

10-1-1970

The Legally Uninteresting Cases of Northern Nigeria and North Carolina

Everett Noland

Follow this and additional works at: <https://archives.law.nccu.edu/ncclr>

 Part of the [International Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Noland, Everett (1970) "The Legally Uninteresting Cases of Northern Nigeria and North Carolina," *North Carolina Central Law Review*: Vol. 2 : Iss. 2 , Article 3.

Available at: <https://archives.law.nccu.edu/ncclr/vol2/iss2/3>

This Article is brought to you for free and open access by History and Scholarship Digital Archives. It has been accepted for inclusion in North Carolina Central Law Review by an authorized editor of History and Scholarship Digital Archives. For more information, please contact jbeeker@nccu.edu.

THE LEGALLY UNINTERESTING CASES OF NORTHERN NIGERIA AND NORTH CAROLINA

EVERETT NOLAND*

I

My work in the legal system of Northern Nigeria,¹ left me with an impression of the similarity of their system to ours. Expressing this impression some three years later has revived many old memories. One is that of a young law school graduate going to Northern Nigeria in a state of complete ignorance—a state of ignorance bordered by *National Geographic Magazine* pictures of primitive Africa and Africans. Another of these memories is the great relief and fellow-feeling that arose on discovering a general similarity between their legal work and ours as well as the confusing differences. A comparative study of legal systems is far beyond the scope of this article. The burden of this article is to relieve a little of that ignorance and to share a little of that fellow-feeling by describing some elements common to both systems.

Much of the content and method of routine litigation is common to both systems. Lloyd Fallers describes some of these routine cases as the “legally uninteresting cases”² such as . . . a magistrate processing drunk and disorderly cases. These are cases where the facts do not require attention to the scope of the law and the law does not have anything particularly new or interesting to say about the facts. Such cases have a certain mechanical quality to them. Both North Carolina and Northern Nigeria have many such cases. The similarity of treatment of these cases may account for much of the over-all similarity of the systems, for these cases are great in number and in the aggregate much legal time is spent on them.

Northern Nigeria in 1966 and early 1967³ was different in many ways

* Attorney At Law, Raleigh, North Carolina; B.A. Emory University; J.D. University of Michigan Law School. Assistant Prosecutor in Northern Nigeria 1966-1967. Assistant Solicitor Wake County 1965-1970.

¹ The author worked as Inspector of Native Courts, Kaduna, Nigeria, during 1966 and early 1967 on the Afro-Asian Fellowship Program from Syracuse University, Syracuse, N.Y.

² L. Fallers, *Law Without Precedent*, 12 (1969).

³ Northern Nigeria no longer exists. In 1967 the military government of Nigeria established by edict six states in place of the Region while a revolution

from North Carolina today. In area, Northern Nigeria was 281,225 sq. miles and in population approximately 30 million people—roughly six times the number of people in North Carolina living in five times the amount of space. The population concentration varied from cities with a thousand years of history and over a 100,000 people to nomadic herds-men scattered in the bush a few to the square mile. It has been estimated that there are four hundred tribes in Nigeria and over forty major languages.⁴ Religiously, the country is divided into Moslem, Christian and Anamist, and further subdivided by most of the schisms and sects of these religions. The countryside varies from semidesert bush to lush, to tropical rain forests with good red soil in between. Crops include peanuts, cocoa, okra, cotton and bananas. In 1966 the country was a federal republic divided into four regions, of which the Northern Region was divided into 13 provinces and 552 districts,⁵ their closest equivalent to our states and counties. On the local level there were seventy local authorities in Northern Nigeria. Together they collected and spent over \$25 million a year in ordinary revenues.⁶

These local authorities appointed the personnel of the local courts which served much as our city courts did prior to the institution of the District Court system in 1965. The local courts were called native courts in 1966; today they are called area courts.⁷ These local authorities set salaries, made transfers and dismissals subject only to the approval of the Northern Nigerian Government. It was in these local courts that most of the legally uninteresting cases were tried. The local courts were authorized by the Regional Government and to some extent supervised by it. Historically, many of these courts continued to possess the responsibility they had prior to the coming of the British in 1900, especially in the more settled parts of the country. Appeals from the less important native courts could be taken of right on the law and facts, to a Regional Provincial Court. These Provincial Courts were established by the Governor with one to a province. From the more important courts

was in progress. Some of the revolution has worked itself out and much of what is said about Northern Nigeria in this paper, as it was then, remains true of the six northern states of Nigeria today.

⁴ Winder, "Fooling the Pundits, Nigerian Comeback," *Christian Science Monitor*, Oct. 17, 1970, at 9, col. 4.

⁵ M. J. Campbell, *Law and Practice of Local Government in Northern Nigeria*, 71 (1963).

⁶ *Id.* at 119.

⁷ A. O. Obilade, *Reform of Customary Court Systems in Nigeria Under the Military Government*, *Journal of African Law* 28 (1969).

it was taken, of right on the law, to the High Court of Northern Nigeria, their closest equivalent to the North Carolina Supreme Court, an appellate court of last resort with appeal only to the Federal Supreme Court in Lagos. Special provisions were made for appeals involving Moslem law.

The High Court also served as the apex of the other Nigerian court systems—the Magistrate Courts—courts which handled cases involving English law, corporations, governmental agencies and officials, and federal and regional statutes not specifically designated to the native courts. These courts were held by Nigerian judges trained in Britain as barristers of the English Bar before juries under a comprehensive Evidence Ordinance. These judges were chosen from the Nigerian Bar which had over 1000 members, some of them third generation lawyers.⁸ The complications of our federal-state-local court division were existent there, but were compounded by the unwritten customary law, the undigested English statutes and common law applicable⁹ in the Magistrate courts, the use of English in one set of courts and Hausa or some other native language in the customary courts, and the revolution of those days.

The native courts handled 95% of all the cases in Northern Nigeria.¹⁰ Generally, these courts were either composed of a sole Muslim judge supported by a clerk in training to become a judge and by messengers for informal process service and other duties or by a court president and members—usually persons of local importance by birth or education or ability—supported by a trained clerk and messengers. In 1963¹¹ there were roughly 786 native courts in Northern Nigeria divided into five grades of authority, A, A Limited, B, C and D. (Of course, there were a large number of the courts with rather limited jurisdiction—185 B, 256 C and 298 D courts.) These courts disposed of approximately 213,000 civil cases and 86,000 criminal cases in 1947.¹² In Northern Nigeria in 1966, for example, the most limited court, Grade D, had the authority to try \$150 civil cases, unlimited value domestic cases, and nine months or \$45

⁸ Ademola, *Personnel Problems in the Administration of Justice in Nigeria*, 27 Law and Contemp. Prob. 576, 580 (1962).

⁹ A. E. W. Park, *The Sources of Nigerian Law*, 14 (1963).

¹⁰ Ministry of Information Pamphlet, *Judicial Reforms in Northern Nigeria*, Northern States, Nigeria, 1967.

¹¹ Nwambaze, *Machinery of Justice in Nigeria*, 111 (1963).

¹² *Id.* at 126-127. Statistics for latter years were not available at the time of writing of this paper, but the trend has been to lower the number of courts with very limited jurisdiction and to increase the number of cases and to increase the proportion of criminal cases in relation to civil cases.

fine in criminal cases.¹³ The authority of any specific court could be limited or expanded by the political administration of the region as its particular problems warranted. For example, a low jurisdiction native court at a railroad stop might be given authority to try persons riding the train without paying or causing a disturbance on federal property, both violations of federal statutes. In addition, the jurisdiction of all native courts was limited by a statutory prohibition against hearing cases involving persons of non-Nigerian descent or persons whose "mode of life" was different from that of the community. These were the courts where most of the routine litigation of Northern Nigeria was begun, heard and completed. In North Carolina most of these cases are solely matters for the District Courts.

A look at certain routine cases of both systems, by the case method, illustrates some features that the systems and such cases have in common. Take an ordinary case of public intoxication. About nine per cent of all the N.C. District Court criminal cases filed are public intoxication cases.¹⁴ In Northern Nigeria this is also a very ordinary case.¹⁵ Here it is handled most often under N.C. General Statute 14-335, which makes it a criminal offense to appear in a public place intoxicated. In Northern Nigeria in 1966, one of the 443 sections of the Penal Code made it a crime to appear in public intoxicated.¹⁶ Here the maximum fine for the first offense is 20 days in jail or \$50 fine; there the maximum was seven days in jail or \$3 fine or both.¹⁷ In both countries the case could be tried before the court with the lowest criminal jurisdiction—without a jury. In North Carolina a single judge would probably hear it; in Northern Nigeria, a single judge or a panel of judges would hear it. In both countries a jury trial could be had on appeal, under special circumstances in Northern Nigeria and by right in North Carolina. In both countries the rate of guilty pleas would be high. Here in North Carolina they would run about 80%¹⁸ and there, the percentage of repeaters would be high.¹⁹

Even with these many similarities there are some differences. Since 1954 Northern Nigeria courts have been required to keep a verbatim

¹³ E. Keary and S. Richardson, *The Native and Customary Courts of Nigeria*, 158-159 (1966).

¹⁴ Commitment to Action, Governor's Committee on Law and Order, *Improvements in the Criminal Justice System*, Appendix D, D-6 (1970).

¹⁵ Personal impression of my experience. Statistics not available.

¹⁶ N.R.L.N. 93 of 1960, Appendix A, Section 401.

¹⁷ *Id.* & N.C. Gen. Stat., § 14-335 (1969).

¹⁸ Appendix D, *op. cit.*, D-31.

¹⁹ N.R.L.N. 93 of 1960, Appendix A, Section 404, 405 N.C. Gen. Stat. 14-335.

record of each criminal case and to allege the section of the Penal Code under which they were proceeding. Native courts often did not have indictments or warrants to start criminal proceedings. In North Carolina today it is the reverse. One would probably have to have an indictment or warrant to begin trial for public intoxication, but the proceedings would probably not be written down. If a public drunk was a Muslim in Northern Nigeria a Moslem judge could give him an extra punishment of Haddi lashes a religious symbolic whipping; in North Carolina an erring Baptist tried before a Baptist judge could not get a judicial punishment any harsher than could a college senior drunk at a football game.

Generally, however, the case method forces one to focus on the details of these legal systems. When the details of these systems are described, they are much more eye-catching than the over-all similarity that by reflex one's attention is drawn to them. Therefore, it seemed necessary for the purpose of this article to use another approach and to look at the two systems from a prospective view rather than that of a lawyer. The book by the social anthropologist, Lloyd Fallers, mentioned above, uses an approach to the legal system of the Buganda people of Uganda, Africa, which emphasizes the general structure of the legal system.

II

There is, of course, a mechanical element in human social life, and even in adjudication, as anyone who has watched a magistrate 'process' routine traffic and drunk and disorderly cases knows. Much of social life is quite unreflective and repetitive. Even the more self-conscious forms of social action commonly proceed, for the most part, in stereotyped sequences in which mutual expectations are satisfied by interactions based upon common patterns of belief and value . . .²⁰

The routine adjudication of the legally unimportant cases is a large part of the work of the legal system in both countries. Both systems process these cases in great number and a great deal of legal time is spent on them in the aggregate. In both systems they form the mechanical fly-wheel of the system—the routine cases out of whose number springs occasionally, the legally interesting case. In both, they tend to be factually oriented, implicit, based on common patterns of belief and values, limited to a few types and in themselves unimportant on a one-to-one basis. They also tend to be completed locally, cheaply, quickly and basically, to the

²⁰ L. Fallers, *Law Without Precedent* 15-16 (1969).

satisfaction (or acceptance) of the litigants, before a single judge in a single hearing, both in Northern Nigeria and North Carolina.

Law is normally very explicit and self-conscious to one educated to its language—as any student of a thirty-page opinion on a negligence case knows. Litigation is one of the most explicit aspects of the law. However, in routine litigation much is left unsaid and remains assumed by all parties in North Carolina, as well as in Northern Nigeria. In North Carolina today a speeding case of less than 15 mph over the speed limit is probably the most routine of all criminal cases.²¹ Many of them are based on readings from radar or VASCAR. A great number of questions can be legitimately raised about the reliability of such a radar reading.²² Yet in the routine case most of these remain unraised questions and much remains implicit in the phrase “I checked my radar and it was working properly.” In Northern Nigeria this implicitness was encouraged by a statute which forbade any legal representation in the native courts.²³ The special, unusual points of procedure or experience which professional advocates would raise were thus reduced. To this extent the case was forced to follow the ordinary presentation, the ordinary arguments limited by the facts that everybody knows to be true—the implicit assumptions of everyday life. The more routine the case, the more that was left unsaid, as everybody “knows” how such cases arise and how they are handled in the court.

Routine cases are quickly finished both in Northern Nigeria and North Carolina. For example, the routine case of uncontested divorce in Northern Nigeria would not take a page of writing to record in longhand. In North Carolina the routine public intoxication or minor speeding case can be tried in less than ten minutes.²⁴ Not only are these cases quickly brought to judgment, but very few are carried farther. Approximately 16,000 misdemeanor cases were appealed from the District Courts in 1969, as opposed to some 600,000 such cases completed by the court or by waiver at this level.²⁵ The Provincial Courts of Northern Nigeria

²¹ Appendix D, *op. cit.*, p. D-6.

²² Kopper, *Symposium: Radar Speedometers*, 33 N.C.L. Rev. 343-381 (1955).

²³ Native Courts Law of 1954, N.R.L.N. 1967. This portion of the law was repealed in late 1967. See Obilade, at 39.

²⁴ From my personal experience as assistant prosecutor of the District Court during 1970 in Wake County.

²⁵ Unreported figure on the number of appeals found in material in the Administrative Office of the Courts, Raleigh, with the total figures being from Annual Report of the Administrative Office of the Courts, 1969, Raleigh, p. 57, with allowance for nol-pros and preliminary hearings.

were sometimes without pressing business and they received the appeals from as many as thirty-five courts and one million people.

The factual nature of routine litigation results from the law involved being simple and familiar to all. The law is well-known to litigants and to the court because in both systems there are only a few types of cases that are routine. In North Carolina, for example, over 80% of the criminal cases filed in the District Court during the first third of 1969 were either traffic violations, public intoxication or worthless checks.²⁶ Small claims and divorce actions were about 75% of the civil cases filed in District Court during 1969.²⁷ From limited personal experience²⁸ I would say the same types of civil cases form a large part of the docket in Northern Nigeria. There, assaults, public intoxication and failure to buy licenses and pay taxes are a large part of the routine criminal cases. The law and its application to these few types of cases soon become well-known. Therefore, in most routine cases, the litigation is over the facts and the dispositions. The litigation here in North Carolina on speeding, public intoxication or small claims is seldom about what is the applicable law or what is its scope; it is most often about whether the facts are as the first litigant or as the second litigant saw them. In Northern Nigeria the routine divorce case often turned on how much dowry had been paid and needed to be returned—a question of fact most often, not even a mixed question of fact and law.

The legally uninteresting cases involve small fines, judgments or punishments. Occasionally, even the most routine type of case can be made important, "when it is the principle of the thing." But a costly verdict or a stiff punishment will keep any type of case from becoming routine, regardless of how simple or well-known the law itself is. Individually, these cases involve small matters, but when added together, they have an important effect on the community, on the legal system and, possibly, on the individuals involved.

Perhaps it is because these garden variety cases are fact-oriented and limited in types and importance, that they are settled locally and cheaply. The most limited courts of Northern Nigeria could hear divorce cases and small claims and these courts were scattered throughout the country.²⁹

²⁶ Appendix D, *op. cit.*, p. D-6.

²⁷ Annual Report, *op. cit.*, p. 51.

²⁸ The dearth of statistics in developing nations, and in Nigerian economics, in particular, is eloquently described in Stopler's *Planning Without Facts* (1966).

²⁹ In Southern Zaria in 1967 one such court, and only one, was so situated that when the creeks rose it could not get to a highway and could not hold court because the courthouse had fallen down and court was being held under a tree.

The fees of these courts were less than a dollar and were uniform throughout the Northern Region. Here in North Carolina the fees of the District Court system are uniform and rather inexpensive (about \$15) and the courts sit at least in every county seat.³⁰ But in the Northern Region the language of the court might be different from one locale to the next and the civil law applied to residents of the area would vary from locale to locale. Travel was far more difficult than it is in North Carolina. For the reasons above the courts there are more local than they are here. In addition, today in North Carolina there are fewer District Courts than there were local courts a few years ago. In 1967 the local courts of Northern Nigeria were reorganized; whether there are more or fewer courts since this reorganization I do not know, I suspect there are fewer. In both countries the routine cases are settled locally; few are appealed. If such cases could be disposed of more quickly, cheaply and locally, this would be acceptable to the litigants in both countries.

The legally uninteresting cases are also characterized by common patterns of belief and values and general satisfaction (or acceptance) by the litigants. Even if the case is one of the few routine types, intrinsically unimportant decided in a system which provides cheap, quick, local, and just decisions after hearing all the facts, it can still "become a federal case" if the legal sub-culture is not operating in a common pattern of belief and value with the community. When such a case becomes a federal case, every proposition of law, every fact has to be proven. Nothing is implicit, nothing is quick. For example, if a vagrancy case becomes a battleground for persons whose patterns of belief and value differ widely from those of the courts and legal system, then the right of the court to hold the trial may be questioned, the right to receive testimony, the right to sworn testimony, etc. Recent cases have received wide publicity on this ground here in the United States. In Northern Nigeria the *alkali* (local Moslem judge) was a political symbol in some circles of a type of conservative thought and political power dominated by one particular ethnic group. Such a judge seldom could be given routine cases in areas of Christian or animist populations politically opposed to this particular ethnic group. The Kano riots of the 1950's were attributed in part to such a judge—community relationship and the revolting break in the mutual understanding and trust between court and community. A common pattern of belief and values is not an identical pattern of belief and values. That the court settles a case legally, not as the community would

³⁰ N.C. Gen. Stat. 7A-304, and 7A-130.

want it settled, or that the court punishes in accordance with the law, not as the community would, does not necessarily cause a break in the pattern of values—if the community accepts the legal sub-culture's pattern.

The community's acceptance of the legal system depends on many factors, one of which is whether the mutual expectations that common patterns create is generally satisfied by the court's actions and particularly by the court's action in routine cases. In both systems the handling of routine cases does satisfy the common expectations. This satisfaction is not because the outcome of the cases is always predictable, although it generally is, not because hopes and expectations of the parties or defendants are satisfied, although they generally are, but because one receives his day in court. He receives a hearing with the police or the prosecuting witness in a generally satisfactory forum operating under general understood limits. In North Carolina this satisfaction is indicated by the great number of cases that a comparatively small number of limited jurisdiction courts handled last year. In 83 counties of North Carolina in 1969 the District Courts completed 728,463 criminal and 93,734 civil cases.⁸¹ This would have been impossible if the community was not generally satisfied with what they were doing and allowed them to move quickly, locally and without appeal. They would not have completed as many criminal cases if 529,298 had not been completed by plea or waiver, nor as many civil cases if the magistrates had not been able to dispose of 46,869 out of the 52,321 small claims filed in District Court.⁸² They could not complete as many, if the percentage of appeals had been greater; for there were fewer than 3% appealed from District Court in misdemeanor cases.⁸³ Possibly, the high cost of appeal was the cause; still it indicates acceptance, if not satisfaction. Having completed as many as shown is some evidence of a general satisfaction of mutual expectations.

In Northern Nigeria the fact that 95% of the cases were heard in the native courts is evidence of the satisfactory nature of the courts in meeting the expectations of the parties. The parties had a right to appeal in all cases to a government court. Even Nigerian legal scholars trained

⁸¹ Annual Report, at 51 and 57. This is a tremendous number of cases. The Superior Courts of the State combined completed 20,692 civil cases and 33,456 criminal cases during the same time (*Id.* at 27 and 36) and the Appellate Division of the General Court of Justice completed less than a thousand cases (*Id.* at 13). The effectiveness of these court decisions may be in an inverse relationship to their number. For example, one parking ticket case in the Supreme Court may control the disposition of 100,000 parking ticket cases in District Court.

⁸² *Id.* at 57 and 61.

⁸³ Note 25, *supra*.

in English law in England, acknowledge that in customary courts in routine cases: "for the majority of our people, justice in the native or customary courts is preferable, because it is cheap and convenient and is administered under familiar surroundings in a language which they understand."³⁴

When the legal system ceases to give satisfaction to mutual expectations routinely on the legally uninteresting cases, serious repercussions have resulted in the community at large. In 1929 in Eastern Nigeria the Aba Riots occurred during which "native court buildings were burned to the ground and native court members attacked and prevented from holding court Persecution by native court members and corruption in the native courts are a source of very considerable discontent among the people."³⁵ In the early 1950's there were riots in Kano, Northern Nigeria. From these events resulted extensive reform of the native court systems.

It is important to the legal system as a whole, both in Northern Nigeria and in North Carolina, that the courts routinely give this satisfaction. There are a large number of legally uninteresting cases. Each one is very important to the citizens involved. The handling of *his* case is his major contact with the legal system. In each of these cases the court's action is easily observable because the factual situations are stereotyped. Stereotyped factual situations cause everybody to think they understand the case before the court and how the court should decide it and does. For example, if someone were thrown in jail in Northern Nigeria for wilfully not paying his cattle tax, then it was clear that here a governmental policy existed which the courts would undoubtedly enforce. If a woman were put in jail for disposing of mortgaged property in North Carolina, then it is clearly a business policy which the courts will enforce. This clear visibility, the large number of decisions and the high expectations of the litigants about their case, contributes to the need for the legal systems of both countries to handle well their legally uninteresting cases.

III

"The events which precipitate a case are not, for the legal official, 'the theatre of his activities,' but merely the 'object of his contemplation.'"³⁶

³⁴ Nwambaze, *op. cit.*, p. 128.

³⁵ *Id.* at 77.

³⁶ L. Fallers, *Law Without Precedent*, 17 (1969).

That so much about routine litigation was similar did not come to pass by chance. These common features are the side effects of the legal systems' methods of handling their work. That these side effects are similar demonstrates how the systems themselves have much in common. Some of these common features are the use of legal reasoning, the respect given the legal method, the use of the law to backstop other institutions and the law's affinity for politics and morality.

In Northern Nigeria the legal system is as legalistic as ours, in kind, if not in degree. Often it is argued in North Carolina that our courts only want to know whether you were going 55 mph in a 45 mph zone, not whether you were on the way to the hospital with a wife in labor. Law in Nigeria was also an authoritative decision on whether or not a specific standard of conduct had been violated by a certain set of facts—not a moral judgment on the overall goodness and badness of the relationship or action. Neither in North Carolina nor in Northern Nigeria is it mediation or arbitration between fending parties. In both systems a case was decided on the legal issues involved, not on the issue of the parties' desires, nor even on the important issue as the parties see it. Other legal systems are not so legalistic. It is reported that among the Tiv tribe of Northern Nigeria prior to the native court system, if the evidence in one case indicates another legal action is involved, the court would start into the new action on its own motion.³⁷ In Northern Nigeria, as here, the court might hint that there is another action on the facts in evidence, but it is an unusual case where the court itself starts the new case. Judicial restraint, hewing to the legal issues, and deciding cases, not mediating or arbitrating them, characterizes both these legal systems.

Both cultures place much emphasis on this legalistic mode of settling disputes, even though they criticize it freely for being legalistic. This is in stark contrast to the use of law by some cultures. For example, in China in the 1600's the Emperor directed his judges to treat "those who have recourse to tribunals without any pity, and in such a manner that they shall be disgusted with law, and tremble to appear before a magistrate."³⁸ Such a cultural context would make the law seem unfamiliar, but in Nigeria the law has been respected for hundreds of years, much as we respect it. This made my work there seem more familiar. The Moslem empire of Northern Nigeria established a system of courts over thousands

³⁷ P. Bohannon, *Justice and Judgment Among the Tiv*, 105, 106 & 142 (1957).

³⁸ H. McAleary, Praeger, *Introduction to Legal Systems: Chinese Law*, New York, p. 115.

of square miles and thousands of people long before America was discovered by Europe. The Nupe of Northern Nigeria established and respected their courts before the British came.³⁹ The British merely encouraged the native judicial system in Northern Nigeria when they came in 1900.

"There is no more important duty imposed upon an Administrative Officer than that of keeping the closest touch with the native courts of his Province."⁴⁰

When there is this kind of esteem for the legal process in the cultural fabric, it survives through great historical changes. The Alkali has held court in Kano for hundreds of years and there is little reason to think that even the current revolution will stop him. In North Carolina today we also use the law to settle many of our disputes (maybe too many). We honor it and those who follow its discipline. Some say there is no respect for the law these days; some say the laws are not just and should not be obeyed. Yet, law is still an important part of our lives as a State and as a people, just as it is in Northern Nigeria.

Both of these legal systems have only a few routine causes of action and these backstop only a few of society's institutions and rules of conduct. If over 80% of the criminal cases are traffic, drunkenness or bad checks, then it is obvious that routinely, the courts are used to enforce (by the criminal law) only a few social policies. It is also obvious that these three serve as backstops to government safety policies (traffic), social patterns (drunkenness), and business policies (bad checks). In Northern Nigeria also, only a selected few of the community standards of conduct were supported by the law (even fewer by the routine work of the law); and those few were often backstops to other institutions' policies and practices. This effect of backstopping comes not only from punishment or judgment, but also from the ritual juxtaposing in time and place of a petty violation with a preliminary hearing for murder, as can happen in District Court in North Carolina.

This use of the law to backstop inevitably involves it in a tangled relationship with politics and morality. In fact, the effect on the law of this relationship in Northern Nigeria in 1966-67 was much more obvious and thoroughgoing than it is in North Carolina today. If we are living in a period of fast social change, in Northern Nigeria they are

³⁹ S. Nadel, *A Black Byzantium*, 165-174 (1942).

⁴⁰ A. H. M. Kirk-Greene, *The Principles of Native Administration in Nigeria*. Lugard's Political Memoranda, Lord Lugard, 147, 1965.

living in a period of revolution—literally—politically, socially and culturally. In 1922 Nigeria got a constitution, and again in 1947, 1952, 1954, and 1962.⁴¹ Then in 1966 the military made a *coup d'etat* and suspended much of the constitution and in 1967 reorganized it. In 1918 the native courts were reorganized, and again in 1934, 1954 and 1966.⁴² North Carolina's constitution has not been revised since 1868 and the reorganization of the lower courts in the 1960's was the first major reorganization of the courts in many years.

Just as our politics are neither so rampant, unstable nor revolutionary, neither are our cultural, social, religious or educational shocks as great or frequent as those in Northern Nigeria. We do not have large groups of completely illiterate people living the pattern of centuries ago next door to five large, modern textile mills operating on the latest of international machinery, as they have in Kaduna, Nigeria. We do not have the severe divisions of religious life between Moslem, Christian and anamist. If there is a generation gap affecting moral standards between Arlo Guthrie and Spiro Agnew, visualize the gap between a village farmer who tills his two acres of sugar cane with a hand hoe and his son who flies the jets that fought in the recent Nigerian civil war. This revolution means that the legal standards are less settled and that even the settled ones are less effectively supported by the law. It also contributes to rapid changes in the law and to the law being regarded as less well-established, less morally right, as most moral standards are daily jostled and disrupted.

The association of politics, law and morality under these conditions causes the legal work to be done differently and to have a different feel than it does here. Yet the changes this association has brought about in the court structure have some features in common. Both have created unified lower court systems. (G.S. 7A-101 and identical edicts of Northern States, 1967). Both have established these unified courts on a non-local basis—in North Carolina by state-wide legislation and in Northern Nigeria by region-wide military edicts.

These features, common to both systems, combined with codes substantially like ours in certain fields—Penal Code, Evidence Ordinance, Model Banking Act, Corporation Act, etc., formed much of the basis for that sense of overriding similarity which I found amid the show-stopping differences of the two countries. The intent of this article has

⁴¹ Sir Bryan Sharwood Smith, *Recollections of British Administrations in the Cameroons and Northern Nigeria, 1921-1957*: "But Always As Friends," 418-425 (1962).

⁴² Keary, *op. cit.*

LEGALLY UNINTERESTING CASES

191

been to share the basis of a sense or relief and fellow-feeling with the interested, armchair-bound reader, not to show the whole picture or to compare the systems objectively. Great changes in the legal structure involving the lower courts and the routine, legally uninteresting cases are happening in North Carolina and Northern Nigeria. In such times it helps those involved to be aware of how "the object of their contemplation" is also "the theater of their activities." Visualizing something in common between Nigeria and North Carolina is one of many ways to do this.