper has assumed that Western ways of government are on the whole good ones, better, at least, than others humankind has yet proved capable of sustaining; and several of the “ten good things” discussed here suggest that Nigeria’s Muslims have gone very far towards accepting them.

The renewed sharia a step towards Muslim acceptance of “Western ways of government?” Only Ostien! Muslims themselves think of it as a *rejection* of Western ways, a very conscious rejection. Well, not *only* Ostien. As we have seen in earlier chapters, more liberal Muslim scholars deny that the literal reading of sharia as practiced by fundamentalist Muslims conforms to historical Muslim orthodoxy. Western non-Muslim scholars have taken this one step further by declaring the current fundamentalist practice of sharia as part of the Westernization process. Sorry, Muslims, but things do get complicated when you study them in depth. Especially moderate Muslims may wish to pursue this line of thinking and see where it will lead them. We could have a case here of rejecting secularism in a secularist way! If this observation were proven correct, then we would have a further expansion and affirmation of my frequently stated dictum that when Christians resort to semi-secular arguments, they invariably end up in inconsistencies. Now it seems that could apply to Muslims as well.

The question whether the new sharia is *sizzling* or *fizzling* receives conflicting answers. A couple of knowledgeable Nigerians at the “front lines” assure me it has fizzled already or is in the process of fizzling.¹⁰³ On the other hand, Ostien insists, “I don’t think it’s correct to say that sharia implementation has fizzled out. To some extent this depends on which state you are talking about, and everywhere the situation is quite complex, too much so to sum up here.” Nevertheless, he expands,

As to whether sharia has fizzled out: well, all the new sharia-related laws are still there, and they are being amended, supplemented, etc. from time to time. The institutions created by the laws are there and are being operated. There are a whole lot of fairly serious-minded people in charge of these institutions doing their best to make them work. Yes: there are serious problems with the sharia programme in some states (not Zamfara); in others it is going forward.

As to the harsh punishments that everybody was alarmed about: yes: they are not being executed where such sentences are being pronounced, and it appears that even the pronouncement of such sentences by the sharia courts has much abated because the judges see that the sentences will not be carried out anyway. This, I should think, is a good thing. The governors don't fund the sharia programmes as those operating them would like, but of course the governors have many other things to worry about too, like infrastructure, education, etc. This too is a good thing: the clerics are not in charge, the secular rulers¹⁰⁴ are: I myself think "political sharia" is a good thing not a bad one: religion shouldn't have everything its own way.

The obstacle to all of Ostien's suggestions is the Muslim plan and continuing Christian negative experience with Muslims. Until Muslims openly reject the plan, such positive developments will be hard to achieve.

In the meantime, Nigerian sharia operators are not satisfied with its progress. Late February, 2009, sharia "stakeholders"—"governors, emirs, jurists, academicians and other dignitaries"—held a conference in Kano to review sharia status and progress. Various negative terms were used to describe the situation. There are "obstacles obstructing" its execution. It "had slowed down" in some states. They recognized a "disturbing trend of stagnation." But the initiating Governor Sani of Zamfara State, now Senator, assured the conferees that "the legal system can never fizzle out."

Yes, there are serious problems, but there is also much to celebrate. "The Yerima declaration of Sharia in Zamfara State and the subsequent legislation and adoption of the Shari'ah legal system in majority of the northern states have given higher meaning and direction to politics," Kano Governor Shekarau said. Yes, "there are lapses in the implementation process of the Shari'ah. But the lapses...are far below the successes."

In conclusion, “the conference therefore called for a joint effort by the Sharia implementing states to ensure that concerned Muslims reflected, and impediment to Sharia implementation are removed in the proposed constitutional review, among many other recommendations.”¹⁰⁵ From this I draw the conclusion that, even though sharia is not sizzling, neither is it fizzling. Neither do I hope it will fizzle. I agree with Ostien that it is a good thing in that it allows a great people to reclaim their heritage that was taken away by force and cunning. But if I hope it will make progress, that needs to follow and include all the parameters of my formula. Saidu’s full report on the Kano conference shows that the direction is away from fundamentalist literalist reading of sharia to a broader, more liberal and more social version. If we give that new direction time to develop in terms of my complete formula, I believe that there is hope for Nigeria, for both Christians and Muslims.

*Could Christians not take the initiative and see if they cannot prayerfully and cooperatively help overcome the negatives of sharia? Hard hearts **can** melt. Who can pre-empt the plan of the Spirit of God? It is time Christians become the pace setters and peace makers by beating Muslims to their own rhetoric. Until now, we have mainly been reactionaries to Muslim initiatives.*

One Christian leader confided that even though he often has defended the Christian cause publicly with anger and strong language, he also sits with Muslim leaders in private. In such situations they have shown considerable respect for his perspective on things. It is the public belligerence that prevents them from more openly admitting such respect and displaying it. Ostien does have an important point about the negative effects of Christian belligerence. ***Belligerence begets belligerence.***

Ostien’s paper ends on a positive note: “Meantime, Nigerians

should take pride in the fact that these issues are now being addressed and worked out openly, peacefully, democratically, responsibly, according to the due processes of the law. This is most definitely progress, and it is to be devoutly hoped that it will be sustained.” I partially agree. I would like to fully agree, but the problems Christians face in sharia states allow me only partial agreement. Probably not many Nigerian Christians will see it in that positive light. It is not all that peaceful, democratic, responsible or “according to the due process of the law.” But I am hoping—against hope?—that both Ostien’s work and my series will both contribute to turning the ship around and Christians and Muslims can work out their problems in calmer water where goose and gander can swim and feed together.