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Introduction

When Rowan Williams, the Archbishop of Canterbury, stated that the government of the United Kingdom should acknowledge *Shari'ah* law as part of the legal system, the uproar and public outcry was considerable. When Canada began to formally acknowledge the decisions by Islamic arbitration panels in Ontario, there was such tumult that the Ontario legislature passed an Act that deprived all the religious tribunals of any authority to decide family law matters if the decisions would be inconsistent with the law of Ontario. When certain states in Northern Nigeria decided to adopt Islamic criminal law, it made international headlines, and the stories were accompanied by horrific pictures of amputations. In the United States thirteen states have recently considered bills or state constitutional amendments that would forbid a judge to take into consideration any aspect of *Shari'ah* in any legal case. It seems that the very mention of the word *Shari'ah* in the West causes fear and leads to scandal. But in the United States, as elsewhere, there have always been alternate legal systems that co-exist with the official law. In the United States there are religious tribunals that apply Jewish law and Canon law. Native American nations have courts of limited jurisdiction that sometimes apply customary law. The official courts regularly uphold the decisions of these tribunals and arbitration panels as legitimate alternatives for dispute resolution. In addition, there are informal rule making bodies and systems of law that are not recognized by the official legal system, but nevertheless create and enforce norms and rules, such as the Kris courts of the Roma ("Gypsy") peoples. But *Shari'ah* tribunals are singled out as dangerous to the very existence of the United States, not only by the radical fringe, but now also by well respected elected representatives.

Why are *Shari'ah* courts singled out for such hostility? It is not as if no one was aware of alternate legal systems co-existing in the United States or Europe prior to the *Shari'ah* courts.

I believe the outrage is due to misunderstanding of Islamic law, anxiety about the Muslim minority, and a general belief that there should be one law for all. But as explained below, alternate and overlapping legal systems have always existed in every society and will continue to do so in the future, especially in multi-cultural, multi-ethnic and religiously plural societies. The challenge for all States is to determine how to deal with the

reality of legal plurality. There are only three choices: absorb and accept the alternate legal systems into the official legal system, restrict and limit the alternate legal system while still allowing it some space in the official legal system, or attempt to destroy the alternate legal system.

What is Legal Pluralism?

...argues that legal pluralism is a fact, and exists in every society.

Legal pluralism has been defined as "the coexistence of two or more legal systems" within one socio-political space."[1] Brian Z. Tamanaha, one of the prominent scholars interested in the study of law and society, argues that legal pluralism is a fact, and exists in every society.[2] It is not normally conceived of as a theory that can explain the phenomenon of overlapping legal systems, but is better understood as "a sensitizing concept."[3] "It provides a starting point for developing analytical criteria for distinguishing variations within empirical complexities of bodies of law and their interrelationships."[4] Legal pluralism is studied by academics in a number of fields, and is by its nature multidisciplinary. According to Tamanaha,

> *[l]egal pluralism is everywhere. . . . In the past two decades, the notion of legal pluralism has become a major topic in legal anthropology, legal sociology, comparative law, international law, and socio-legal studies, and it appears to be gaining in popularity. As anyone who has engaged in multidisciplinary work knows, each academic discipline has its own paradigms and knowledge base, so it is unusual to see a single notion penetrate so many different disciplines.*[5]

...that the assumption that law comes from one central authority was in error.

The study of legal pluralism originates from the work of anthropologists who began to study the "law ways" of indigenous populations. These anthropologists began to opine that the Western definition of law was too narrow, and that the assumption that law comes from one central authority was in error. In the societies they studied, there was no official, written, codified, or formal state enforced "law," but nevertheless, the societies had methods of enforcing norms. They also observed that there were complimentary, overlapping and sometimes conflicting norm generating systems within those societies. This led to a debate about whether these societies had no law or whether the definition of law that we use in the west is too narrow.

Academics interested in legal studies have traditionally focused on official state law and actors, and have not focused on other normative orders within geographically and politically discrete states. But there is a long history of multiple legal systems

occupying the same territorial space in the west. In the middle ages, there were numerous sources of legal authority, with overlapping jurisdictions and powers. However, legal authority eventually became centralized in the State government, and the other formal sources of legal authority lost their official roles in the legal system. Thus, for the past few hundred years Western academics have assumed a monopoly of legal authority rests in the central or state governments. This focus on official state law is a result of the legal history of Western Europe and it also shaped our definition of "the law." This assumption was of no use to anthropologists studying legally diverse, overlapping and informal rule-making systems.

...when the colonial powers imposed their style of state law on the indigenous populations.

When academics began studying societies that were then colonies of western States, they began to deal with the problems produced when the colonial powers imposed their style of state law on the indigenous populations. In most cases, the colonial powers did not completely rout out the indigenous rule making, dispute settling and traditional practices of the colonized people. The colonizers tended to allow the people to retain limited authority over some parts of their lives. This legal space was referred to as customary law, traditional law, or informal law. The observation of overlapping legal systems in the colonial world launched the theory and debate over what is now generally described as legal pluralism.

Countries in the west are also experiencing a resurgence of legal pluralism...

Scholars are now also interested in legal pluralism in Western nations such as the United States, and they are also interested in legal pluralism on the international scale. The advent of the European Union, international law, and transnational corporations has added another layer to the inquiries involving legal pluralism. Countries that were formerly colonies are beginning to fuse their legal systems into more unified systems, rejecting some of the law imposed by the colonizers, and formally embracing their traditional law. Countries in the west are also experiencing a resurgence of legal pluralism, or legal polycentricity, as they absorb immigrants from former colonies who bring with them their own legal ideas, rules, and assumptions. The role of *Shari'ah* in Muslim majority states that were formerly colonies and its role in western States is one aspect of legal pluralism that is beginning to attract many scholars.

What is *Shari'ah* Law?

Shari'ah law is the religious law of Islam. The literal translation of *Shari'ah* is the way or path to the watering place. *Shari'ah* is the divinely revealed law. Most scholars agree that the *Shari'ah* consists of the *Quar'an* and the *Sunna* (examples) of the Prophet. The divine will is conveyed through the *Qur'an* and the traditions of the Prophet Muhammad. *Shari'ah* is considered the right path

of religion, and primarily emphasizes faith in G-d and the proper way to worship. *Shari'ah* aims to protect the five essentials: life, religion, intellect, property and family. It is also concerned with justice, and thus with transactions between humans. It covers civil transactions, criminal law, family law, the law of inheritance and governance. Religious ideals and morality permeate every aspect of Islamic law.

The Qur'an*...is also the ultimate authority in Islamic law.*

The *Qur'an* is the holy book of Islam. It is also the ultimate authority in Islamic law. Muslims believe that the *Qur'an* was revealed to the Prophet over a period of twenty three years, and that it is the actual word of G-d. The *Qur'an* contains over 6,200 verses, but it is not a book of law. Only about 350 of the verses in the *Qur'an* can be considered "legal" verses. The remaining verses deal with *Qur'an* belief, dogma, history and the nature of humans and G-d.

The traditions of the Prophet, or the *Sunna*, make up the second source of *Shari'ah*. These include examples of proper behavior, legal rulings, letters, and the *hadith*. The *hadith* are the teachings of the Prophet passed down from generation to generation that were collected, analyzed and authenticated by Islamic scholars. The *Sunna* together with the Qur'anic legal verses constitutes the *Shari'ah.* But there are other sources of Islamic law. The bulk of the "legal" verses in the *Qur'an* and the hadith deal with issues of worship and do not constitute "law" in the western secular sense.

Classical Islamic jurisprudence was developed in the Middle Ages. A handful of renowned scholars founded the leading schools of thought, or *Mahdrabs*. Scholars from these schools of thought developed the Islamic *corpus juris* and Islamic jurisprudence. The works of the leading scholars from these schools of thought are still consulted today by lawyers, judges, legislatures and contemporary scholars. These scholars devised techniques for deciding legal questions that were not clearly addressed in the *Quar'an* and *hadith*. Because they were applying human reasoning to address these legal issues there is variation among the approaches they took. Therefore, the rules of law devised by these schools of thought, "*furu al-fiqh*," are not completely consistent with one another. There is also a wide range of interpretation and application of the principles of *Shari'ah* in the modern context. Many scholars of *Shari'ah* believe that the law can be seen as perfectly compatible with international human rights standards, democracy and the equality of women.

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In general, the term Islamic law refers to both the *Shari'ah* and to the law created by the scholars. Islamic law is therefore a broader category than *Shari'ah*, and includes the law created

by the application of human reason, the *fiqh*. Islamic law also can refer to the legal rulings or *fatwas* of modern scholars and judges. In the United States, it can also refer to the interpretations of Islamic law made by judges dealing with issues and concepts originally devised by the *Shari'ah* scholars. And it can refer to the interpretations of Islamic law that have begun to take shape by Islamic arbitrators, scholars and business and legal specialists who live and work in the United States. This law would more appropriately be referred to as American Islamic law.

Colonization, Interlegality, and the Resurgence of *Shari'ah* in Nigeria

Many states that were formally colonized by Europeans have codes of law based on either common law or civil law, but also retain elements of indigenous, traditional or religious law. In fact, during the colonial periods, the European colonizers often encouraged or allowed these courts to operate within the official legal systems. The systems that absorb various types of law into the official legal systems are known as "mixed jurisdictions." The adoption of "other" legal rules, concepts and practices by the dominant legal system is called "interlegality." Currently, there are a number of states that give official recognition to more than one system of law. In Malaysia, for example, there are courts that apply the *adat*, or customary laws of the indigenous populations, *Shari'ah* courts for the Muslim population, and courts that are based on the English common law for others. In parts of Africa, *Shari'ah* law has long been a part of the legal landscape of large portions of the continent that later became the current nation-states. *Shari'ah* law and customary law pre-date western style legal codes that are based on common law and civil law principles. These secular codes never fully replaced the indigenous systems of law, and *Shari'ah* law is reemerging as a powerful force in post-colonial African legal systems.

*...*Shari'ah *law has long been a part of the legal landscape of large portions of the continent...*

Most states that incorporate *Shari'ah* into their official state law do so only with respect to personal status matters. The balance of the state law in these countries is usually derived from European law codes. But there is a growing movement in some parts of the Muslim world to "Islamize" society. Part of that call usually includes a demand to return to the *Shari'ah* law, including *Shari'ah* criminal law. This is partially a reaction to colonization and the imposition of European codes of law.[6] The call to Islamize society was famously answered in Iran in the 1970's and more recently in the states of Northern Nigeria (collectively, Northern Nigeria).

...call to Islamize society was famously answered in Iran in the 1970's...

The Islamic *Shari'ah* has a long history in Northern Nigeria. Islam was introduced into the region in the ninth century.[7] Islam was brought by traders from North Africa (the Maghreb) who

visited western Africa and the kingdoms and empires that had emerged there in the sixth through ninth centuries. By the 15th century, Islam was firmly rooted in western Africa.[8] In addition, Islam and Islamic institutions had become a formal part of the kingdom of Kano under the leadership of Muhammad Rumfa, the first Emir of Kano.[9] Western Africa soon emerged as a center of Islamic scholarship, rivaled only by the great centers of Islamic scholarship in Spain and the Middle East.

...prior to colonization, Islamic law had existed in western Africa for hundreds of years...

The study and development of Islamic legal concepts and jurisprudence was integral to the Islamic societies in Western Africa. As the original bearers of Islam had come from North Africa, the roots of Islamic jurisprudence in western Africa were from the Maliki school of thought.[10] Thus prior to colonization, Islamic law had existed in western Africa for hundreds of years, and was a deeply rooted aspect of the lives of the Muslims living in the Muslim empires and kingdoms in what later became Nigeria. This situation persisted until the disintegration of the indigenous kingdoms and the imposition of British colonial rule in the 19th century.

In the early 19th century, a new Caliphate, the Sokoto Caliphate, was established in what later became Nigeria.[11] Islamic law became integral to the management of the affairs of the Caliphate, and the monopolization of the criminal justice system was a part of the consolidation of its power. In 1804, an Islamic revivalist movement in western Africa culminated in the Uthman Dan Fodio Jihad.[12]

...and the British claimed a monopoly over the law.

In the late 1800s, the British had begun trying to colonize the area and the Sokoto Caliphate resisted. By 1900, the Sokoto resistance, which was based in part on a deep desire to maintain the Islamic character of the Caliphate, was crushed, and the British claimed a monopoly over the law.[13] Under the auspices of the "native rule" policy, the British left the *Shari'ah* courts with jurisdiction over civil disputes and personal status cases, and limited their power to resolve criminal disputes and apply traditional or *Shari'ah* based punishments.[14] It also enacted The Native Courts Proclamation of 1900, which declared that *Shari'ah* courts would

> *administer the native law and custom prevailing in the area of jurisdiction, and might award any type of punishment recognised thereby except mutilation, torture, or any other which was repugnant to natural justice and humanity.*[15]

Whether any punishment was "recognized" as "repugnant to natural justice and humanity," was of course to be determined

from the British point-of-view, which is interesting since at the time the British employed a number of corporal punishments for crimes including lashing and execution. Nevertheless, the Native Courts Proclamation relegated *Shari'ah* to a second-class status as a source of law. The colonists limited the application of *Shari'ah* law in criminal cases.[16] Because *Shari'ah* law was so ingrained in the cultural identity of the people of the former Sokoto Caliphate, including the criminal law of *Shari'ah*, the dilution of *Shari'ah* law created resentment that lasted over one hundred years.[17] It has fueled the current debates (and violence) about the place of Islamic criminal law in Nigeria in the post-colonial period and the re-adoption of *Shari'ah*-based criminal law today.[18]

...the dilution of Shari'ah *law created resentment that lasted over one hundred years.*

The British left the nation deeply divided by ethnic, religious, regional, class and educational differences.[19] One of the battlegrounds upon which these conflicts were to be fought was the place of *Shari'ah* in Nigerian law. In 1960, delegates met to determine the future of the Nigerian penal code. [20] Two different codes were established; one for the north, and one for the predominantly Christian south. However, neither code provided for *Shari'ah* as a source of criminal law. Those in the North who supported the integration of *Shari'ah* into the criminal code were convinced that its neglect was a vestige of colonialism. Those who opposed *Shari'ah* in any form were convinced of its primitive and inhuman nature. The conflict was so intense that the Muslims finally conceded and accepted a penal code that was not based on *Shari'ah* in order to prevent severe civil unrest.[21] But the issue never went away.[22]

After the British left in the 1960s, Nigeria suffered civil war and military rule. After a brief period of democratic possibilities in the 1970's, the military regimes that lasted from 1983-1998 once again halted serious discussion about the placement of *Shari'ah* law on the same level as English-derived law in Nigeria.[23] The moment the military dictatorships ended, however, the debate about the role of *Shari'ah* in Nigerian law began once again with full vigor. In 1999, the states in Northern Nigeria began to test the limits of the federal government's power by adopting penal codes that incorporated *Shari'ah*-based crimes, procedures and punishments.[24]

...the debate about the role of Shari'ah *in Nigerian law began once again with full vigor.*

The experience of the re-adoption of *Shari'ah* criminal law in Northern Nigeria is a good example of the process through which many former colonies are reclaiming their original sources of law. It also shows how the law of the colonizers made room for some aspects of indigenous law while maintaining legal hegemony. The current legal system in Northern Nigeria shows aspects

of English-style codes and legal methods as well as retaining sources, procedures and rules that are unique to Islamic law. But the official recognition of alternate sources of law is just one way to accommodate plural legal systems.

Reverse Interlegality: *Shari'ah* in the United States

Sometimes "foreign" legal concepts sneak into the official legal system through the back door. The concept of reverse interlegality deals with the absorption of legal concepts into the official state legal system through contact with the other system, but not through any official recognition of that system of law. This is the current situation in the United States with respect to Islamic law.

Islamic law is in America. There are *Shari'ah* arbitration courts in Texas, and Islamic banks in Chicago, Detroit and New York. Judges in U.S. courts are interpreting and applying Islamic legal concepts to cases that arise out of Islamic marriage contracts or business deals structured on concepts derived from the *Shari'ah*. The Dow Jones even has a *Shari'ah* compliant investments index. Citigroup offers *Shari'ah* compliant investment and banking services. AIG offers *Shari'ah* compliant insurance. And, since the United States government now owns a large portion of Citigroup and AIG, the American people are invested in enterprises that follow not only the law of the State, but also the law of Islam.

...Dow Jones even has a Shari'ah compliant investments index.

The introduction of concepts and issues arising under Islamic law are changing the legal system of the United States as a whole by becoming a part of the system itself. The actors in the official legal systems and those who are interested in the relationship between law, and culture and religion need to become aware of the presence of Islamic law in the United States as both an alternative to the official state law system and as an influence within the official legal system. However, the discussion of *Shari'ah* in the United States has been focused on the elimination of *Shari'ah*, which is only one alternative to dealing with an unofficial legal system, and is destined for failure, as Archbishop Williams observed in the context of the U.K.

...changing the legal system of the United States as a whole by becoming a part of the system itself.

The United States has a long history of absorbing immigrants. The history has not been without terrible discrimination. Catholics were discriminated against in the 19th century. Other groups of immigrants who came in waves from non-European countries such as China were fiercely discriminated against. Immigrants from central America continue to be subjected to xenophobia, racism and intolerance. But it has become taboo to *openly* condemn other religions and ethnic groups in polite society. The values of multiculturality and diversity are widely espoused and accepted by most Americans.

There are far fewer Muslims in the United States than there are in Europe.

In Europe, there have been relatively large waves of immigration from Muslim majority former colonies for at least two generations. There are far fewer Muslims in the United States than there are in Europe. Muslims constitute a tiny minority in the United States, less than 1 percent of the population, and that includes Muslims who were born in the United States and whose ancestors have lived in the United States for hundreds of years. Nevertheless, the anti-Muslim sentiment is not difficult to find. Direct attacks on Mosques and Muslims wearing distinctive dress are reported on a regular basis in the media. There are a number of blogs devoted to bashing Islam and Muslims. These might be considered the acts of a fringe minority, but the anti-Muslim movement has found another way to disparage Islam and Muslims rather than open condemnation; they have begun to focus on the importation of Islamic law – *Shari'ah*. Even politicians who would never admit to prejudice against Muslims are perfectly willing to demonize *Shari'ah*. *Shari'ah* law is treated as a danger to civil society.

...and the belief that there should be one law for everyone.

Is the backlash against *Shari'ah* in the United States simply an outpouring of xenophobia, racism and intolerance? Or is there another value at work that is being exploited by the anti-Muslim groups? I believe that it has to do with the long-standing (mis) perception that the concept of law is limited to formal, official law, and the belief that there should be one law for everyone. There is also fear of change and of the unknown at work. However, as the scholars of legal pluralism have demonstrated, a legal system is composed of many different types of law. Different types of law often overlap, compliment or are in conflict with one another. The interaction of multiple legal systems in one geopolitical area is legal pluralism. Law is not now, nor has it ever been static. It is constantly changing. It is shaped by historical, economic and social forces.

Conclusion

The interaction of different legal systems, whether officially recognized or not, has long been overlooked by legal scholars. All legal systems have elements of pluralism that should be recognized and understood by scholars, legal practitioners and politicians. As the early students of pluralism recognized, the definition of law that is normally used in the west limits the scope of the study of law. While it is impossible to develop a definition of law to which everyone will adhere, the fact that there are a number of types of rule-generating regimes extant in every society should be recognized in order to give context to the debates regarding *Shari'ah*.

...leads to the question of what...should be done about it?

But recognizing that other legal systems will inevitably exist in pluralistic societies leads to the question of what, if anything, should be done about it? In other words, how should the official legal system deal with the existence of legal diversity? The British colonizers in Nigeria recognized that it was counterproductive if not impossible to completely outlaw the indigenous legal systems. They recognized that *Shari'ah* courts and customary courts should be allowed to exist, but they severely restricted their jurisdiction and decision making ability, making them subordinate to the common law courts. By doing so, however, they encouraged some to view the restoration of *Shari'ah* law, including the criminal law, as a necessary element of post-colonial revitalization.

Before politicians try to dismantle the *Shari'ah* arbitration tribunals, outlaw any reference to *Shari'ah* law, and condemn anyone who adheres to *Shari'ah*, they should examine their underlying motives. Are they simply trying to appeal to the anti-Muslim constituents? Are they offended by the idea of multiple legal systems, and if so, why do they single out *Shari'ah* for annihilation? If they are concerned that *Shari'ah* courts are more discriminatory towards women than the official courts, then perhaps some data collection is in order. And what if discrimination is discovered? Should then the government of the United States install official overseers in the *Shari'ah* courts, or draft legislation designed to make the decisions conform to the official law, as did Ontario? This would be a form of official recognition of the courts and an interference with their ability to apply the version of *Shari'ah* they find most closely represents G-d's law. Singling out the *Shari'ah* courts for dismemberment would amount to creating separate law for Muslims. Those who would outlaw *Shari'ah* in the United States should realize that it is impossible to eliminate Islamic law from our legal system, even if such laws could be considered compatible with the First Amendment to the Constitution. Perhaps the best course of action is to treat the *Shari'ah* courts the same as other religious tribunals and alternate forms of dispute resolution, and allow judges to decide for themselves when they must examine legal concepts derived from Islamic law in particular cases.

...it is impossible to eliminate Islamic law from our legal system...

Endnotes

[1] Franz and Keebet von Benda-Beckman, *The Dynamics of Change and Continuity in Plural Legal Orders*, 53 Journal of Legal Pluralism and Unofficial Law (JLP) 18 (2006) (also stating, "[b]y 'legal system' we mean a body of legal rules and regulations conceived of as a totality and represented as a bounded symbolic universe by social actors, and for which often, but not necessarily, a claim of internal systemization and coherence is made."). *Id.*
[2] Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global,* 30 Sydney L. Rev. 375, 375 (2008).
[3] Von Benda-Beckman, *supra* note 1, at 14.
[4] *Id.*
[5] Tamanaha, *supra* note 2, at 376.
[6] *See* Rudolf Peters, Crime and Punishment in Islamic Law: Theory and Practice From The Sixteenth to the Twenty-First Century, 142-169 (Cambridge University Press 2005) (discussing at length the political, social and historical forces leading to the reimplementation of *Shari'ah* law in contemporary states).
[7] Rasheed Olaniyi, *Hisba and the Shari'ah Law Enforcement in Metropolitan Kano*, *available at* http://www.ifra-nigeria.org/IMG/pdf/Rasheed_Olaniyi_-_Hisba_and_the_Sharia_Law_Enforcement_in_Metropolitan_Kano.pdf
[8] Ogechi E. Anyanwu, *Crime and Justice in Postcolonial Nigeria: The Justifications and Challenges of Islamic Law of Shari'ah*, 21 J.L. & Religion 315 (2005-2006).
[9] Olaniyi, *supra* note 7, at 1-2.
[10] There are four main schools of thought in contemporary Sunni Islam. One of these schools is the Maliki school, named for its founder Malik Ibn Anas al-Asbahi. Kamali, *supra* note 6, at 73. However, there was also dialogue with scholars from other schools of thought who traveled to Western Africa both to teach and to study at the schools of law established in the Islamic kingdoms. *Id.*
[11] Anyanwu, *supra* note 8, at 324.
[12] *Id.* at 324. This was nothing less than an Islamic revolution influenced by Fodio. Two years prior to the revolution, Fodio had moved to Gudu and composed two works that emphasized the importance of Islamic practices as outlined in the Shari'ah. *Id.* at 324. The Sokoto Caliphate accorded high status to *Shari'ah* law based upon Fodio's leadership and writings. The Sokoto Caliphate became the largest in western Africa, and led to the ingrained use of *Shari'ah* as the basis for the legal systems in northern Nigeria. As one author expressed: "The Sokoto caliphate became seen as part of a sacred history, 'G-d's act.' The *Shari'ah* was presented as a solution to misfortune, upheavals and injustice." *Id.* (quoting Peter B. Clark & Ian Linden, Islam in Modern Nigeria: A study of a Muslim Community in a Post-Independence State 1960-1983 (Kaiser 1984) (further quotation marks omitted)). Thus, the *Shari'ah* penetrated every aspect of Muslims' lives in the Caliphate, and became a part of the "collective conscience" of the people living there. *Id.* at 324. The ability of the political leaders to punish wrongdoing was an important aspect of their consolidation of political power in the far-flung pluralistic Caliphate. Their power ended, however, when the better-armed and equipped British won decisive victories over the Sokoto army. *Id.* at 325.
[13] *Id.*

[14] *See* Kamari Maxine Clarke, Fictions of Justice: The International Criminal Court and the Challenge of Legal pluralism in Sub-Saharan Africa 192 (Cambridge Studies in Law and Society 2009).
[15] Anyanwu, *supra* note 8, at 325. (citing E.A. Keay & S.S. Richardson, The Native and Customary Courts of Nigeria 22 (Sweet & Maxwell Ltd. 1966).
[16] C.N. Ubah, *Islamic Legal System and the Westernization Process in the Nigerian Emirates*, 20 J. Legal Pluralism 69, 71-73 (1982). *See also* Auwalu H. Yadadu, *Colonialism and the Transformation of Islamic Law*, 32 J. Legal Pluralism & Unofficial L. 103, 114-115 (1992). *See also* Anyanwu, *supra* note 8, at 325.
[17] *See* Anyanwu, *supra* note 8, at 328-333 (discussing the history of the gradual reestablishment of Shari'ah in Northern Nigeria).
[18] *See id*.
[19] Andrew Ubaka Iwobi, *Tiptoeing Through A Constitutional Minefield: The Great Sharia Controversy in Nigeria*, 48 J. Afr. L. 111, 113-114 (2004).
[20] *Id.* at 112.
[21] Anyanwu, *supra* note 8, at 328.
[22] The *Shari'ah* debate was not on the national forefront during the 1967-70 civil war, nor during the years of military rule from 1966-78, but the debate began in earnest in 1978, when democracy was once again a possibility in Nigeria. *Id.* at 328. The first serious debate about the second-class status of *Shari'ah* centered around a move to establish a federal *Shari'ah* appellate court. *Id*. at 328-329. Previously, appeals from the *Shari'ah* courts of first instance went to the federal courts. *Id.* at 329.The federal courts of appeals did not maintain judges or staff who were well-versed in *Shari'ah* law, and thus could overturn the decisions of the *qadis* (judges) without any sound legal basis arising from the *Shari'ah*. *Id.*A compromise was formed that would require a few members of the Supreme Court to have training in *Shari'ah* law, and that court would then hear appeals from the *Shari'ah* courts. No federal *Shari'ah* courts of appeals were created. *Id.* at 331. After this brief period of democratic possibilities, the military regimes that lasted from 1983-1998 once again halted serious discussion about the placement of *Shari'ah* law on the same level as English-derived law in Nigeria. *Id.* at 332. The moment the military dictatorships ended, however, the debate about the role of *Shari'ah* in Nigerian law began once again with full vigor. In 1999, the states in Northern Nigeria began to test the limits of the federal government's power by adopting penal codes that incorporated *Shari'ah*-based crimes, procedures and punishments. *Id.*
[23] *Id*. at 332
[24] *Id.*