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IX. *Idda* and Secondary Marriage Among the Northern Kadara

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I INTRODUCTION

The Kadara are one of many ‘pagan’ tribes in the southern half of Zaria Province whose traditional institutions of marriage excluded divorce. In 1934 the Muhammadan practice of *Idda*, described below, was imposed on these tribes by laws of the Zaria Native Authority and the British Provincial Administration. In this paper I wish to discuss some effects of this new rule as observed among the Northern Kadara in 1950 and 1959. In this respect the present essay is a brief study in the conflict of laws. It should also show how an internally consistent structure of interlocking and ramifying rights may react to the introduction of an alien element when the conditions prerequisite for its reorganization are lacking.

Ideally, we should compare these Kadara reactions with parallel responses in other societies affected by the *Idda* rule. This comparison has been made with the Kagoro, but it cannot be presented here. Briefly, after a period of confused reactions, Kagoro, who are politically united and autonomous, resolved the problems that *Idda* presented by institutionalizing a new set of marriage rules and procedures, which were devised to conserve their basic units of social organization, while eliminating the traditional form of secondary marriage. Lacking political unity and internal autonomy, Kadara cannot develop a common policy on this matter, but are obliged to respond to their situation as individuals, lineages, or communities. In consequence, within their context of legal conflict, Kadara cannot resolve the problems which arise from the opposing interests of these different levels of social organization in a uniform manner.

*Idda* is a period of continence lasting three months which Maliki law requires before a free woman may remarry after leaving her husband. In the Muslim Hausa courts of Northern Zaria, divorce is granted only on completion of *Idda*, which the court prescribes after failing to reconcile the couple. Since Muslim law forbids women to remarry without first obtaining a divorce, the Muslim courts must administer *Idda* before granting a divorce.

In 1934 a Kadara pagan court was established to administer their matrimonial cases. Its members were the Kadara village heads and it administered tribal law as well as the new *Idda* rule. For some years the court met at Kufana, the largest Kadara village in the district. It was then moved to Kajuru Town, where the District Head, who convened it for one week monthly, provided executive supervision and support through his Native Administration police. When the Kajuru District Council was set up in 1954, each Kadara village area was represented on it by its chief and two elected delegates, the Council meeting under the presidency of the Sarkin Chief of Kajuru. As Kadara comprise the majority of the district population, they provided the majority of the council members; but the council was ethnically mixed, and remained under Hausa control. It was not a tribal council.

Until 1954, fines for failure to observe the *Idda* regulation were set at 15s. for the erring wife and 25s. for her new husband. In 1955 these rates were increased by the Kajuru district council to £3 for the woman and £6 for the man. At the same time the woman’s father became liable to a fine of £4 if his complicity was established. Between 1955 and 1959, only two fathers were fined for this offence.

Within their village areas, Kadara are grouped into distinct communities, which are further divided into localized ritual aggregates (*ategburu*) each containing two or more patrilineages.

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1 Smith, *The Social Structure of the Northern Kadara* (unpublished MS) (1951); 'Secondary Marriage in Northern Nigeria', (1953). These give a general account of the people.

2 In March–April 1950 I spent six weeks with the Kadara of Kajuru district while holding a studentship from the Colonial Social Science Research Council. In April 1959 I revisited Kufana for a few days while attached to the Nigerian Institute of Social and Economic Research. To both these bodies grateful acknowledgements are due.

3 Ruxton, 1916.
(ute), who conduct their rituals together and constitute a separate ward. Lineages belonging to the same ategburu need not be linked by agnatic kinship, although this is common. Lineages form the primary segments of the ritual groups which are the major units of community organization; and each ute is itself divided into a number of minor lineages settled in separate compounds, known as aban. Compounds are further segmented into family households, known as engau (pl. ungau). All units at each level of organization have their most senior men as ritual heads; but administrative leadership of the lineage and of ritual groups is generally vested in an active man of middle age, selected by the lineage elders. In the old days, ritual group divisions of the local age-sets (ufro) served as fighting units; today they are called out for the larger hunts.

Kadara marriage is virilocal and normally patrilocal. Marriage between all cognates is expressly tabooed. Tribal law sanctions three forms of marriage (uballe): primary marriage, secondary marriage, and widow-inheritance. Primary marriage (ario) is preceded by a lengthy betrothal (teshi), during which the groom's kinsmen perform labour services for twelve years at annually increasing rates. With certain fixed gifts of grain, salt, mats, and hoes, this constitutes the standard bride-wealth at first marriage. Secondary marriage (aherezam) presupposes the woman's earlier marriage and the assent of her father or guardian and bride-wealth consists mainly in standard gifts of beer. Widow-inheritance (ailalalako) is obligatory for primary and secondary wives alike, widows being allowed to select a spouse from their dead husband's agnates, in the hope that they will then settle.

Under tribal law, secondary marriage was subject to the following rules: (i) It was prohibited within each community. Formerly this was the village area or group of attached settlements; but since 1950 each settlement has come to be treated as a separate community. (ii) It was prohibited between all branches of a common lineage or clan, wheresoever located. (iii) Unmarried maidens could not be taken as secondary brides. Kadara placed no value on pre-marital chastity, the children conceived or borne by girls before marriage belonging to their primary husbands, who were then obliged to ratify their claims by traditional prestations to their fathers-in-law.

(iv) Secondary marriage required the approval of the woman's father or his surrogate. (v) On moving from one husband to another, a woman was required to present proofs of menstruation to her senior kinswomen at her next three periods, failing which the deserted husband claimed the next child as his. (vi) Relations of primary and secondary marriage are mutually exclusive. Men call those whose daughters they marry 'azaimi'; those whose wives they abduct, 'aformi'. The abducted wife always belongs by birth to a lineage with which her abductor's agnates maintain azaimi relations. He is thus in some sense entitled to seek her as a wife. Aformi relations, which are laden with tensions and dispute, were prohibited within each community; and traditionally all first marriages took place within these communities, following infant betrothals. (vii) A woman's abscondment terminates her cohabitation, but not the marriage. Wives may rejoin their deserted husbands permanently or on visits (abusan) of varying length, during which marital relations are resumed with the consent of the woman's other spouse, without any further transfers of bride-wealth. Absent wives are summoned by their dead husband's lineage kin for inheritance. (viii) A woman's first husband has an unqualified claim to all her issue before she leaves his home; but he is required to validate these claims by substantial gifts of beer to her father after the birth of the child, and by similar triennial gifts until the third child is born. Secondary husbands, in their turn, are also required to make these gifts. (ix) Under tribal law a husband could not claim return of bride-wealth once his wives had borne him a child, whether it survived or not. Claims for return of bride-wealth had no place in traditional practice, being inconsistent with secondary marriage and with lineage relations. Such practice would empower individuals to claim for themselves the value of services provided by their lineage kin. By so doing it would allow men to surrender claims to their children and to discontinue the residual rights that their lineages held in their wives. Finally, under Kadara norms, any issue of unions terminated in this way would trace descent from its mother's father, in opposition to the patrilineal mode of Kadara society.

Under tribal law, primary and secondary husbands enjoy identical rights in their wives on marriage. Besides exclusive
domestic and sexual rights for the duration of their cohabitation, these men have primary claims to all the issue borne by their wives during cohabitation, unless paternity is disputed by a preceding spouse. The woman’s father retains substantial control over his daughter’s marriages, and at fixed intervals receives set gifts from her cohabitating spouse. Normally, eligible suitors solicit the father’s approval before abducting the woman; and even when women are ‘taken away by force’ (that is, without the father’s prior consent), tribal law prescribes that the abductor should at once transfer the prestations requisite for secondary marriage. Though the parties directly involved in these relations are individuals, the relations which regulate their respective obligations and rights are corporate ones, holding between the lineages to which they belong. The tribal law of secondary marriage is set deep in a framework of corporate patrilineages which hold and transfer rights in women as daughters, wives, mothers, and widows in ways that reinforce their autonomy and interdependence equally. Under this régime, a father-in-law held a strong position, being responsible for directing his daughter’s unions in conformity with lineage interests and the network of its marriage relations. In arranging or entering marriages, and in disputing paternity or inheriting widows, individuals exercise personal capacities which are allocated to them on grounds of kinship status within the corporate framework of tribal law.¹

As just described, this law excludes divorce. The marriage never dies, however long or often cohabitation has been broken. The husband could not dismiss his wife; and as a jural minor, she was not legally liable for her acts. Even when absconding freely with her lovers, a woman is said to have been ‘taken away by force’.

II CASE MATERIAL

Under the Idda regulation of 1934, both parties to unions not preceded by observance of Idda were held to have committed a ‘criminal’ offence and were liable to fines. In 1955 the woman’s father became liable to a fine if his complicity was proved. The original law neither provided women who intended to leave their husbands with opportunities to register in advance

¹ Gurvitch, 1947.
In April 1959 I compiled marital records covering the period since April 1950 for 179 married men in 42 compounds at Kufana. Of these, 19 (10·5 per cent), though formerly married, were wifeless in 1959; 116 (65 per cent) then had one wife each; 38 (21·5 per cent) had two, 5 (2·8 per cent) had three, and one had four wives. Men who had never married were excluded from this survey. The 160 husbands in these 42 compounds had a total of 211 resident wives, of whom 155 were primary wives acquired by betrothal, 70 of these having married before 1950, and 85 thereafter. Of the remaining 56 resident wives, 48 were secondary wives acquired from other villages, and 8 had been inherited. In addition, between 1950 and 1959 these 179 men had lost a total of 30 wives to other villages. Excluding some deaths, in April 1959 these 179 men had 241 wives, resident or absent, of whom 109 (45 per cent) had absconded at least once between 1950 and 1959, 48 to join them, 30 to leave, and 3 to rejoin them after one or more adventures. Of their 155 primary wives, 124 (80 per cent) had not absconded. Only one of these 179 men had asked the court for a divorce; and he was a pioneer.

To determine how Idda applies, it is necessary to analyse the movements of these 109 mobile wives, paying special attention to the role of the court. In the following table which sets out these data, the total number of entries slightly exceeds the number of women involved, since some cases evoked two or more types of action, and are represented accordingly. Adopting Kufana as our reference point, women are classified as 'gains' when moving into the village on marriage, as 'losses' when moving away.

<table>
<thead>
<tr>
<th>Action Taken on the Abscondment of 109 Woman</th>
<th>Kufana</th>
<th>Gains</th>
<th>Losses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of action taken</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman's restoration by her parents once</td>
<td>Kufana</td>
<td>3</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Woman's restoration by her parents twice</td>
<td></td>
<td>7</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td>No parental restoration, no legal action</td>
<td></td>
<td>40</td>
<td>23</td>
<td>63</td>
</tr>
<tr>
<td>Legal action, one suit</td>
<td></td>
<td>8</td>
<td>13</td>
<td>21</td>
</tr>
<tr>
<td>Legal action, two suits</td>
<td></td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>61</td>
<td>54</td>
<td>115</td>
</tr>
</tbody>
</table>

The total number of women involved is 109 since six of these cases were taken to court following the woman's unsuccessful restoration by her father. Only in 26 of those 109 marriages (23·8 per cent) did the matter go to court on any issue. Under traditional practice, husbands generally appeal to their wife's father immediately the wife departs; and even when the woman's father makes no attempt to restore her, in rather more than half the examples (63 or 58 per cent) the deserted husband makes no complaint to the court. Evidently many men prefer customary procedures to those of the court.

To compare the effectiveness of 'legal' and 'customary' modes of action in these situations, I summarize the data for 84 women who had deserted their primary husbands, classifying these cases by the woman's movement to or from Kufana, and by the use or avoidance of court procedures.

| Table II
| Women's Movements under Legal and Customary Procedures |
|--------------------------------------------------------|------------------------------------------------------|
| **Effect**                                              | **Kufana gains** | **Kufana losses** |
| **Type of action taken**                                | **Custom** | **Legal** | **All** | **Custom** | **Legal** | **All** | **Total** | **Handled customarily** |
| Woman returns to primary H                              | 10         | 2         | 12      | 15       | 5         | 20      | 32        | 25                   |
| Woman stays with secondary H                            | 25         | 8         | 33      | 7        | 4         | 11      | 44        | 32                   |
| Woman goes to a third H                                 | 2          | 1         | 3       | —        | 2         | 2       | 5         | 2                    |
| Woman moves between first 2 Hs                          | 1          | —         | 1       | 1        | 1         | 1       | 2         | 1                    |
| Woman remains with her parents                          | 1          | —         | 1       | —        | —         | —       | 1         | 1                    |
| **Total**                                               | 39         | 11        | 50      | 22       | 12        | 34      | 84        | 61                   |

Legal and customary procedures offer deserted primary husbands equal chances of recovering their wives, 36·2 and 29·8 per cent respectively. However, nearly three-fourths of these movements are not reported to court, despite, or perhaps because of, recent increases in the fines levied for failure to observe Idda.

In 1955 the Kajuru District Council authorized the Kadara court to issue dated certificates to women on their completion of Idda, and also to permit those women who planned to leave their husbands to register for Idda in advance. In 1955, 19 women took advantage of this new facility before changing husbands; in 1956, 22; in 1957, 16; and in 1958, 13. Evidently few Kadara women are inclined to undertake observance of
Idda before changing husbands. The new facility is not a striking success. It merely adds yet another alternative to the increasingly varied procedures by which Kadara women enter new unions.

III ANALYSIS

What are the structural correlates of these ambiguous distributions? Clearly traditional procedures of secondary marriage persist with their harvest of paternity disputes; but the status of these unions is progressively obscured by successive amendments to the Idda rule. A deserted husband may complain to court that his wife has not observed Idda on her departure. The court first inquires into the conduct of the woman’s father. If he is innocent, the court fines the woman £3 and her new husband £6. The deserted husband usually pays his wife’s fine immediately, thereby asserting his legal responsibility for her as her husband. In this way plaintiffs appeal to court to announce their claims to absconded wives, often years after the woman’s departure, when the performance of Idda is usually pointless. Only the deserted husband may report his wife for failure to observe Idda, and if he does not pay her consequent fine, it is understood that he will shortly return to court to claim refund of bride-wealth. When a man suspects that his absconding wife is already pregnant, he normally requires the court to enforce her observance of Idda, thereby seeking to assert his future paternity claim. Failing this, he may still claim paternity after the child is born.

Observance of Idda is not held to constitute divorce, though under the new law it is prerequisite for subsequent marriages. Only when bride-wealth has been reclaimed and refunded does the former marriage cease. Under tribal law, as mentioned above, this exceptional event was regarded as annulment, and any issue of the union reverted to the wife’s natal lineage. Under the Idda law, return of bride-wealth constitutes divorce, the woman’s ex-husband retaining the children as his. None the less, in some cases the husband may seek refund of bride-wealth from the girl’s father directly or through the local village chief, without proceeding to court. Since this course of action forfeits his claim to the children under tribal law, only those men whose wives have borne no issue normally adopt it. The majority of deserted husbands are still restrained by the pressure of their lineage obligations. Where bride-wealth is informally reclaimed, the wife’s father is obliged to demand it from his daughter’s current husband; and whether settled at court or outside, the transaction terminates the first marriage and capitalizes the later marriage whether Idda has been observed or not.

The Idda rule has had important indirect effects at two levels, the personal and the corporate. It has taken effect by altering the balance and form of personal liabilities and rights which formerly prevailed under tribal law, and by obscuring the validity of these liabilities and rights where this derives from traditional procedures. Under Idda as administered by the court, women have ceased to be jural minors, and are now directly responsible for their failure to observe Idda. In those cases where both husbands refuse to pay a woman’s fine, she may be sent to jail; and, if she has persistently disobeyed her father, he will not come to her aid. Fathers have also lost their formerly unchallenged jurisdiction over their daughter’s marriages and fertility. So long as a woman’s various husbands negotiate their claims upon her out of court, her father preserves the form of his original right, and administers paternity suits to her issue, where these arise; but at best these paternal rights are now conditional. Where paternity disputes are brought to court, traditional authority ceases, and if they take the form of complaints for failure to observe Idda, the woman’s father may then himself be liable to fine. Deserted husbands may require Idda or reclaim their bride-wealth.

After many years some Kadara women undertake Idda before changing husbands, but most still do not; and while some husbands report their wives’ departure to the court, to secure observance of Idda, most do not. Either course of action by husband or wife lends itself to ambiguous interpretations by the other. A deserted husband may regard his wife’s observance of Idda before joining another man as evidence of intent to return, or as evidence of the opposite. The wife may treat her husband’s demand for the observance of Idda in similar ways. Sons-in-law now have various legal tools to use against their fathers-in-law; but these legal actions do not increase their security as husbands. Relations between a man and his daughters’ husbands are equally unstable.
Special Studies

Paternity is still a fertile subject of dispute, since observance of *Idda* is very poorly supervised. Following court fines and orders, *Idda* is often begun, to be abandoned shortly after. Few deserted husbands then summon their wives to court a second time, since by so doing they render themselves liable to pay her second fine. A man’s rights *in uxorem* are now no wider or more secure than formerly. Since these rights are now subject to two conflicting legal systems, tribal law based on corporate lineages, and court law sanctioned by the state, they may in fact be less secure.

The *Idda* rule has had its most important indirect effects at the level of corporate organization. Under the law, women may remarry as they please following performance of *Idda*. The court, administering this Muhammadan rule, has not yet found a way to forbid those marriages which violate traditional proscriptions, since these latter form no part of the Islamic order which the Kadara court is required to observe by its Hausa superiors. In consequence, traditional prohibitions against secondary marriage within communities and ritual groups are increasingly broken. Widows, having completed their mourning periods, may refuse inheritance, as happened in Kufana in 1956. Such events transform *azaimi* relations of solidarity between the lineages of a community into the institutionalized antagonism of *aforni*.

By permitting unrestricted ‘remarriage’, the *Idda* rule transfers full initiative to arrange such unions from the parental generation, who represent lineage, ritual group, and community interests, to the generation of the spouses themselves. The rule accordingly permits and supports breaches of the tribal law that once served to integrate relations of secondary marriage with the requisites of Kadara corporate organization. Unrestricted ‘remarriage’ exposes the traditional forms of corporate groupings on which the society still depends for its cohesion and order to progressive dissolution under the internal conflicts and strains which perennially attach to *aforni* relations between antagonistic lineages.

Secondary marriage persists as the typical form of later union among Kadara; but its validity is now obscured under the superordinate law. Alongside the traditional structure of secondary marriage and in competition with it, ‘remarriage’ has emerged as a new form in consequence of the *Idda* rule; and under the law as administered by the court, ‘remarriage’ eludes those traditional proscriptions that formerly regulated secondary marriage. The bases and relations of Kadara corporate groups, traditionally insulated from antagonistic *aforni* relations by mechanisms which restricted the alternative modes of marriage to mutually exclusive social spheres, are progressively compromised; the differing forms of prestation for primary and secondary marriage are assimilated; and the personal rights and liabilities of women, their fathers, and their rival husbands, remain obscure and ambiguous, even after submission to court.

The traditional structure and distribution of individual liability and right have been disturbed by the introduction of an alien structure with very different presumptions and implications. The two systems of law, tribal and alien, coexist in conflict, although each has partly absorbed the other into itself, by dislocating some of its rival’s institutional connections.

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Résumé

*IDDA ET LE MARIAGE SECONDAIRE CHEZ LES KADARA DU NORD*

Ce résumé essaie de décrire les effets directs et indirects d’une loi qui prescrit l’observation de l’*Idda* par les femmes de Kadara lorsqu’elles delaisent leur mari pour un autre. L’*Idda* est la période de 3 mois d’abstinence que les épouses doivent observer dans le droit musulman sous la surveillance des tribunaux avant le divorce.

Outre le premier mariage, les Kadara pratiquent l’héritage de la veuve, et le mariage secondaire. Les Kadara sont groupés...

Le mariage secondaire était une sorte de remariage, qui donnait au mari secondaire les droits exclusifs aussi longtemps que durait la cohabitation avec la femme, sans pour cela abroger les précédents mariages de la femme. Une femme pouvait avoir autant de maris secondaires qu’elle désirait, mais elle ne pouvait cohabiter qu’avec un seul à la fois, et selon la tradition ces maris devaient être choisis dans autant de communautés différentes. En bref, le départ de l’épouse terminait la cohabitation mais non le mariage. Les femmes étaient libres de retourner auprès de leur mari en permanence, ou en visites formelles (*abusan*) pour des périodes établies, renouant dans l’intervalle leurs relations rompues avec leur mari.

Sous la loi Kadara, pour résoudre les reclamations de paternité, une épouse, abandonnant son mari, doit montrer des preuves de menstruation à ses parentes pendant trois périodes successives; mais les discussions de paternité sont communes. Le père de l’épouse traditionnellement décidait qui était le père d’un enfant.

Sous la loi nouvelle de l’*Idda* il y a maintenant une obscurité considérable au sujet de l’état et de la validité des droits et des responsabilités individuels en tant que maris, femmes, pères ou beau-pères, sous ce conflit continu des règles et procédures légales. Tandis que les droits dérivant de la loi tribale du mariage secondaire peuvent être réglés de nouveau par la cour, la cour peut aussi légaliser indirectement les infractions de la loi tribale.

En légalisant les ‘remariages’, sans ces restrictions traditionnelles par lesquels les Kadara abritaient leurs groupes fondamentaux des effets désagréants du mariage secondaire, la loi de l’*Idda* administrée par la cour jusqu’en 1959 a progressivement affaibli les communautés de Kadara, les groupes rituels, et les lignages. Etant donné que les lignages auparavant se servaient du mariage secondaire pour affirmer cette construction collective, le ‘remariage’ et le divorce, sous la nouvelle loi de la cour renverse cette même construction collective avec sa distribution logique de sanctions, de responsabilités et de droits.