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Author(s): M.G. Smith
CHAPTER SEVEN

Hausa Inheritance and Succession

M. G. SMITH

INTRODUCTION

The Hausa, most of whom live in Northern Nigeria, are a Musliman people, several millions strong, settled mainly between 10\(^\circ\) and 13\(^\circ\) degrees North and 4 to 10 degrees East. Hausa share a common language, religion, and mode of social and economic organization. Their primary groupings are centralized states of varying size, population, and political status, all of which have city-capitals.

Most Hausa states have Fulani rulers. These ruling Fulani are now part of the Hausa (Habe) population they rule; but in 1804–10, when the Fulani overran the independent Hausa kingdoms of this region, the two peoples were sharply distinguished by culture, religion, economy, language and race. The settled Muslim Fulani who rebelled at that time received important aid from their nomad cousins, the pastoral Fulani or Bororo, of whom few were Muslim. Nowadays Settled Fulani have a greater community of culture and interests with Hausa than with their Bororo kin.

The Hausa economy, based on continuous farming in areas of compact settlement, is the polar opposite of the pastoral nomadism to which the cattle-keeping Fulani are devoted. For some centuries these pastoral and peasant economies maintained symbiotic relations, but these were altered by Hausa oppression and by the revolt of sedentary Muslim Fulani in the jihad of 1804–10. During the last century the pastoralists provided the new rulers of Hausaland with reserve forces on which they could draw when necessary to maintain their rule. But under British control in this century, these political relations of settled and nomad Fulani have tended to weaken, and until recently 'pastoralists regard the Native Authority (that is, the Fulani administrations of Hausaland) as machinery of the Haabe (Hausa)'.

In a typical emirate the Fulani ruling classes and their Hausa subjects now share a common citizenship and framework of political obligations. They also owe common allegiance to the Sultan of Sokoto, the traditional head of the Fulani empire. As Muslims, both groups also belong to the Malikite school or rite. Both emphasize agnatic kinship in descent and domestic life, both practise polygyny with easy divorce, both hold common judicial and administrative institutions, and, formerly, a common system of slavery.

Their establishment as the Hausa ruling class also committed the Settled Fulani to the adoption of Hausa settlement-patterns and to a progressively fuller participation in the Hausa economy. However, this economic participation varies with class and ethnic affiliation. The great majority of Hausa are peasants who also practise some specialist such as handicrafts, local or long-distance trade. Few ruling Fulani farm personally, and not many more engage directly in trade. Until 1900, when Lugard proscribed slave-raising and the slave trade, the dominant Fulani depended mainly on the produce of their slave settlements (rurada), or on the levies of office, the latter being especially valued for the opportunities to acquire slaves which it provided. Aristocratic Fulani have thus maintained that aloofness from trade and farming which forms part of their pastoral heritage. This avoidance still holds, so far as office or political prospects permit.

However, those Settled Fulani whose ancestors failed in the scramble for fief and office, not having reserves of cattle to fall back on, have had to take part in the peasant economy directly. Such persons are nowadays distinguishable from their Hausa neighbours mainly by their preference for certain specialisms, such as sewing and Koranic scholarship. This preference is coupled with an avoidance of such other occupations as blacksmith work, dyeing, building and thatching, weaving, praise-singing and pot-making, hunting, fishing, mat-making,

woodworking, and above all, butchering. These occupational preferences and dislikes of certain trades reveal the persistence of pastoral orientations even among those Settled Fulani who now rank as commoners (talakawa) and peasants (yan kanye). Their preferences are for those techniques which were pursued by Fulani when they first settled among Sudanese Negroes under the influence of Islam. The disvalued occupations are especially distinctive and important elements of the Habe peasant heritage, and thus alien to pastoralism. The limited occupational choices open to these Fulani commoners further reinforce their tendency to inherit the occupations of their fathers. Among Hausa also this inheritance of occupations is an explicit principle regulating social life. However, the general context of Fulani domination has allowed Fulani occupational preferences, which reflect their pastoral origin, to realign the Hausa ranking of occupations and thus partly to reverse their traditional peasant hierarchy. Indirectly, these Fulani values have also strengthened the principle of occupational inheritance from father to son.

Thus, in learning who are Hausa, we learn something about the conditions which pose problems for the uniform regulation of inheritance and succession among them. Hausa society contains a number of politically distinct societies, each with an old walled town as its capital. In most Hausa states, Fulani form an hereditary aristocracy, but none the less most Fulani are commoners. Although Muhammadanism and the practice of Hausa culture are the two essential conditions of citizenship in these states, the prescriptions of Maliki law affect inheritance unevenly. This variability forms the chief analytic interest of Hausa inheritance practice. To pursue this problem, I shall first describe those conditions which influence Hausa inheritance and succession. Then I shall summarize the principles and procedures of Maliki law and their application amongst the Hausa. In conclusion, after describing the forms of Hausa succession, I shall seek to isolate the factors which regulate this variable combination of law and custom.

By inheritance, I refer to the transmission of property rights, by succession to the transmission of statuses. Inheritance and succession are closely related and commonly proceed together; but they are analytically distinct, and may proceed differently. Inheritance confers rights over things; succession transfers statuses, defined by rights and interests vis-à-vis persons. Thus, one of the problems we shall have to consider is the relation between these two processes.

THE TERRITORIAL SYSTEM

Hausa territorial organization is based on the local community. Under the British this unit, renamed a Village Area, formed the lowest level of the Native (Hausa) Administration in the emirates. Each local community has an officially recognized chief, who is responsible for its administration, tax, and population-counts to superior authorities, viz. formerly fiefholdrs resident at the capital, nowadays to District Heads who live nearby. The boundaries of these local communities are usually marked by river or flood courses, by other natural features, or by trenches filled with charcoal. Everyone living within its boundaries owes obedience to the community chief and is entitled to the treatment accorded to community members. No one living elsewhere may occupy or farm land belonging to a community without the knowledge and approval of its chief. A man who lives in one emirate may not farm in another; such a practice, known as nomajidde, would evoke the disapproval of both rulers.

The largest settlement in a local community is generally its capital, an old walled town of some size, at which the community mosque, Idi (Sallah) prayer-ground, market, and chief's compound are sited. Until 1900 this town was the refuge to which people fled when war-drums sounded news of an enemy's approach.

The village chief administers his community through a number of ward heads whose appointment is marked by formal
investiture to titles such as Madaki, Barde, Ubandomo, Magaji, etc. Each ward head has charge of a clearly-defined ward and of all who live within it. Wards fall into two categories, those within the village centre, the gari or walled town, and those consisting of hamlets (tunga, keffi, kuye) founded from the village or on community lands. Ward heads in charge of bush hamlets have power to allocate virgin land or long-disused fallow land near their settlements. They are obliged to report the arrival of strangers to their village chief, who in turn informs his superior.

This was the usual but not the only form of community administration among Hausa. In Habe states such as Daura, or Maradi in Niger, most village heads lacked, before 1900, immediate power over their people, who were individually responsible to a number of different officials resident at the capital. Under this system the village head was referred to as mai-gari (owner of the village) rather than sarkin gari (village chief). Besides counselling and arbitration, the main function of the mai-gari was to act as a means of communication between his villagers and their various lords. Such villages usually lacked internal organization by wards. So did Sokoto town itself, the capital of the Fulani empire, Wurno, its rival, and several other new towns founded by Fulani.

Under Fulani, the principle of local origin governed community claims for lands in areas of new settlement. Thus, if the members of a certain village settled on virgin lands nearby, that area and its population were grouped with the parent community, either within a single unit, or as senior and junior units under the same fiefholder but having different chiefs, though often from the same lineage. In Habe Daura and Maradi on the other hand, since individuals owed personal allegiance to particular chiefs, migration was less significant than the rights of citizens to transfer allegiance (chapp) formally from their old lord to a new one, without even moving from their homes. These principles of personal allegiance applied also to nomad or semi-settled Fulani throughout most of the Fulani empire at that time. Usually each important Fulani clan or sub-tribe had its headman (ruja, ardo) appointed by a particular lord at the capital of the emirate in which it was quartered for the rainy season. Unless the nomad group formally contracted a new allegiance, it remained under this lord’s control, wherever it

moved. This form of administration had no place in Zaria, which had few nomads and was fully wedded to the territorial principle.

The fiefs through which these local communities were administered, and which themselves formed the principal administrative units of the Hausa emirates, were thus organizationally complex and of variable composition. They generally consisted of scattered communities which accidents of history had placed under administration of a common office. In contrast to and sometimes in combination with these strictly territorial fiefs were others, consisting of nomad Fulani bands. Throughout the last century, fiefs were rarely transferred from one office to another; and throughout most of their empire, office-holding fiefs tended to vest in patrilineal groups, most of which were Fulani. Zaria was exceptional in this respect also, since hereditary fief-holding office (hakimi, gadoon samun) was there the rarity rather than the rule. Except in Sokoto, and to a lesser degree in Kano, fiefholders lived in the capital as members of the court, administering their fiefs through staffs of titled agents (jakadu) who were drawn from their kin, clients, and slaves.

In Zaria, which made little use of hereditary office from Habe times, the distinction between fief and vassal-state was clearest, the vassal-chief living in his fiefdom, deriving his title hereditarily, rendering tribute rather than tax, and having certain other powers and functions not shared by hakimai (fiefholders). In Sokoto on the other hand, most of the large fiefholders, who were of royal descent, lived in their domains and ruled rather as vassals did in Zaria. In Katsina and Kano, the distribution and governmental roles of fiefs also differed. Kano contained several vassals as well as large consolidated fiefdoms under hereditary officials resident at court. The territory of Katsina included several chiefs who owed allegiance direct to Sokoto and who were thus largely independent of the local emir.

This territorial organization is further complicated by certain land allocations made by Fulani leaders when they conquered and occupied Hausaland. In Zaria, the four leading Fulani families each received a block of territory stretching outwards from the capital. Parallel distributions of land took place in Kano and in Sokoto. Walled towns already or subsequently
established within these lineage estates remained fiefs under the emir, and such fiefs were usually held by officials drawn from lineages having no claim to local land. Viewed internally, these fiefs consisted of communities, the component households of which occupied plots of land by reason of gift, pledge, inheritance, initial clearing, or possibly purchase.

As the new rulers secured slaves, they founded many new settlements in various circumstances. A fiefholder might establish his 

*riji* (slave settlement, pl. *rumada*) within his fief, or on land to which he had some hereditary claim by reason of the Conquest allocations, or on virgin land claimed by another lineage or community; or, most rarely, on land to which only the emir laid claim, in his capacity as *mai-kasa* (owner of the country). Other slave-owners, lacking claims to lineage estates or fiefs, might establish *rumada* within or near some fortified township, or very rarely on land over which no lineage or subordinate official claimed prior jurisdiction. Senior eunuchs and slaves, who lacked hereditary estates, might also establish slave-settlements in fiefs placed under their supervision, directly or indirectly. Often enough, unsuccessful candidates for office and the sons of dead officials collected their slaves and clients and withdrew from the city to establish new *rumada* and settle there. *Rumada* belonging to important officials, slave or free, were administered by agents of their absentee owners (*fiyergiji*, s. *ubangiji*). *Rumada* sited within larger settlements differed politically from those which stood on their own. The ruler's *rumada* were also politically distinct.

Distinctions between private and public property deserve attention here. Each important office had, as part of its constitution, an official residence in the capital, often another in each important fief, and one or more official farms. In most emirates, senior offices also had certain slaves and free clients attached to them permanently. On transfer of office to a new holder, these houses and lands remained with the office, while moveables such as slaves, cattle, cash, horses, and the like were divided in ways described below. Throne property received similar treatment on a new ruler's accession. Sokoto, as the imperial state and seat of the Sultan, was in this respect among others peculiar. Every state also contained numerous offices lacking compounds, and many of these also lacked farms and office-slaves. Administration of inheritance for these various categories of officials differed accordingly.

During his lifetime a ruler or important official usually acquired slaves sufficient to found one or more slave-settlements, separately or within some older unit. Most emirates also had certain *rumada* which were permanently endowed upon the throne, for instance the towns of Gandi and Gwadodi among others in Sokoto. In a real sense, the palace (*fada*) of an emir or first-order official (*rikuni*) was simply his *riji* at the capital; but this was state property, whereas the *rumada* established during tenure of office were personal estates which might be confiscated or dissolved if the official was held guilty of some serious offence. Normally such *rumada* were transferred by their founder to his issue, often during the former's lifetime. Failing heirs of this category, they passed to his younger siblings. Neither women nor elder brothers could inherit them. They were thus distinguished from other *rumada* established by a man's ancestors, to which he had hereditary claims, but which were administered by his senior kinsmen. Since the nobility sought to retain their own *rumada* on inheritance without division, most of these became corporate lineage property in one or two generations. Thus brothers who held exclusive joint rights to the *rumada* established by their father, may also have claims in those established by remoter ancestors. In either case the unit would be administered by the senior male of the kin sharing these property-interests. Often this 'administrator' was not the oldest member of the group, but its senior office-holder or foremost personality. This organization of lineage interests in property was further complicated by the fact that the rate at which individuals or groups established *rumada*, and their ability to maintain them intact, depended on their relative success in the competition for political office. Thus it often happened that a politically successful descent line came to exercise administrative powers over *rumada* established by other segments of the lineage to which it belonged, irrespective of seniority on the basis of age, generation, or descent. On no account, however, would the members of one lineage be freely entrusted with the *rumada* of another.

There were thus two categories of corporate property, that held by lineages, which was private, and that belonging to the
state, which was public. Among the nobility, rights in land, *rumada*, or compounds acquired by individuals tended to become the joint property of their offspring, especially the males, unless subdivided for some special reason. A ruler's personal estate, being unusually large, was generally split up among the offspring of his four wives (*daki-daki*, hut by hut), the offspring of concubines normally inheriting within the hut of the wife to whom they had been attached by the ruler during his life. This formula was often ignored in practice, some rulers simply allocating a set number of slaves and articles to each of their predecessor's sons, while others varied the portions allotted to each hut-group according to the relative status of the wives concerned. Equality of ultimate shares was hardly consistent with distribution on the *daki-daki* basis, since the size and constitution of the *daki*-groups would vary; moreover the concubine's offspring rarely received the same portion as sons by another emir's daughter. In either case, decisions about the further subdivision of each *daki* share, or its corporate administration, rested with the group concerned, and varied with its constitution. In the first generation of heirs corporate property was more commonly held by full than by half siblings.

**THE ECONOMIC AND DOMESTIC SYSTEMS**

The Hausa economy combines two clearly distinct sectors, one of which is commercial and urban, while the other is rural and peasant. This economy has a triangular basis in farming, handicrafts, and trade. The capital which contained the government is also the commercial hub of each kingdom. Formerly these capitals were engaged in a network of caravan trading (*fatauci*) which stretched across the Sahara, south to Ikko (Lagos), and between Bornu and Timbuktu. As caravan ports they attracted many foreign merchants, especially Arabs, Tuareg, Nupe, and Kanuri. Colonies of these merchants settled in Hausa cities, pursuing trade on their own account or acting as agents for principals elsewhere. The resulting urban heterogeneity was further differentiated from the rural population by the prescriptive concentration of officials and political agents at the court. Thus the rural and urban Hausa populations differ in composition, organization, interests, and activities.

These rural-urban differences are especially important for an understanding of Hausa history and Hausa Islam. The populations of pre-industrial cities can accommodate Islam more easily and completely than peasants. In Hausaland its adoption by the city folk was facilitated by their autocratic organization, by their ancient tributary relation to the Muslim empire of Bornu, and by the presence of Berber and Arab merchants in their midst. Thus, despite the numerous deviations from Islam as practised by Hausa townsfolk, its observance is greater there than in the country. This is shown by the differing knowledge of and attitudes to Maliki law which prevail among the two populations.

By virtue of their political and commercial opportunities, the Hausa city folk depend on farming less directly than do the peasants. In either milieu, craft production is important, to the villagers because it supplies local needs, to the townsmen as a form of export production, and also for its services to court and state. Thus, city craftsmen were organized to produce the war-gear and luxuries required by rulers. The craft activities of rural areas lacked parallel markets and served the farmers for low if steady profits.

The peasant economy is a special adjustment to such environmental conditions as climate, seasons, crop inventories, and the availability of land. The specifically Hausa response to these factors consists of technology and socio-economic organization. Many pagan tribes scattered throughout this climatic zone lack the Hausa technology, market system, compact settlement-pattern, and centralized political organization. The differences between these tribes and the Hausa in levels of living and range of consumption goods and services are vivid proof of the superiority of the Hausa adaptation to the common habitat. This specifically Hausa adaptation combines farming during the rainy season from May to October, and pursuit of trade, handicrafts, or marshland farming in the dry period which follows. Among near-by pagans, productive activity virtually ceases with the rains.

Hausa cultivation includes no permanent crops and few perennials, even if the sugar-cane, which may ratoon for three or four years, is so regarded. Harvests consist overwhelmingly of crops planted in the preceding rainy season. This is equally
true of the food staples, millet, sorghum, or maize, and of the major cash crops, cotton and groundnuts. Thus land retains its traditional uses. Hardly any new crops have been adopted in this century, although many superior varieties of old crops have been introduced, and there has been considerable change in the acreage under crops of different types.

There are no groves of oil-palm or cocoa in Hausa, and the inheritance-problems arising from their exploitation among the Yoruba or Ashanti have no Hausa parallels. The heritable economic trees of Hausaland scatter rather than cluster. These heritable trees vary in different districts, but generally include the baobab, locust-bean, *diny* (*Vitex cienkowskii*), and occasionally the delèb or borassus palm (*Borassus flabelliformis*), the acacia or horse-radish tree (*H. zogalagandi*), and the shea-nut tree. Date-palms are heritable wherever found, and are usually throne property when standing in groves. Silk-cotton trees may be reserved as office perquisites for the village chief in whose area they stand. Raffia-palm trees which grow thick by water-holes and streams are state property. Wild game, including birds and fish, belong to those who catch them, although token gifts may be expected by certain officials.

To the peasant, farmland is the most important property. To the townsman, occupational and political status and the family compound may have greater significance. For the nobility, the principal value of land is political rather than economic. Control of access to land promotes control of persons, and this, besides its economic yield, enhances political status. Given these contextual differences, it is easy to understand how diversions may develop in Hausa rural and urban inheritance.

The peasant economic and domestic organizations are closely integrated. The division of labour by sex among Muslim Hausa focuses women’s productive activities on food processing and preparation, pot-making, spinning and weaving, petty trade, and some special tasks in building. Until the British occupation of 1900–3, female slaves were either employed in agriculture or closeted by their masters as concubines. British anti-slavery legislation allowed women of this category to withdraw from farm labour, thereby assimilating themselves to the freeborn. The Muslim custom of purdah recognized by the nobility provided an ideological justification of this withdrawal. None the less, in Argungu and Daura, and in many other rural areas, it is still the rule rather than the exception for women to take part in farm work, although men bear the chief burden. As we shall see, the variable agricultural roles of women diversify inheritance-patterns to some extent. This variation includes adjustments found among pagan Hausa, or Maguzawa, who have recently adopted Islam. Maguzawa women participate fully in farming; and conversion to Islam initially increases their interest in cultivation, rather than otherwise.

Both Muslim Hausa and Fulani practise virilocal marriage. So do their cousins, the Maguzawa and Bororo. In all groups the household core is thus a group of males linked by ties of agnatic kinship. Many Hausa households consist only of a man, his wife or wives, and their children. In the towns such groups commonly occupy separate homesteads or parts thereof. In the rural areas, it is rather more usual to find such families in homesteads which include parallel units whose heads are linked by agnation. Often such agnatically-linked families operate a common domestic economy based on joint land-holding and farming. This sort of unit, known as *gandu* (*pl. ganduna*), is an institution essential to the Hausa and has a variable kinship composition. Gandu composition has two main alternatives, in one case a man, his wives and family, and his married sons and their families; the other, which represents a later stage of the unit, contains two or more brothers and their families. Among Muslim Hausa it is rare for ganduna to include two brothers, their children and grandchildren, and rarer still to find first cousins as principals, even though they occupy the same homestead.

Peasants find many advantages in the *gandu* as a productive unit. It combines joint insurance against individual distress due to illness, pests, or crop-failure, with economies due to the better management which large resources of land and labour permit, and to the spreading of ceremonial expenditures at marriage, childbirth, naming, or Sallah (‘I’d el-Fitr and ‘I’d el-Kabir). It also provides some security against petty oppression by the local chief, since the withdrawal of a large *gandu* to other areas may indirectly lead to the chief’s downfall. Given the adaptive values of *gandu* organization, the similar agnatic axioms of kinship in this area, and the constant effect of family growth and decline
on gandu, their relative frequency in different communities reflects differences of local history and economic orientation. Thus Greenberg's Maguzawa compounds, averaging 19 souls each, with a range from 7 to 96, imply a greater incidence of gandu than I found in two Muslim Hausa settlements, the compounds of which averaged 13.4 and 8.7 souls respectively, ranging from 4 to 43 in the first case and from 1 to 33 persons in the second.\(^1\) In the first of these two Muslim communities, the gandu accounted for 25 per cent. of all households, but for rather less in the second, where crafts, trade, and dry-season cane-farming were significant alternatives to grain cultivation. Economic diversification correlates with reduced frequency of the gandu and with corresponding increase of households based on individual families.

As a joint family, the gandu occupies a common holding of land. The head controls the holding, allocates plots, directs the labour force, and distributes food-supplies from the gandu's granaries for the common meal. He provides the male members with personal plots known as gayuna, the profits of which are entirely their own. He provides the seed and tools required by the unit, pays the tax due from its male members, and represents them to officials of the Native Authority. He arranges the marriages of girls belonging to the gandu and provides its junior males with dwellings and wives. Co-residence is prerequisite for gandu membership, but as the gandu grows older, and the families of its young married men increase, so do their individual demands for farming land and house-space. The gandu form of organization accommodates these pressures by allocations of land to its males, initially at circumcision, then as they mature, and again on their marriage, when they are also given hut-space within the compound.

A large joint household is accorded high value by Hausa, but when pressure on the farmland and living space grows acute, the head of the gandu will build a new compound nearby for his eldest son and then give him a part of the holding. On leaving his father's compound, the young man also leaves his gandu and becomes a household head (maigida). Sometimes the gandu head sets up the new compound for two sons who are full brothers. If the younger one is unmarried, his senior, the new maigida, will meet his marriage expenses. In this case the new unit is also a gandu, though younger and of different constitution from its parent.

When an old head of a gandu dies, the sons who live in the compound may continue to farm together and may hold the land left by their father in common, until their own children marry and partition becomes necessary. Until then, the eldest son in the compound acts as head of the gandu. But if they decide to farm separately, the sons generally split into groups of full brothers, and may subdivide the compound, unless one section moves elsewhere. Sons already established on their own in their father's lifetime have claims on the gandu land only if it includes surplus fallow. In such a case, the younger brother or eldest son of the dead man generally exercises control over the surplus. He is also responsible for ensuring that such partition of the common holding as is effected gives claimants equal shares; and he is also responsible for minors and orphans left by the group's dead members, together with their property-rights in land. If the former head of the gandu has left two or more widows, each with one or more sons in the home, the unallotted land of the gandu may soon be apportioned; but if there is only one widow, partition is likely to be postponed until her death, if she remains in the home. In either event, allocations of land made by the previous head of the gandu do not change; and the principle of equal shares guides further division, which takes place among the men concerned, since women rarely have the right to inherit compounds or land.

Among Hausa peasants it is unusual for those sons who are already established in their own homes to return to their father's compound after his death, or to take up leadership of the residue of the gandu. They would not be set up in compounds on their own in the first place unless there were other adult sons capable of maintaining the unit. Among the urban intelligentsia and aristocracy, the custom differs. There it is usual for a man's younger brother, or, failing such, for his eldest son, to occupy his portion of the compound after his death, whether he is

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already living there or not. By occupying the dead man's rooms, the successor formally signifies his assumption of the deceased's status as senior of the kinship group. In Hausa cities, such compound succession also serves to express the organization of lineage-segments and their interest; but since lineage-groupings and compound succession are limited to the nobility and intelligentsia, they are closely linked with political status. Neither form obtains among peasants, for whom land far exceeds homesteads in value.

When brothers farm together in a gandu, and one dies leaving junior offspring, the senior survivor assumes paternal responsibilities for the orphans, together with control of their inheritance which may be divided in the future. Even if the brothers had lived in separate households but within the same homestead, this transfer of roles and statuses also proceeds without reference to the local court; but if the homesteads are separate and the wards are still young enough to require their mother's care, or if their mother objects sufficiently to such guardianship, the inheritance may be referred to the court, whose ruling must then be obeyed, after which the dead man's surviving brother may adopt his nephews and nieces and may assume control of their father's compound and land. As the children mature, the guardian's household once more assumes gandu form; but should his nephews on marriage request their inheritance, allotment is immediate, and the unit splits up.

The gandu organization outlined above has many important implications for peasant inheritance, simply because rights of enjoyment of land are almost the only important property which peasants hold. Moreover, as we have seen, the distribution of these rights forms an aspect of the process by which the gandu emerges, grows, and declines. In its duration, this process of distribution exactly equals the life of the gandu. Beginning with the allocation of gayauna plots, there is a continuous series of similar allocations, until the surplus land is subdivided after the former head's death, to be followed some years later by the explicit separation of his sons' households. It is clear that this process and form of organization allows scant room for accommodation with rules and procedures of law. It distributes most of the inherited property during the holder's lifetime, leaving the remainder to be settled among his heirs according to their situation at any time after his death. Moreover, since the gandu is continually allocating old plots as gayauna and taking up the new ones, its fallow reserve or surplus can rarely equal the portions already disposed of.

Gandu rights also vary with their founders' status and situation. Among Hausa, bush-clearing confers title to occupancy, but land-shortage in areas of dense population, such as Kano and parts of Katsina, can block gandu development. In addition, land claimed by aristocratic lineages may be liable to imposts; ganduna consisting of slaves had to render their owners substantial portions of the harvest as murgu or time-rent (galla). Slaves, of course, originally had no title to land even if they or their fathers had cleared it and their master had permitted occupancy. Likewise, the right to enjoy land effectively claimed by a noble lineage cannot be inherited as 'freehold' by commoners farming thereon. Neither can it be distributed freely by the farmer among his sons. The new holder undertakes the old burdens. Thus the preceding account applies directly only to those ganduna the members of which are free persons, living in communities administered as fieis by hakimai. None the less the principles which underlie this organization and govern its form hold wherever the gandu obtains.

**SUBSTANTIVE RULES OF LAW**

The Maliki law of inheritance, which is projected on to the socio-economic field outlined above, has two important divisions, the procedural and the substantive. Although these two aspects are closely linked, I shall discuss the substantive rules before the procedure; but, the position of this law merits attention.

Muslim Hausa belong to the Malikite rite, and accordingly should observe Maliki law. However, this law does not apply in many matters relating to land and inheritance. In such cases, custom (urf, adz, Hausa al'adda) was recognized by Fulani rulers and administered by the Hausa courts. Thus, these transactions rarely come to court, but are settled informally by the people, following customs which may differ from those recognized by the courts. Further, certain types of land-claim and certain portions of an inheritance which were brought before the courts
would be settled according to the strict rules of Maliki law. To complicate matters, as Professor Anderson has shown, during their administration of Nigeria the British treated Maliki law somewhat ambiguously as the Muslim code applicable to Hausa as 'Native Law and Custom', and as Muslim law occasionally overridden by Hausa custom. ¹ Nigerian Statutes and Ordinances sought to regulate and support the application of this Native Law and Custom. However, since the Maliki law applies only to some land- and inheritance-issues, obscurity may easily arise regarding the rules applicable in various situations. Such rules may be drawn from actual practice not usually enforced by the courts as Hausa custom, since such matters do not come to court; or from rules of Hausa custom recognized by the courts; or from Maliki law, in so far as the court customarily applies it; or from Nigerian Statutes and Ordinances or by-laws passed thereunder. It is necessary to distinguish these four groups of rules clearly.

In practice, land- and inheritance-transfers proceed among Hausa under customary usages which may occasionally conflict with one another and with both Maliki and Statute law. However, it is rather rare for such transactions to come to court; and in those inheritance-cases which do so, it is unusual for capital goods such as land, compounds, or dyepits to be reported in the estate and partitioned by the court, except in such larger cities as Kano.

The law, whether Malikite or Nigerian, is thus only of significance for the regulation of inheritance where it is explicitly invoked and applied, or where it is in direct conflict with custom or with rival law. As regards inheritance-issues, Hausa courts administer a variable mixture of Maliki law and Hausa custom, in so far as this is consistent with Nigerian Statutes; but such inheritance-issues as come to the attention of these courts are a small fraction of the total range; accordingly we can neither derive an adequate account of Hausa inheritance-practices from these legal proceedings, nor identify Hausa custom fully with them.

The substantive rules which govern apportionment of inheritance under Maliki law are too detailed and technical to present here. They can readily be inspected in a number of works. ¹ The calculation of inheritance-shares under the law has numerous permutations and qualifications, but its guiding principles are few and simple. A man is legally empowered to dispose of one-third of his property by testament and to appoint an executor (wasi) to administer his estate for minors. According to Ruxton, the first claims on an estate are ascertained liabilities, including death-duties (ushira) and charges for the widow’s accommodation during the mourning period, which should be four months and ten days if she is not pregnant. Next come funeral expenses, the deceased’s debts, and legacies within the limits of the disposable one-third of the estate. ² Under Hausa practice, ushira, which represents a fixed tenth of the value of the estate reported to court, is deducted before subdivision among heirs, and properly belongs to the Muslim ruler for uses of state.

After subtraction of charges, the first portions to be reckoned and set aside are shares earmarked by law for certain categories of kin, including women, spouses, father, father’s father, and the uterine brother. It is unlikely that all the persons entitled to these fixed shares will inherit simultaneously. The remainder of the estate goes to agnates for subdivision in the following order: descendants, ascendants, descendants of the father, and descendants of the father’s father. Within and between these orders, the nearer in degree excludes the more remote, except that the father’s father, who only takes his fixed share if he would be excluded from inheriting as nearest agnate by an aquatic descendant, generally shares with the deceased’s full brothers. ³ That portion of an estate which remains after persons with fixed shares have received their due belongs to the Beit el-Mal or State Treasury, but the latter will not happen if agnates (‘asabah) survive, who, as we have seen, are entitled to the residue. As a general rule, sons receive twice the share of daughters, and descendants are usually the principal heirs.

The relative sizes of the fixed shares varies with the number


³ I am indebted to Professor J. N. D. Anderson for this summary of the law.
of remaining heirs and the kinship-status of the recipient. Since variation in these fractional shares involves further calculations, the division of the inheritance is a technical matter reserved for persons skilled in Muslim law. It is not the sort of thing that the average Hausa peasant can do for himself correctly. The formula for subdivision presupposes a complete inventory of the estate and its systematic valuation. It implies that sale should follow calculation to permit subdivision. There is provision for agreement (sulhu, Ar. sulh) among co-heirs to restrain sale of items valued judicially within the estate; but the undistributed remainder of the estate will be sold through the Alkali or assessor, preferably to the heirs, the proceeds being transferred to the Beit el-Mal.

Siblings can inherit from one another, parents from their issue, and widowed persons from specified portions of their former spouse’s estate. A divorced spouse has no right of inheritance. Maliki law treats children as their father’s nearest agnates, and gives them priority among residual heirs. In this way, a man’s descendants (zuriya) take priority over his siblings in inheritance. Thus although the shari’a prefers agnation to uterine kinship, since it prefers descendants to collaterals, it promotes the progressive differentiation of descent lines within agnatic lineages.

To illustrate the current application of this inheritance law in Hausaland, I shall draw on the records of a typical rural court. Over a twelve-month period this court heard a total of 1,156 cases, 90 per cent. of which were civil issues, including ninety-one inheritance (gado) suits. The Beit el-Mal received some share of these estates in ten cases, after suitable heirs had received their prescribed portions. In fifteen cases the deceased was a woman. Compounds were included in eight estates, half a compound in one case, and the deceased’s huts in another two. In at least three of these eight compound-valuations, the units were sold, and much of the proceeds went to the Beit el-Mal for lack of suitable heirs. In only one of these eleven building-valuations was the deceased a woman. Compound-valuations made by this court averaged from one shilling to seven shillings, with a mode of five shillings, which is a nominal price, even in rural areas; but the home of a migrant labourer lacking male kin was put at £7, the half-compound of a woman, also migrant, fetched £2.10s., and two huts were priced at £1 and £1.10s. respectively. The basis of these valuations is clear. Where the deceased’s kin wish to retain the compound, it is either omitted entirely from the estate, or given a nominal value; where the proceeds of an estate are likely to go to the Beit el-Mal, compounds are included and valued less frivolously.

The attitudes which inform these valuations find their most extreme expression with regard to the inheritance of land. Only two of these ninety-one case-records make any reference to land, and even then the terms used explicitly distinguish standing crops (e.g. thirteen rows of yam, two furrows of cassava, one plot of cotton) from the land on which they are grown. In these cases it is probable that both deceased had bought the specified crops as standing futures, and had no claims to the farms on which they stood. In short, land-rights, the peasant’s property par excellence, form no part of the estates of which these courts take account. These rights are conditional upon residence in the community and they are rights of enjoyment only. The holder can transfer them directly and fully only to his heirs.

As Michie says,

By local custom, the sons of the deceased land holder are entitled to divide the farm up amongst themselves. In practice this means that the eldest son runs the farm with the help of his unmarried brothers. . . . Where a land owner leaves only female issue, his brothers and their heirs, or failing them his sister’s heirs, may occupy the deceased’s land in their own right. . . . Maliki law would not prevent the deceased’s daughters entering into possession, but in practice the custom described above prevails. The female heirs, however, have in local custom and in law an absolute right to the fruits of the economic trees on these farms, viz., locust-bean trees (dorowa) and baobab trees (kuwa). 1

Thus compounds rarely, if ever, come before the court in inheritance-cases, trees and land even less so. Where disputes arise, these either go to the executive, or if they now come to court, fall under the rubric of land-tenure.

To illustrate estate-composition and administration by the courts, I shall cite three cases, the first of which is the estate of

a woman, the wife of a village chief. Her recorded possessions and their values follow. One cornelian necklace, £1. 10s.; one necklace with special beads (tagode) £1, one headcloth 2s., three mats 7d., one weaninanci (?) 10s., medicines 1s., two brass bowls 14s., three brass mugs 10s., one short cloth 4s., one waist cloth 6s., one bobbin 9d., one lidded basket 1s., one blouse 2s., one mat tray 6d., one grinding stone 3s., one measuring-bowl 6d., one tsakiya (?) 3d., one spindle 2d., one iron rod for ginning cotton 2d., one large waterpot 6d. Total £5. 12s. 10d., less ushira (10 per cent. or 11s. 9d.), leaving a remainder of £5. 15s. 7d. This was distributed among the heirs as follows: the husband (one-fourth, rubu'i) £1. 5s. 4d.; the mother (one-sixth, su'dusi) 16s. 11d.; four sons (seven-sixtieths each) 11s. 10d. each; two daughters (seven-hundred-and-twentieths each) 1 5s. 11d. each. Total £5. 15s. 7d. Thus between them, the woman's children received slightly more than half of her possessions, and her husband another quarter. It was not necessary that the widowed husband should have been the father of the children.

The estate of the migrant labourer already mentioned is cited next as it illustrates conditions under which the Treasury inherits, and also because it includes the unusual charge of a fee for valuing the dead man's house. The deceased left one hand-plough (garma) 1s., one crowbar 6d., one axe 3d., one hoe 2d., one compound £7. Total £7. 1s. 11d., less ushira (10 per cent. = 13s. 6d.) and valuer's fee 7s., remainder £6. 15s. 5d. This sum was apportioned as follows: the mother (one-sixth) £1. 0s. 2d.; three wives (one twenty-fourth each) £5s. each; one daughter (a half share) £3. 0s. 8d. Remainder £1. 5s. 9d. to the Beit el-Mal.

A more typical case concludes these illustrations. The deceased, a man, left one robe 15s., one pair of trousers 2s., one shift or long shirt 3s., one donkey £1. 10s., one ramgoat 10s., nine bundles of millet valued at 2s. 6d. each = £1. 2s. 6d., one hand plough 2s., one hoe 1s., one Hausa cotton blanket 4s. 6d., giving a total of £4. 10s., less ushira 9s., leaving £4. 1s. for subdivision. The deceased's three wives received 3s. 4d. each, his seven sons got 8s. 4d. each, and his three daughters 4s. 2d. each. The gross value of this estate was slightly above the average recorded by this court, but so was the number of heirs.

1 The children share the residue, which is here £2.
2 Sharing the fixed share of 1/8 for the widow or widows together.

The records catalogue moveables forming part of an estate, itemizing Arabic books by their titles, different types of garment, tools, ornaments, animals, crops in store, cash, bicycles, even a single bar of washing-soap. However, the completeness of these inventories is open to doubt. Thus, the estate of the migrant labourer cited above contains no clothing. Moreover, the values placed on articles brought to court are typically lower than current prices. The reason is not easy to determine. Perhaps it is because the commission-agent who acts as court valuer has trade prospects in mind, perhaps because such low values encourage co-heirs to partition the estate amicably among themselves, and perhaps to facilitate profitable purchases by court hangers-on if sale ensues.

These court-inventories of heritable estates have several features, of which some, such as the omission of land and economic trees or the infrequency with which compounds are included, have been noted already. Likewise, dyepits, an important, permanent, and productive form of immovable property, rarely figure in these accounts. Like other capital goods (dikitia), dyepits are tacitly left by the court for informal subdivision among the male heirs. Such omissions ensure that the estates administered by Hausa courts rarely have much value, but consist mainly of self-acquired possessions, most of which are consumption goods (tarkace) in use by the deceased, or of liquid assets such as food-stores, cash, cattle or other animals, which have ready local markets. Only rarely can some right to land, compounds, or economic trees, which the deceased had acquired through inheritance, come to these courts for adjudication, although compounds figure more frequently in the estates administered by urban courts, together with trading capital. In short, the court parades its learning to calculate the meticulous apportionment of trivalities, and in full knowledge that their distribution may proceed informally on other lines.

The only form of dispute which this mode of judicial administration permits in court relates to the exhaustiveness of the inventory. The ninety-one cases under discussion include three in which articles of value omitted from the initial distribution were subsequently reported to court for administration. The inference is that these were sold and the shares formally distributed after apportionment. Cattle and grain are the items
most commonly concealed while money and debts due to the dead are usually omitted. In one case a nomad Fulani claimed that his dead brother’s widow refused to surrender her daughter and the eight cattle inherited by this child into his custody. In reply the woman said that there were now eleven head of stock but that she was obeying the decision of a court in Kano emirate. The local Alkali then gave her fourteen days in which to produce the child, checking meanwhile with the Kano court. This was the only case involving nomad Fulani which came to this court that year, partly because the District contained few Fulani, but certainly because the nomads resent and avoid such legal administration of their estates, with its heavy charges of usuira on their herds and its overriding of their customary practices. Hopen says that ‘pastoralists argue that inheritance is not a question which concerns the District Alkali since it is “an affair of the household” and should correctly be settled by the immediate kin of the deceased’.¹ De St. Croix mentions ‘instances . . . of a rapid removal to other parts, by those in possession, in order to avoid the legal and preserve the customary manner of distribution’.² Stenning says that ‘for reasons connected with the involvement of the Wodaabe (Fulani) with the State, burials and the administration of estates are kept as private as possible’.³ Fulani nomads strive quite successfully to avoid death-duty on their cattle by keeping their inheritance-issues out of the courts. Thus neither the peasants nor the pastoralists bring their real wealth to these courts for the administration of inheritance.

These data direct attention to certain problems of procedure which I shall discuss shortly; but first there is a question of the conditions under which Hausa estates go to court for division. The majority of such cases fall into one of three categories: those in which the deceased lack known heirs, so that some portion of the estate goes to the Native Treasury; those cases in which the co-heirs prefer legal administration, either because they have strict views of their Muslim duties, or because of internal
disagreement, such as conflicts of interest. The third category, which may overlap the other two, occurs when the deceased’s issue are minors and there is no obvious or formally appointed wali to administer the estate. In this final group of cases, the interests of widows in the inheritance on behalf of their children may conflict mutually and with those of the deceased’s younger brothers, who are the children’s traditional guardians. Such estates are usually sold — land, trees, and houses excepted — and the shares distributed among the heirs.

Payment of usuira naturally discourages heirs who have large claims from seeking legal division of the estate. In addition, there is no fixed period following death at the end of which the estate must be assembled for report and division. The mourning (takaba) of widows, which concludes 130 days after their husband’s death unless they are pregnant, may serve as such a period, if these widows intend to remarry or to move elsewhere; but during this period equitable division may be made informally by the heirs.

The procedural problem is highlighted if one considers the relative infrequency with which estates come to court for administration. Our sample of ninety-one cases represents the total number of inheritance suits brought before a Hausa court having jurisdiction over a District of 29,011 souls, in a full twelve-month period. It is thus quite representative of rural Hausa, who outnumber the townsfolk by four or five to one. Of the 29,011 individuals within the jurisdiction of this court, 26,500 were Muslim, the overwhelming majority being Hausa-Fulani. Adults numbered 18,500, women being in the majority. During the year under review, the District mortality rate had increased due to a meningitis epidemic. On the conservative assumption that Hausa have a life expectancy of sixty years or more, then even without this epidemic we should expect on average about 370 deaths among senior members of the District each year. This is a clear underestimate, but merely emphasizes the contrast between the minimum probable number of inheritance suits and the number actually administered by court. At most one-third of the inheritances resulting from the death of males actually reach these rural courts, and approximately one-tenth in the case of women. Thus despite the formal attachment of Hausa to Islam, and the obvious need to take Maliki law into

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³ D. J. Stenning, Savannah Nomads: A Study of the Wodaabe Pastoral Fulani of Western Bornu Province, Northern Region, Nigeria (Oxford, for the International African Institute, 1959), p. 47.
account when discussing Hausa inheritance, it is clear that the mere citation of law-cases would seriously misrepresent Hausa practice, which largely ignores and may contradict this law. In regard to substantive rulings where the law is meticulous, Hausa custom is simpler and more flexible, being a set of traditional solutions to inheritance problems consistent with other important Hausa institutions; but in matters of procedure, where Muslim law is weak, custom is especially strong, and this procedural advantage enables it easily to override Muslim law.

**OFFICIAL INHERITANCE PROCEDURE**

Correctly, the Maliki law should be administered by a duly appointed Kadi (H. alkali) in a court with clearly-defined jurisdiction. As regards inheritance, the law (shari'a) applies only where local custom does not hold sway. The discretionary power of the Muslim ruler is known as siyasa. By its exercise the ruler can establish alkali’s courts; but he is not compelled to set up such courts in all districts under his control, although this is desirable. He may delegate judicial functions in particular cases, or appoint assessors whose recommendations he considers, or he may commission mallams (Ar. mu'allim, learned man) to investigate or administer certain suits. He may also empower his officials to exercise certain types of jurisdiction within the spheres of their offices. Such delegated jurisdiction was more important under the Fulani in the last century than the administration of law through the alkali’s courts. Perhaps for this reason, Fulani legal administration allowed scope for appeal, even up to the court of the Sultan at Sokoto, although naturally such appeals were rare. Emphasis was given by the Fulani to the enforcement of criminal law (manyan shari'a), the apprehension of offenders being an important duty of the local chiefs; but no routine or compulsory return of civil issues was ever attempted. As in other legal systems, the initiative rested with the interested parties to bring civil suits to court, although failure to do so, if followed by certain actions, such as the remarriage of women without divorce, might lead to penalties. Normally civil issues were settled by village chiefs or hakimai (fiefholders).

This system permitted Hausa commoners to administer their estates according to their own custom, without bringing the matter to the notice of the courts; but large estates rarely escaped official action since the ushira derived from them was tempting, and special provisions were necessary for the estates of officials themselves.

Not only did the Fulani legal system treat different types of case differently, homicide, violence leading to bloodshed, or offences involving mutilation, normally being dealt with by the alkali, while rainor sarauta (contempt of office) or kin umurni (rejection of orders) were dealt with by territorial chiefs; but it also provided alternative procedures even for the category of inheritance-cases. Estates of moderate size could be settled by the community chief where he had the status of a sarkin gari. The ushira from such units belonged to the state by law. The village chief who administered a local estate would turn over the greater part of this ushira to his fiefholder, or to the latter’s agent, the jakada. The rest was divided between the village chief and the mallam whom he had commissioned to apportion the estate. If the deceased was wealthy and had left considerable property, the village chief could sequestrate it until the fiefholder had been informed and authorized action. In such cases, the fiefholder might either send his own mallams to apportion the shares and collect the ushira; or he might instruct his jakada for that fief to supervise the partition and bring in a stated portion of the ushira. In certain circumstances the fiefholder would only report to the ruler or to the deceased’s senior lineage kin, who would duly inform the ruler.

The fiefholder’s freedom of action was really limited to the administration of commoners’ estates, when he might empower his agents, his mallams, or even the village chief to deal with the matter. The village chief’s discretion was limited to deciding whether the estate was substantial enough to merit official notice, and whether it was too large for him to handle without risking his lord’s displeasure. Under this system, the ushira required by law of all estates became a sort of levy on the estates of wealthy commoners, while peasants were left to administer their own affairs. Sizeable aggregates left by wealthy commoners invited the attention of officials whose positions gave them a share in the ushira. Similar or greater aggregates left by officials or noblemen received different treatment, as we shall see.
When a village chief died, his fiefholder reported this to the emir, who would then administer the inheritance, the fiefholder being asked to nominate a suitable successor for appointment. The village chief usually reported the death of his ward heads to the fiefholder, but only if the estate was substantial was it likely to receive official attention. When an official of the central system died, the procedure and rules of division varied; but offices could also change hands in three other ways, namely after dismissal, promotion, or flight, and any of these changes made property divisions and transfers necessary. I shall therefore discuss official property-inheritance along with these other forms of transfer.

Transfer of office after promotion or flight of the last holder was less frequent under the Fulani than after dismissal or death. On promotion an official took his personally-acquired property with him to his new position, leaving that endowed to the old office behind. An official who decided on flight sought to carry as much moveable treasure as he could, together with his family, womenfolk, and horses.

On the death of a subordinate official, for instance a hakimi (fiefholder), it was customary to inform the ruler by returning the robes and insignia of office with which the dead man had been appointed. The property permanently endowed to the office, for example its compounds, farms, and title-slaves, would then be separated from that belonging to the dead holder, such as his slaves, cattle, horses, stores, goods, money, and concubines. Those horses held by the dead official as gifts from the ruler would be recalled and returned to him. These, and other horses which the dead man had acquired himself, were usually distributed among clients, who thereby undertook to care for them and to attend the donor whenever he went on campaigns or official missions. Thus recovery of the horses publicized administration of the estate, and brought it to the notice of the dead man’s creditors. Those horses which belonged to the dead official were sequestrated with his personal estate. Together with his wives, the concubines who had borne him children were excluded from this aggregate, since under Islam, fertility made them free, once their mourning was over. The deceased’s wives might return to their parents’ homes or might remain with their married sons. The official’s personal land-holdings or claims to private compounds were not included in the estate of his office, but the aggregate of chattels belonging to the office would be divided into three equal parts, one of which went to the emir, one to the deceased’s immediate family for their subdivision, and the third to his successor in office. This division was normally carried out by other officials whose special duty this was. On receiving his portion, the ruler would keep what he wished, distributing the remainder among his courtiers, kin, or slaves.

The principal securities which officials enjoyed under this mode of inheritance was the exclusion of their inherited property, namely compounds and lands, and of gifts made during their lifetime, other than horses. These exclusions encouraged officials while in good health to distribute most of their acquired surplus wealth, especially slaves and rumada, to sons and close kin. Such generosity also increased their personal following and so their prospect of further power. Since land claimed by officials on the basis of allocation from some earlier ruler or by virtue of occupancy as rumada escaped partition on inheritance, their issue inherited these claims jointly as a group.

When an official was dismissed, his cash and chattels were itemized as already described, but were liable to division into two portions, one of which went to the ruler, while the other went to his successor in office. The conditions of dismissal really determined the type of property-distribution which followed. The man who retired after long and honourable service due to age or ill-health, might be allowed to retain the bulk of his personal property, if he was not succeeded in office by his son. Under other circumstances, an emir might permit a dismissed official to retain one-third of his property; or he might confiscate all the goods of an official who specially displeased him, wives and fertile concubines being excepted. Such confiscation, known as wasan, was standard punishment for political disloyalty. It applied whenever officials fled, and often accompanied transfers of power from one dynasty or branch to its rival.

The personal estate of an emir, itemized similarly, was treated in much the same way as that of his officials, except that all horses remained with the throne as kayan jihadi (equipment for the Holy War). After the ruler’s debts had been paid and his fertile concubines excluded, the rest was divided into three
portions, one of which remained with the throne for the new ruler, while another went to the dead emir’s family and the third part, usually in slaves, went to the Sultan of Sokoto, whose appointed representative (kofa) to the emirate also received a portion of this.

The Sultan’s estate was of course unique within the empire. It was usual for slave-settlements and other new townships which he had established to be turned over to his sons, though several years might elapse before this transfer took place. The insignia of office remained with the throne, and its transfer to the new ruler was the central act of the accession ceremony. The tarkace (chattels) of the last Sultan were usually disposed of by his successor as he pleased; but since Sultans were expected to be generous without peer, few left behind much of value, apart from new towns and rumada. Until the new Sultan was appointed, the senior councillors (sarakunan karagga) of Sokoto took charge of the Sultan’s estate; but decision on its distribution rested with the new ruler. The Sultan also decided how to distribute the personal wealth of an emir whom he had deposed. Usually he appropriated half, leaving the new ruler half; but property endowed to the throne was not affected.

Under British administration, this system of official inheritance has changed greatly. To begin with, the British prohibited slave-raiding and slave-trading, and claimed the hegemony formerly exercised by Sokoto over these states. Thus with the Occupation under Lugard, Sokoto ceased to receive fixed portions of the estates left by Fulani emirs as a right. The British also expanded the judiciary in each emirate as rapidly as conditions permitted. With the introduction of money and salaries, the principal form of moveable wealth became fully divisible, and relations between lord and subordinated were to some extent simplified. None the less, official farms (gandun sarauta) and compounds persisted as elements of office. Nowadays, several categories of Hausa officialdom live in compounds which they own individually or together with their kin. Others occupy compounds belonging to the state. Some offices still possess gandun sarauta, although these now lack slaves. Others which once did possess them, do not; and not all of the newly-established offices have farms officially attaching to them.

Throne staff, who are normally slaves and live within or just outside the palace precincts, occupy state compounds, often on grounds of descent, inheritance, and succession to status. So do District Heads and those village chiefs whose towns contain old gidan sarauta (official compounds). Departmental officials may or may not; and nowadays these men may represent above one-half of the staff of a Native Administration. About thirty years ago, when these Native Administrations began to develop technical departments, alternative arrangements for housing the new officers were discussed, and it was decided that compounds should be built or reserved by the Native Administrations for those officials, such as Veterinary or Farming Assistants (maltams), who were posted away from their homes for indefinite periods. Each emirate was then empowered to decide which other offices should have state compounds.

A case which occurred in Daura during this period and which, like many other important Hausa cases, did not reach the courts, illustrates some of the new problems involved. On being restored by the British to Daura city, the Habe ruler assigned a certain compound there to his Imam (H. limam). In due course this limam died and his son succeeded to the office and compound. The son also died in the same compound, and his younger brother was next appointed limam. The new limam was then sent by the ruler to occupy his predecessor’s compound. However, the late limam’s sons refused to let their uncle enter the compound, and when the emir claimed it for the state, they counter-claimed £300, alleging that this was the sum spent by their father in improvements. The emir then gave the new limam another compound in which to live.

For Daura at least, this incident represents the turning-point as regards gidan sarauta. In repudiating the emir’s claims, these young men forfeited future title to the office of limam which had been vested in their lineage; and by denying their uncle his recognized right, as the senior living member of their descent group, to occupy their father’s compound and rooms, they simultaneously declared their rejection of lineage-ties and obligations.

Walif, rumada, and lineage estates

History is relevant to our understanding of Hausa inheritance practices in several ways. It explains the conditions under which
custom flourished and the law was loosely applied. The division of official property was consistent with the corporate inheritance and administration of important property aggregates held by nobles. The administration of inheritance varied as between peasants, among whom it was purely customary, the wealthy commoners (altajirai) to whom Maliki law in part applied, and officials, among whom still other practices obtained. As we shall see, noble lineages practised yet another form of inheritance. Together these alternatives raise important questions about the nature and status of custom. Such historical details as we have suggest that some of these ‘customs’ initially had very little that was customary about them. Haj Sa’id, who lived at the Sokoto court under three Sultans, reports that Sultan Bello, the heir of Shehu dan Fodio, found himself unable to enforce the legal division of war booty (humushki) among his followers. Quite probably, the customary modes by which officials and noble lineages transmit and inherit property developed in similar circumstances.

It is still general practice, wherever these lineage estates persist, for the senior male of the segment which holds them to administer on behalf of the joint heirs, who are former slaves now having a serf status (dimajo, pl. dimajai), and occupying lands at the pleasure of their ubangiji (master) in return for specified rents. Since Maliki law provides for observance of custom, under the British the alkalai may have been correct in leaving this form of inheritance and property administration undisturbed, provided that such practice has the status of custom. However, Hausa alkalai may not be entirely disinterested in this matter, since they are mainly drawn from the stratum which has interests in lineage estates and rumada.

These issues are usually discussed under the rubric of Hausa land-tenure, and have thus been confused with certain extraneous issues, such as the historicity or legality of sales of land. Actually, only two questions are involved, namely, the status of land-claims based on allocations shortly after the jihad of 1804-10, and the status of rumada and of land-claims derived therefrom. Though these issues often run together, where

over demands made on their crops, they were given the simple alternative of moving elsewhere immediately, or of rendering these and other mandatory payments as befitted their status. On the other hand, when the paternal uncle of a man who had recently inherited a rinji, sought to appropriate some valuable marshland which one of the local dimajai had ‘inherited’ from his father who cleared it, the latter became the District alkali’s house-servant (bara) and was duly rewarded with a court decision in his favour. In this case, the alkali’s decision could be interpreted as observing the rule under which rights of occupancy derived from bush-clearing are heritable. The decision could also be interpreted as enforcing Lugard’s edict that persons born after 1901 were free, and as such had full rights of inheritance. Both these interpretations are probably wrong; to the alkali, the important element may well have been the fact that the claimant had no hereditary basis for his claim, since the rinji and its dimajai had never been his property, and were now controlled by the founder’s son. The latter was not interested in this land, since besides the fifteen farms he then had out on rent, twenty-four fallow plots remained in his care. From the alkali’s point of view, any decision in favour of the uncle would have infringed the heir’s rights to the plot in question and to other land of the rinji.

Not ten miles distant in another rinji, which was also the capital of a village area, the resident owner, who belonged to one of the four dynasties of Zaria, had recently redistributed farm-plots to discourage those dimajai who had adopted cattle for ploughing and had thus extended their farms while maintaining a continuous cultivation through constant manuring. The intervention of British Agricultural Officers in this case did not secure redress for the unfortunate mixed farmers, although the Emir was informed. This princely ubangiji could claim the land on three grounds: firstly because his family’s slaves had cleared it, secondly because the rinji stood in a broad tract allotted to his ancestor after the jihad, and thirdly, perhaps most effectively, because as a prince he held status equivalent to the ruler’s kinsmen, and as such had rights to the enjoyment of his inheritance identical with those held by the ruler’s dynasty.

Whether rumada persist elsewhere as in Zaria, I cannot say; however, it is unlikely that Zaria is unique in this respect, and there are scattered indications of their persistence elsewhere. For example the term galla or galtan gowa which is usually translated as ‘rent’ (farm rent), also denotes ‘payment made by a slave in lieu of work (= murgu)’. As such, galla embraces at least two quite distinct transactions which involve payments of different kind and size. Thus, when C. W. Michie reports that ‘in some areas, viz. Soba District, galla seems to have amounted to one-tenth of the crop harvested, but more generally it seems to have been a token payment emphasizing the nature of the tenure’, he is probably confusing the genuine rental of farmland (aro = loan) with the dues equivalent to tithe (zakka), payable by dimajai on a rinji. Likewise, Rowling reports from Kano that ‘in some, maybe all, of such gandu sarbotu as remain, the officeholder (allows) the farmers to work their own portions in exchange for labour on the part he retains himself’. This is exactly how traditional rumada were worked. Rowling also notes with puzzlement that apart from loan (aro) with its token rent, some parts of Kano practice share-cropping from which the landholder receives between one-third and one-quarter of the crop. He says that in some districts the practice is wholly unknown, since the villagers stated that no one would consent to share the result of his labours in this way when he could lease land if he wanted it for a small payment . . . (but) the system was met at Kano where there is no shortage of farm land’. Unless we are content to regard as Hausa custom practices which are incomprehensible to the Hausa themselves, we are forced to infer, despite Rowling, that in such areas ‘the tenant cannot be a chooser’, probably because all local land is claimed and controlled by persons with power to press their claims. Such claims also give rise to galla, which then denotes rent paid for the uses of land held under allocation after the Conquest, cultivated probably by the owner’s serfs.

The status of land-claims based on post-Conquest allocations

2 C. W. Michie, 1940 (cited above), p. 66.
5 G. W. Rowling (cited above), p. 52.
6 Rowling, ibid.
depends on the type of land then allocated, and on the current interpretation of the doctrine of wakf in Islamic law. The latter is a technical matter and has already led to some disagreement.\(^1\) A late Chief Judge of Zaria summarized the position as follows:

There are two kinds of conquered lands; land which is conquered and taken by force, and land obtained by means of treaty. Conquered lands are of two kinds—cultivated (or living), and waste (or dead). There are two alternative rules governing conquered lands:—\((a)\) the Ruler can keep it as property of the State, and therefore put it to use, taking the proceeds into the Treasury of the State; this kind of land is not the property of any individual cultivator; \((b)\) the Ruler can divide it out amongst his warriors as booty gained from a conquered people. In such a case, any one of those warriors has a right of property in his own portion; he can sell it, give it to somebody else, appropriate it as an endowment or keep it for himself, and his heirs upon his death can inherit it. . . . To take for example the kingdom of Zazzau (Zaria). . . . We do not definitely know how it was ruled by the conquering Ruler. But, however, we realize that it might have been divided out to the warriors. Hence we see that every ‘family’ (dangi, patrilineage) has its own share with a full right of property. They could make a gift of it, give it out for rent—obtaining the proceeds therefrom, sell it or keep it for their heirs to inherit after them, all without the Ruler having any say in their right of property. Mallawa lineage have their portion, so do the Bornawa, Katsinawa, Sullibawa, and other families. This therefore shows that the Province was never put on endowment but was divided out.\(^2\)

Since these land-claims are the most important elements of property inherited by the nobility, we cannot ignore the problems they present. The \(Talim\) of Abdullahi, the younger brother of Shehu dan Fodio and the most learned Fulani was of his day, is cited in two versions given by Lugard as saying, ‘The Imam (Ruler) cannot assign ownership of cultivated land captured in war or ceded by treaty. He can assign ownership of deserted lands, but lands still in cultivation

by the ancient inhabitants belong to them and to no one else.\(^1\) The second version reads that ‘cultivated lands captured in war or ceded by treaty, even though held by Unbelievers . . . are wakf or public lands; and only user of them can be granted’.\(^2\) This treatise of Abdullahi’s was probably well known to the new rulers appointed by his brother, the Shehu, Abdullahi wrote several books, such as the \(Diya’ul Hikam\) and the \(Diya’ul Siyasa\), explicitly for the instruction of the new emirs; it is therefore reasonable to assume that Mallam Musa, who conquered Zaria, was aware of the rule of wakf as laid down by Abdullahi.

This assumption agrees with the statements made to me in Zaria about Mallam Musa’s distribution. I was informed that he gave Abdukerim and his Katsinawa the land west and north-west of Zaria city to the border of the state, most of which lies in the present district of Giwa, and was then waste. Similarly the Suliibawa received a tract stretching east and north-east to their settlements at Kwasabo, Ricifa, and beyond. The Bornawa tract lay southwards between these, past Zangon Aya and Igabi to the Kaduna river, where they were already settled. The new ruler, Musa, took the northern segment up to Likoro and the Kano border for his own lineage, the Mallawa, perhaps because that was the route by which he had come. The territory thus distributed must then have been mainly bush, but there were probably smaller allocations nearer the city consisting of lands deserted by their Habe owners who had fled southward with Makau, the defeated Habe ruler, to Zuba. Musa’s allocations did not include lands south of the Kaduna river, nor the western frontier-state of Fatika, nor the present district of Kubau (Anchau), for the reason that some of these areas were not yet conquered, while the rest were occupied by vassals, some of whom, such as Fatika and Kauru, supported the Fulani, while others, such as Kajuru forty-five miles southeast of Kaduna, and Haskia, Kargi, and Gadas in Kubu and


Anchau, opposed them. Thus when Cole argues that, 'had the Moslem Law of perpetual "ownership" of inherited land despite many years of non-user been operative in the Anchau District, the problem of resettlement would have raised many complications',\(^1\) he has overlooked the expansion of Zaria emirate after the Conquest. Since Muslim authorities agree that waste lands acquired by conquest can be allocated in perpetuo by the conqueror, and since Abdullah dan Fodio's text on this point was probably available to the new emirs for their guidance, it is reasonable to believe that the lands allocated after the jihad were mainly tracts of bush or farms deserted by the defeated Habe. If this is accepted, then the hereditary right of endowed lineages to such lands at Muslim law seems undeniable; otherwise it is not. Whether Maliki law applies in these cases is another question.

Land-allocations similar to those of Zaria were also made at Kano and Sokoto after the Conquest; but this legal dispute about their validity seems to have developed mainly at Zaria. In Gwandu and Sokoto, freehold claims to land are often based on the argument that such land was the property of Muslims before the jihad. The small population of Zaria (c. 800,000 in 1952) may have led its aristocracy to conserve as much of their resources as they could, particularly land-claims, since these permit control of people. Given British attitudes towards slavery and rumada, claims to land derived from the Conquest may have seemed preferable on grounds of acceptability as well as extent to those derived from slavery. The local alkali, because of their legal knowledge, aristocratic lineage, and sympathies, were the ablest available exponents of these claims; but under Hausa custom 'it is clearly laid down that the settlement of all land questions lay with the head of the Executive (the Imam and local Sarki) and not with the Judicial Authority (alkali)'\(^2\). In Zaria, however, this rule was abandoned, and by 1949 'all land cases were dealt with by the Native Courts and ... the Emir's Judicial Council would only hear such cases if they came up on appeal'.\(^3\) Until 1936, these cases had been dealt with by the Executive.

This change illustrates the way in which pursuit of traditional interests in new situations may promote deviation from traditional procedure. In this case, the interests themselves involve issues of law, which the Alkalin Zaria describes as Hausa Custom.\(^4\) Even so, the transfer of jurisdiction over land-issues is a procedural change in law and custom together. These concurrent changes allow many deviations from law or custom to be classified, and therefore sanctioned, as belonging to either category, or both. Another instance of this is given below.

So long as the Zaria courts adhered to the interpretation of wakf and of local history which M. Muhammadu Lawal, then Chief alkali, adopted, land-claims derived from Conquest-allocations enjoyed different legal status and treatment from those based on occupancy by rumada alone. In effect, this meant that the rights of these aristocrats descended from original allottees were protected by the alkali's interpretation of history and wakf, while the rights of other slave-owners were not. Thus the customary land-rights derived from rumada became more insecure at the same time that new interpretations of older claims were put forward.

Both rumada and Conquest-allocations were corporately administered. But whereas the founder's eldest son took over the rinji after his father's death as a rule, the administration of lineage-estates based on wakf passed to the senior member of the lineage, usually a younger 'brother' of the deceased or a high-ranking official, and only rarely from father to son. Thus the customary administration of rumada and lineage-estates also differed as regards succession. When the Mallawa dynasty of Zaria split as an effect of rivalry between the two eldest sons of its founder, M. Musa, their lineage rumada and other property were divided accordingly, but their rights to wakf territory were exercised jointly, and the senior member of the senior segment continued to supervise this for the dynasty as a whole. Seniority by age or official status thereafter governed succession to this position.

Two further points may be mentioned here. If the Alkalin Zaria was correct in saying that the heirs of original allottees may administer lands held under wakf as they please, then however they might choose to distribute this inheritance, their action would be legal. As regards the question whether the

\(^1\) C. W. Cole, ibid., p. 41.  
\(^2\) C. W. Cole, ibid., p. 52. Also J. N. D. Anderson (cited above), p. 185.  
\(^3\) Cole, p. 40.  
\(^4\) Cole, pp. 40, 71-76.
administration of the lineage-estates founded on Conquest conformed to traditional Fulani inheritance customs, the evidence is not so clear. Stenning shows that among the nomads, a man transfers most, if not all, of his cattle to his sons as their families grow, so that on his death there is little to be inherited. Such as there is then goes to the deceased’s sons, failing them to his brothers or brothers’ sons, but ‘no category might inherit while representatives of a prior category were eligible’.

De St. Croix reports that the deceased’s younger brother takes ‘all the cattle for himself’, as well as one or more of the widows. Hopen says that ‘today junior brothers do not remain in a subordinate relationship to the senior brother to the same extent as in the past ... (when) the Fulbe lived in a wider community of much political instability and, for their common defence, were compelled to live in comparatively large-scale units’. Quite probably the priority given to male issue in inheritance among Stenning’s Bornu Fulani reflects the greater security which they enjoyed in the marches of the Great Forest.

Other evidence shows that it is reasonable to assume a similar contraposition of inheritance interests among Fulani between the younger brothers and sons at the time of the jihad. The different modes by which rumada and wakf property were inherited may thus be seen as a partial resolution of the conflicts inherent in their lineage-system under the favourable conditions provided by Conquest. In this way, wakf allocations became corporate lineage property, authority over which was transferred on the basis of seniority by generation, age, and rank, while rumada were exclusively inherited by their founder’s issue, and were administered on their behalf by the senior son. By combining these two modes of inheritance, the Fulani nobility maintained their lineage organization while encouraging the differentiation of lineage-segments in terms of property as well as status. These differing customs were developed to regulate the inheritance of different categories of property as part of the process by which Fulani accommodated themselves to their new situation. In consequence, these ‘customs’ had little currency among the conquered Hausa (Habe).

Male and female inheritance

Under Maliki law, male issue receive larger shares than females, but all categories of property are equally heritable by both. Under the informal inheritance of estates practised by peasants and aristocrats alike, the primary distinction is between men’s property and women’s. Bush Fulani also treat cattle as men’s property, not inheritable by women. The Fulani rulers of Hausaland regard their lineage estates, rumada, and compounds in a similar fashion. Among peasants, both men and women may have certain common things, such as cash, small stock, economic trees, or rights to use a compound; but by far the greater range of chattels is exclusive to one sex or the other. Women’s clothing, craft-tools, ornaments, or cooking utensils pass to other women, usually their daughters, while men’s clothing, tools, and the like pass to their brothers or sons, the family distributing these articles privately as a rule. Items of interest to both sexes, such as small stock, cash, and economic trees, are divided informally between sons and daughters. Grain-supplies usually remain in the compound for those who live there. Arabic texts, rights to dyepits, hereditary office, land and compounds, are exclusive male interests under this system. Surplus fallow, after a sufficient period, may be transferred by the village chief to other households, when he is satisfied that the heirs do not need or intend to use them. Michie’s statement that ‘female heirs have in local custom and in law absolute right to the fruits of the economic trees’ of the holding should not be taken to mean that such trees are inherited exclusively by females. In the rural areas I am familiar with, such trees were inherited and controlled by men, who used their products for their own households. However, these men did not dispute the right of their sisters to such fruit from these trees as they needed, although at law husbands are responsible for providing these foodstuffs, and failure to do so may be an acceptable ground for divorce in some courts.

A most interesting variant of ‘custom’ involves the inheritance of rights in land by women. From Zaria, Michie reports that in the village of Paki in Ikara District, the general rule that male heirs only may inherit land does not hold good. There female heirs

1 D. J. Stenning (cited above, on p. 252, n. 3), pp. 48-49 ff.
2 F. W. de St. Croix (cited above), p. 43.
have an equal right. . . In Soba District also, it seems that the rights of women to a share in land inheritance is not contested, but that in practice this right is no longer exercised. There is some evidence that in Makarfi District also women had a right to share in the inheritance of farms as late as the Emir Aliyu's time [i.e. 1920].

Together these three adjoining Districts contain approximately one-third of the Hausa population of Zaria, so that this variant of custom has a considerable spread. Among the Kebbi Hausa of Argungu emirate in Sokoto Province, it seems the accepted rule that women inherit land-rights as well as men. Rowling does not mention this practice in rural Kano, but gives examples of female inheritance of compounds among the Ghadames and Tripolitanian Arabs of Kano city, even when the heirs are absentees. He adds that 'none of this holds for any other group; and they (the urban Arabs) seem to be very much left alone by the Emir.'

In 1950 I came across some instances of female inheritance of land-rights at Kudan, a village in Makarfi District where, according to Michie, the 'custom' lapsed about 1920. Not long ago, the people of Kudan were pagan Maguzawa like their immediate neighbours at Zabi. In Ikara District also, where Michie found women inheriting land, one-fourth of the population were then Maguzawa. In Soba, another District which formerly contained many Maguzawa, by 1949 only twenty were left, and there Michie found that although women's land-claims were not disputed, 'in practice this right is no longer exercised'. In four Muslim communities of Giwa District, which adjoins Makarfi, the female inheritance of farms was neither observed nor reported, although several women were found to be farming plots provided by their husbands, and land-holdings and use were there the subject of detailed survey. Among the Kebbi of Argungu also, Islam is only now taking firm hold, these folk having maintained their independence and pagan customs throughout the last century by ceaseless fighting with the Muslims of Sokoto and Gwandu. Kebbi women, like the Maguzawa of Zaria or Kano, have few traditional alternatives to farming. Among Muslim Hausa, wife-seclusion gives women greater opportunity for craft production, notably spinning, weaving, and food-processing for sale. Profits derived therefrom are entirely their own, while the responsibility for supporting the household is entirely; their husband's. In this context, Greenberg's remark that the 'independent economic activity of the Maguzawa women is in striking contrast to the condition of the Moslem Hausa women who do no farm work' may shed light on the conditions which underlie female inheritance of land among Muslim Hausa.

It seems most likely that the practice reported by Michie only obtains among those people whose parents were converted to Islam. In Northern Zaria, such converts would originally be Maguzawa, in Argungu Kebba, whose culture is not very different. Such women generally accept Islam on the conversion of their husbands or fathers, however half-heartedly. The converted wives retain their individual farm-plots (gayauna) as an insurance against possible breakdown of their marriage, since Islam permits their husbands to divorce them easily, but also because these are the main source of personal income needed to satisfy the new consumer demands that arise from the inevitable adoption of Hausa culture as well as Islam. Moreover, children already born to the converts are also handicapped in learning Hausa technology, by age and their parents' marginal status. In consequence, farming remains for them the principal if not the sole source of income. Under such conditions land-claims have special value for women, and are understood by all members of the family to be heritable by both sexes. But the convert's daughters who inherit land under these conditions are more likely to marry Muslim Hausa than not, and their daughters in turn, brought up from infancy as Muslim Hausa, will neither have the same need of land, being familiar with Hausa craft production, nor will they have the power to claim it from their Muslim fathers.

This speculation has two merits: firstly, it fits all available facts, explaining among other things the peculiar discontinuities of this practice in time and space; secondly, it invites verification, since, if the argument is correct, a similar practice should

1 C. W. Michie (1940), in C. W. Cole (cited above, on p. 249, n. 1), at pp. 68-69.
2 Personal communication from Miss E. R. Yeld, 1959.
3 C. W. Rowling, (cited above, on p. 263), at pp. 24-25, 46.
obtain among recent Maguzawa converts to Islam in Katsina or Kano.

Inheritance of land-rights by Hausa women is also of theoretical interest, since such practice, being recognized where it holds, enjoys the status of custom, by general usage and at law, but is explicitly opposed to other, more general custom, under which only males may inherit land. These conflicting customs raise questions about the differences between customary alternatives, norms, and deviations. Or, more explicitly, what are minimum requirements for a satisfactory general definition of custom? How much variation does this concept permit? Like the Fulani accommodation to the conditions of Conquest, which also involved alternative developments, their acceptance of Islam leads former pagans to develop practices which are not only contradictory to that of the Muslim Hausa among whom conversion puts them, but which are also at variance with customs of the tribes from which they are drawn. How valid is it to regard such temporary expedients as ‘custom’, whether developed individually as among recent converts or generally as by conquering Fulani? Whose customs were they?

Parallel questions arise when legislation seeks to incorporate custom in a framework of law, as for instance in the Revenue Survey Districts of Kano emirate, where the law requires formal registration of all land-transfers and establishes an organization to enforce this, and where the direct taxation of land stimulates conformity. Problems of this sort are likely to assume increasing importance in the near future. They are clearly illustrated by Rowling’s inquiries in Kano. He estimated on the basis of field studies that one-fifth of the registered farms in Revenue Survey Areas had been subdivided in a period of twenty years. His inquiries in three districts covered by this Revenue Survey showed that of 14, 81, and 122 plot divisions respectively, only 10, 31, and 12 cases were registered. Are the remainder to be regarded as customary subdivisions, thus invalidating law and custom alike?

Given a long history of change and a complex society, considerable variability in practice seems unavoidable, even without addition of two fixed standards, such as Nigerian Statutes and Maliki law. Some of these variant customs may have an ageless continuity and a general currency as part of tradition. Others may represent specific responses to historic situations, and these may themselves contain a number of alternative or conflicting forms. Their routinization as custom may be obstructed by the diversity of alternative solutions in constant or varying circumstances, some examples of which have been cited above. Yet other variations may be temporary expedients of individuals or groups moving into new social situations of some stereotyped kind, such as conversion to Islam. Clearly such variant practice will differ in kind, origin, spread, and function. However we choose to define custom, it seems unlikely that any single definition which embraces all these forms of practice can be analytically useful or adequate at law.

Succession to office and status

Succession to office varied historically and continues to do so in Hausa kingdoms. Some offices were hereditary in patrilines, others were not. The use made of these alternative modes of recruitment varied in different states, and also within some states at different periods of their history. So did the ratios of officials recruited by different means.

The throne was the prototype of hereditary office, and succession to it was regulated for the empire by the Sultan on the advice of electoral councils drawn from senior officials in each state, members of local dynasties being excluded. The Sultanate itself was filled on the decision of a similar council for the state of Sokoto. The substantive rules which accompanied this procedure limited eligibility to those sons of previous rulers who already held senior territorial office. In theory, younger brothers were preferred to sons; in fact, many younger brothers or father’s brothers were passed over in favour of the late ruler’s sons.

The procedures used in selecting subordinate hereditary officials varied widely, but final decision regarding senior appointments usually lay with the local ruler, occasionally after consultation with Sokoto. A parallel range of variety is observed

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1 'Routinization' in sociology denotes an intermediate state between sporadic incidence and institutionalization. Ed.
in the selection of non-hereditary officials, some of whom were eunuchs, others slaves, others freemen of noble or commoner status, while others were clerics (mallamai). In most cases these appointments were decided by the ruler, but senior officials were also empowered to make appointments to certain positions. In any state, official investitures had a common basic formula, whether princes, nobles, free commoners, eunuchs, or slaves being appointed. Nowadays some senior departmental officials may have positions comparable in rank to many traditional offices, without being formally installed by the ruler.

After a long tenure of office, a man might seek the ruler’s permission to resign in favour of his son; or, on their kinsman’s dismissal or death, the senior members of a lineage having hereditary claims to an office might be asked to recommend a suitable successor. Their nominations would be reported to the ruler through the slave or eunuch responsible for liaison with that office. Candidates for office would canvass the intermediary’s support with gifts, and would seek to recommend themselves likewise to the emir. Kinship conventions favoured appointment of a younger brother of the last official, or failing this, one of his older sons. Military conditions favoured appointment of the ablest leader in the lineage. Political conditions favoured appointment of the man with the widest popular support, who might be a younger son. Administrative requirements favoured the most experienced candidate, who was usually the senior official eligible for the office. This variety of interests and conditions which underlay appointments to hereditary office precluded uniformity in succession rules or procedure. The number of offices filled without hereditary restrictions also discouraged fixed orders of succession to rank within descent groups. Where recruitment to office was mainly hereditary, the needs of the state stressed flexible administration of these appointments, within limits set by agnation and belief in Islam. In Zaria on the other hand, hardly any office of the state was hereditary among freemen. When one lineage held two or more offices, as in Sokoto, where Alibawa still hold the titles of Sarkin Zamfara and Sarkin Kaura Namoda, or in Kano, where Mundubawa still provide the Mai-anguwa Mundubawa and the Magajin Mallam na Cedi, a number of alternatives were possible. Either the linked offices had different

rankings, so that promotion was possible between them, or they might be allocated to separate descent lines within the lineage, which was thereby split.

Normally a senior official, whether shigege (non-hereditary) or other, and whether slave, free, or royal, village chief, or feffholder, appointed his sons and younger brothers to the principal positions on his staff. Such persons formed the group whose claims to succession would receive first consideration in future. Subordinate staffs of first-order (rakun) officials, most of whom were recruited hereditarily, were themselves hierarchically ranked and placed differently as regards succession. At all levels individuals sought to have their sons rather than their brothers to succeed them in office. In official succession contexts, these two categories were contraposed, but each was further divided by matrilineage as well as descent from different titleholders. Thus patriline holding hereditary rights to an office were progressively differentiated, and sons who followed their fathers in office were not acknowledged as lineage seniors by their paternal uncles, despite superior official status. Once a man had been passed over in favour of his younger brother, he stood little further chance of obtaining office, whether or not he had hereditary claim.

On dismissing an hereditary official, emirs would generally appoint one of his younger brothers rather than one of his sons. The reasons for such appointments were largely political, but their frequency deepened the structural cleavage between the sons and younger brothers of hereditary officials. An official who died in office might be succeeded by his son or younger brother equally. As mentioned above, the sons usually received one-third of the moveable property acquired by their father during his term of office, and kept all that he had given them. A similar portion would go to the successor, whether he was a brother, a son, or unrelated. When a man was dismissed, that half-share which remained after the ruler’s portion was removed went to his successor in office and not to his sons, who might then receive nothing. Lineage solidarities were severely strained by this conflict of interests, but when it could not accommodate the resulting rivalry, the lineage segmented, since law could not resolve such issues.

We have seen that a man’s sons inherited his personal rumada,
but that those rumada which the deceased’s father had founded passed into the care of his younger brother as a rule, while his office might be given to someone else. These general patterns were affected by situational variables which influenced particular cases. Neither was hereditary office transmitted uniformly, nor were the property rights and statuses involved uniformly interrelated and administered.

Besides office, which was an exclusive status in a system of like units, individuals might inherit several distinct categories of status, such as lineage-membership, ethnic identity, occupational class, and position in the system of political clientage as patron or dependant. Slavery was for many the decisive status-element transmitted, and in this case only did children take their mother’s status. Even so, the offspring of a free man by his female slave was free and had the same legal rights to inherit from him as his other children.

These ascriptive statuses were governed by birth; but within the kinship system, a junior often lived to see his elder siblings die and thus became his father’s senior heir. Likewise, occupational status though governed by descent was not fixed finally. A man might change his occupation, and some did. Similarly, a client might exchange his father’s patron for some other. Ethnic status and lineage membership were the only ascriptive conditions final from birth. They were thus conditions of descent rather than succession. Per contra, the three remaining status-categories were acquired by succession, rather than by the simple fact of descent. Two of these statuses, the occupational and the client status, involve no transfer of property as a rule, although a man would not occupy such statuses independently while his father lived nearby.

The range and transfer of kinship status was more complex, especially as regards their property elements. The eldest son under custom succeeded to certain elements of his father’s status, namely those involving leadership of the dead man’s zuriya (offspring); but if he had already set up his own home, the residual gandu and land-resources might well remain under a younger brother who lived in the parental home. Among the aristocracy also, the eldest son’s succession to senior status within the segment founded by his father was often qualified by the seniority accorded his junior who held office. Moreover, the father’s control of property on behalf of a wider lineage-segment rarely passed to the person who assumed control of his personal estate; and, under Maliki law, primogeniture, which is a Hausa principle as often breached as observed, enjoys no special recognition. Maliki law does not prescribe direct transmission of paternal status, potestas, of property to one son to the exclusion of others. While the executor (wasi) is recognized, so are legacies by which a man transfers property on his death without any necessary transfer of status. Moreover under this code, daughters will inherit property from their fathers, though they clearly do not succeed to his status. The position of the Beit el-Mal as heir is also important. Notwithstanding the customs under which nobles inherit lineage claims to wakf corporately, or peasants inherit gandu, our data show that it is either invalid or ambiguous to interpret Hausa inheritance ‘as the transference of statuses from the dead to the living with respect to specific property objects’. As just shown, many property-rights are transferred among Hausa by way of inheritance without any specific status-equivalents; and many status-equivalents such as occupational and political status, may be transferred without property-rights.

CONCLUSION

We have seen that the Hausa practise several alternative modes of inheritance, some of which are not merely dissimilar, but contradictory. Thus exclusive inheritance of land-rights by men cannot obtain in districts where women inherit. Strict observance of Maliki law is also incompatible with corporate inheritance of property-rights and jural status. The principles of siyasa which regulate succession to official property are likewise in conflict with those which regulate inheritance at Maliki law. The principles by which Fulani transferred control of lineage wakf are opposed to those which regulated rumada inheritance. Although in many instances Hausa property-inheritance is accompanied by transfers of status, it would be remarkable, given such diversity of practice, if this principle

applied equally in all conditions, especially those of a mutually contradictory kind.

Our data show that among Hausa, despite refined legal calculations and disputes about *wakf*, inheritance for the most part follows rules or conditions which are not prescribed by law, and which also vary. This accords with Levy’s observation that

Where family life is concerned, in marriage, divorce and the distribution of inheritance, the provisions of the *shar'i* (H. *shari'a*) would appear to be widely neglected. . . . The *shar'i* laws of inheritance, which are based upon the rules of tribes owning easily divisible property, consisting of flocks and herds and moveables of other kinds, cannot be successfully applied amongst peoples whose property is chiefly or partly in land.1

However, difficulty in dividing land is not the principal obstacle to the enforcement of legal inheritance among the Hausa. Rowling’s inquiries in Kano emirate showed that when subdividing plots, Hausa do so with meticulous regard for equality. ‘One field was encountered in which each of seven heirs had obtained five ridges. . . . Each field is, in fact, almost invariably split up, since fertility, convenience of access, soil type and so forth vary.’2

To see Hausa inheritance as a struggle between custom and law is hardly adequate. Cole has shown how the legal concept of ‘absolute ownership in land’ has influenced the customary concept of usufructuary rights, especially with regard to patterns of inheritance and alienation.3 On the other hand, custom has overridden many rules of Maliki law; and some customs conflict with others which the Nigerian Government recognizes as Hausa customary law. Likewise, some rules of Statute law appear to conflict with parts of Maliki law. The important question which Hausa inheritance raises centres on the nature and status of custom, the conditions in which it can be validly asserted, the range of variation which this concept can tolerate, and the factors involved in its emergence and change. Thus informal administration of estates and the *gandu* may be

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3 C. W. Cole (cited above), pp. 32 ff.
Hausa system of inheritance alternatives by which property and status are transferred serves both to safeguard institutional arrangements of proven social value and to facilitate change and development by legitimating procedures and practices which may differ in orientation and consequence as well as form. Since the systems of inheritance, descent, kinship, and succession between them express the basic conditions of social continuity and social change, their function must be determined by reference to these alternatives in the historical context.

A single uniform mode of inheritance may be correlated with status-transfers in such a way that the social system is circular and repetitive, and change is ruled out. In such a case we shall probably find a parallel uniformity in descent rules. The combination of diverse and mutually contradictory alternatives to form a system of inheritance and succession is both the product of historical change and the instrument by which such change and conservation of social forms and values are harmonized. The function of Hausa inheritance-practice is simultaneously to express the relation between continuity and change and to co-ordinate these processes and regulate their relations in various parts of the social system. This is an institutional function characteristic of a moving equilibrium, which is the structural condition of Hausa society. This condition itself illustrates the error of treating property-inheritance as the direct correlate of status-transfers, since statuses are neither fixed nor fully determinate in societies where change is continuously under way.

I suspect that the general preference for such static views is a function of the anthropologist’s conception of social structure as a fixed system derivable from synchronic study. The defect of this conception, despite many merits, is that, being inherently static, it provides a ready basis for circular explanations. In both these features it misrepresents the reality with which it seeks to deal, since society is usually a dynamic system which exhibits change and continuity together, and is thus neither circular nor closed.

In sum, Hausa inheritance-practice incorporates Maliki law, together with many customary practices which deviate from this law. These customary modes are a medley of diverse elements, some of which are accepted personal expedients, while others bear the marks of great antiquity, and yet others are accommodations due to conquest and political organization. None the less this medley presents Hausa with a viable if inherently dynamic set of rules and procedures, the distinctive character of which is the number of alternative courses it admits. The bases of this general system are the rural economy, the history and organization of political life, ethnic and status differentiations, and the Hausa recognition of continuity and change as inherent in their society and way of life.

ADDITIONAL NOTE BY THE EDITOR
Consulted on the apparent incompatibility of Hausa customs with the Maliki book-law in regard to inheritance of na`ada, and in regard to the exclusion of females from their fixed shares (an exclusion by no means uniform, and itself yielding to change especially in commercial centres like Kano, where land has risen in value), an Islamic lawyer would not be unarmed. The shari`ah itself recognizes what in English (and Anglo-Indian) law is called a ‘family arrangement’, which passes in Arabic under the name sitt. The persons entitled to the estate under the book-law may agree, in their common interest, to enjoy it under a different arrangement, with other interests and with a variety of rights of enjoyment. Naturally this ‘agreement’ may more often than not be a fiction; but the customs can be traced back to a hypothetical variation of the book-law upon the lines here suggested. Whether any such variation ever happened is, of course, quite another matter; but if any actual arrangement were challenged, it could be defended in law upon the principle of sitt.

1 Sitt means ‘composition’, ‘compromise’ (cf. Koran iv, 127). For the ‘family arrangement’, beloved of equity, see Halsbury’s Laws of England, 3rd edn., vol. 17, pp. 215 ff. (note especially that it may be implied from a long course of dealing, as may frequently happen in a developing society). There is a good example at Ghulam Mohammad v. Ghulam Husain (1931) L.R., 59 I.A., 74, 67 ff. (here in fact the agreement was well evidenced). See also F. B. Tyabji (cited above, p. 22, n. 1), at p. 394, n. 9; H. S. Gour, Hindu Code, 4th edn., Nagpur, 1938, § 173; Derrett (cited above, p. 8, n. 7), § 75. It is not necessary to the binding character of a family arrangement that a dispute shall have broken out already: Pokhar v. Dulari (1930) I.L.R., 52 All., 716, following Williams v. Williams (1867) L.R., 2 Ch. App., 294.