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## The Construction of Minorities: Self-Determination and the Legal Politics of Religious Difference in Late Northern Nigeria, circa 1949-1960

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**The Construction of Minorities: Self-Determination and the Legal Politics of Religious  
Difference in Late Northern Nigeria, circa 1949-1960\***

*(in Religion, Race and Democracy in Africa, University of Virginia Press (under review))*

The last decade of British imperial dominion in Northern Nigeria not only witnessed anticipated calls for Independence, it also marked the emergence of self-determination demands for internal minorities within the Protectorate.<sup>1</sup> As described by advocates of the self-determination project, the demand for autonomy was to take the form of the creation of a Middle Belt State, and the group whose self-determination was to be actualized were the “religious minorities” of Northern Nigeria. That period in Nigeria’s constitutional history has received sustained attention.<sup>2</sup> The tendency has, however, been to center the claim for “determination”—the state-creation demand—in apprehending the constitutional politics of the late colonial state. The consequence is that dominant histories fail to interrogate the religious identity that formed the basis of the self-determination claim. Departing from this approach, this paper foregrounds the making of the religious minorities—the group ‘self’ on behalf of whom the self-determination advocates brought the state creation claim. In unravelling the legal politics of religious difference—and sameness—integral to making the religious minorities identity, this paper’s account of late colonial contestations troubles the narratives of emancipation that undergirded the religious minorities project and the memory of disempowerment that fuelled its rise.

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\* Sections of this paper are produced in Rabiat Akande, *Entangled Domains: Empire, Law and Religion in Northern Nigeria*, Cambridge University Press, 2023.

<sup>1</sup> For accounts of the global wave of decolonization in the years following the Second World War, see See John Charles Hatch, *Africa: The Rebirth of Self-Rule* (Oxford: Oxford University Press, 1967); William Roger Louis, *The Transfer of Power in Africa: Decolonization, 1940-1960* (New Haven: Yale University Press, 1982); John D. Hargreaves, *Decolonization in Africa* (London and New York: Routledge, 2014); and Rudolf von Albertini, *Decolonization: The Administration and Future of the Colonies, 1919-1960* (Doubleday, 1971).

<sup>2</sup> See for example Wale Adebani, "A Nation Betrayed: Nigeria and the Minorities Commission of 1957," *African Affairs* 111, no. 443(2012): 335-337; R. T. Akinyele, "States Creation in Nigeria: The Willink Report in Retrospect," *African Studies Review* 39, no. 2 (1996): 71-94; Oluwatoyin B. Oduntan, "Decolonization and the Minority Question in Nigeria: The Willink Commission Revisited," in *Minority Rights and the National Question in Nigeria* eds. Uyilawa Usuanlel and Bonny Ibhawoh (Cham: Palgrave Macmillan, 2017), 17-39.

Rabiat Akande  
August 27, 2022

Although a range of power relations condition a group as a minority, marshaling a ‘minority’ identity to make political and legal claims is far from an unmediated outcome of those background circumstances.<sup>3</sup> Far from neutral, the construction of minorities often necessitates deliberate—and inconscient—choices of inclusion and exclusion with tremendous consequences, both for shaping the identity and for the substance of the claims to be made. The religious minorities identity emerged in late colonial Nigeria to resist the peculiar forms of domination that colonialism entailed. However, the making of that identity perpetuated the hierarchies and exclusions that colonialism instantiated. Significantly, the religious minorities identity hinged on an antithesis to the Muslim identity, and by so doing, that identity paradoxically embraced the colonial state’s binary distinction of colonial subjects as Muslims v. non-Muslim.<sup>4</sup>

The colonial state glossed over complexities in precolonial identity formations to classify colonial populations as either Muslim or Non-Muslim. That classification, in turn, determined residential formations, political administration and ultimately, jurisdiction. Northern Nigeria was zoned into three areas under the colonial religion differentiation scheme. First, there were emirates under the control of Emirs. These, tagged “Type I areas,” were predominantly Muslim. Second were “Type II” areas with a mixed religious population; these governed through Muslim chiefs that did not have the status of Emirs. Although some mixed-religious areas had come under the control of the precolonial caliphate after the 1804 revolution and been governed through Muslim administrators, the colonial state expanded this category. The third category in the colonial schema was the “Type

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<sup>3</sup> See Burguière, André, and Raymond Grew, eds. *The construction of minorities: Cases for comparison across time and around the world*. University of Michigan Press, 2001; Mamdani, Mahmood. "Neither Settler nor Native." In *Neither Settler nor Native*. Harvard University Press, 2020.. See further Mahmood, Saba. "Religious freedom, the minority question, and geopolitics in the Middle East." *Comparative Studies in Society and History* 54, no. 2 (2012): 418-446.

<sup>4</sup> Rabiat Akande, *Entangled Domains: Empire, Law and Religion in Northern Nigeria* (Cambridge University Press: forthcoming)

III,” area – almost exclusively non-Muslim in the precolonial period. The classification of these territories determined the extent of formal autonomy granted to native chiefs—Emirs had the widest scope of powers and autonomy, Muslim Chiefs of Type II areas were next and the pagan chiefs were at the bottom of the hierarchy.<sup>5</sup> The territorial classification not only determined political administration, it also dictated the jurisdiction of laws and courts. ‘Islamic’ law and system of courts had jurisdiction in Types I and II areas while pagan native law and courts operated, subject to restrictions, in Type III areas.<sup>6</sup> Moreover, the colonial schema formed the basis of the colonial policy on Christian missionary activity. The overwhelmingly Protestant missions drawn to the Northern Nigerian mission field were largely restricted to proselytizing to adherents of indigenous religions, frustrating missionary dreams of taking the gospel to a key missionary attraction in Muslim Africa.<sup>7</sup> A binarized notion of religious difference was therefore central to how empire apprehended its colonial possession, and ultimately, to how it governed its subjects.

To be sure, religious difference certainly pre-dated the colonial encounter; yet, colonial governance came to define, deepen and hierarchize religious difference in ahistorical ways.<sup>8</sup> Indeed, the colonial distinction did not merely binarize religion; it also (re-)defined religion. This (re-)definition of religion took the form of privileging the colonial remains of the caliphal aristocracy as the ideal Muslims, violently repressing Muslim critics of the colonial alliance,<sup>9</sup> and

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<sup>5</sup> *Id*

<sup>6</sup> *id*

<sup>7</sup> *On the attractions of Northern Nigeria to early twentieth century Christian missions*, see Ayandele, Emmanuel A. "The missionary factor in northern Nigeria, 1870-1918." *Journal of the historical society of Nigeria* 3, no. 3 (1966): 503-522, Ubah, Christopher N. "Problems of Christian Missionaries in the Muslim Emirates of Nigeria, 1900-1928." *Journal of African Studies* 3, no. 3 (1976): 351. See, however, Barnes, Andrew E. "'The Great Prohibition': The Expansion of Christianity in Colonial Northern Nigeria." *History Compass* 8, no. 6 (2010): 440-454.

<sup>8</sup> Rabiat Akande, *Entangled Domains*

<sup>9</sup> See for instance Adeleḡe, R. A. "Mahdist triumph and British revenge in northern Nigeria: Satiru 1906." *Journal of the Historical Society of Nigeria* (1972): 193-214; Rabiat Akande, *Contested Domains: Empire, Law and Religion in Northern Nigeria*

Rabiat Akande  
August 27, 2022

by transforming in its entirety Islamic law and institutions.<sup>10</sup> The state's (re-)definition of religion also took the form of bureaucratic efforts to erase ethnolinguistic—and religious—diversity of precolonial indigenous (religious) populations by homogenizing that identity as merely non-Muslim. The Muslim-non-Muslim binary also deepened pre-existing religious difference and hierarchized religions by granting ceremonial deference to the tragic Muslim aristocrats through whom the colonial state governed much of the territory.<sup>11</sup>

The deeply unequal relations of power set in motion by colonial rule created a *de facto* minority status for so-called dissident Muslims, indigenous populations, and newer converts to Christianity. Yet, the construction of religious minorities to make self-determination claims in the last decade of colonial rule was far from a straightforward reflection of the complex forms of exclusion that colonial governance of religion entailed. Championed by Protestant nationalists—and with the undisputed influence of missionary advisers—the wielding of the religious minorities identity for self-determination effectively sidelined non-Protestant concerns. Although it hinged on a non-Muslim identity that purported to be inclusive, self-determination advocacy overwhelmingly privileged the Protestant experience. Indeed, the most bitter contestation in the late colonial years was triggered by frustrations over the colonial state's extreme restrictions on Christian missions - restrictions that had long made Colonial Northern Nigeria particularly infamous in global missionary circles.<sup>12</sup> The question of missionary proselytization ignited a conflict between missionaries, colonial officials, and the *Masu Sarauta* (Muslim elites) that spanned the colonial

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<sup>10</sup> Akande, Rabiat. "Secularizing Islam: The Colonial Encounter and the Making of a British Islamic Criminal Law in Northern Nigeria, 1903–58." *Law and History Review* 38, no. 2 (2020): 459-493.

<sup>11</sup> id

<sup>12</sup> See, for instance, Report of the World Missionary Conference Commission I: Carrying of the Gospel to all the non-Christian World, (World Missionary Conference, Edinburgh: 1910), Rabiat Akande, Neutralizing Secularism: Religious Liberty and the Twentieth Century Global Ecumenical Project. *Journal of Law and Religion* Vol. 37 No. 2, 2022

years. Those tensions only intensified in the waning years of colonial rule as a combination of global and local forces began to signal the eventual end of imperial dominion. Notably, the missionary question was the subject of an explosive altercation in the Northern Region House of Assembly in 1949.<sup>13</sup> That face-off, which almost brought the nascent legislature with colonized elites in the numerical majority, was ignited by a Muslim elite-sponsored bill that sought to tighten pre-existing restrictions on missionary activity. The 1949 altercation reflected the centrality of religious identity to the constitutional politics in the late colonial state, and was a harbinger of things to come. By the time, self-determination claims began to be articulated the following year, that claim would overwhelmingly center the Christian missionary experience.

The Christian Council of Nigeria first tabled a concrete proposal for self-determination at a 1950 meeting with the Chief Commissioner of the Northern Region Colonial Government.<sup>14</sup> That proposal called for the creation of a Middle Belt Region to be cited in Adamawa Province. The Government denied the request giving two reasons. First, it argued that Adamawa Province was not large enough to constitute a separate state. The second reason, which the Government took care to emphasize, was that the Province comprised of several peoples with different religious, ethnic and linguistic identities and there was no common thread to constitute a single identity

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<sup>13</sup> See Jonathan Mamu Ayuba, "The Bible and Political Revolution: Religion and Minority Politics in Northern Nigeria, 1945-1957," *Journal of the Historical Society of Nigeria* 17 (2007): 145. Akande, *Entangled Domains*

<sup>14</sup> Statement Submitted to the Civil Secretary of Northern Nigeria, April 20, 1955. CMS/OMS/A9/ Alvarez. University of Birmingham Cadbury Special Collections (hereafter Cadbury Collections). See also The Commission of the Churches on International Affairs, *Religious Liberty in Nigeria*, July 1956. BCC/DIA/7/3/4/3. Church of England Record Center (hereafter CERC). It is important to note that calls for political autonomy of non-Muslims from Islamic institutions pre-dated the years leading to Independence. The Church Missionary Society in particular and the Christian Council of Nigeria had begun to seek political autonomy of these non-Muslim populations from the Muslim intermediaries through whom the colonial state governed the territory. Perhaps the most vocal of the non-Muslim ethnic groups in clamoring for autonomy were the Chambas of Adamawa Province. See Moses Ochon, *Colonialism by Proxy: Hausa Imperial Agents and Middle Belt Consciousness in Nigeria* (Bloomington and Indianapolis: Indiana University Press). The self-determination claims of the postwar years went far beyond the earlier claims for local governance autonomy – protestant advocates began to advocate for the creation of a state. See Akande, *Entangled Domains*, Cambridge University Press: forthcoming.

necessary for the creation of a state. In essence, the government argued that there was no ‘self’ to form the basis of a self-determination claim. In the absence of such a ‘self,’ the government argued, the self-determination claim could not succeed. It was that challenge that led to the Christian, and more specifically Protestant alliance with indigenous religious populations in furtherance of the self-determination advocacy.

To be sure, political ecumenism predated self-determination advocacy, earlier political parties founded by Christian elites prominent among which was the Non-Muslim League, had invoked a non-Muslim identity thereby nominally extending its membership to indigenous religious faiths and as a political strategy to counter the Muslim-elite controlled Northern People’s Congress. Nevertheless, only following the frustration of the self-determination demand did a concerted effort to construct a political identity—a “non-Muslim self”—to wield a state-creation claim emerge as a conscious strategy of constitutional politics.

It was on the basis of this newly created ‘self’ – the religious minorities - that the United Middle Belt Congress (UMBC), a political party championed by Christian nationalists, began to advocate for self-determination.<sup>15</sup> This claim was for internal self-determination within Nigeria through the creation of an autonomous self-governing Middle Belt state that would align with Nigeria but with its own independent legislature. To be sure, federalist ideas were not unprecedented in the colonial state nor for that matter in British imperial Africa.<sup>16</sup> The colonial state’s territorial religion-based classifications themselves evinced a federalist notion, a structural arrangement that

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<sup>15</sup> The politics of religious differentiation—and homogenization—was itself central to the evolution of political parties in Northern Nigeria, The United Middle Belt Congress succeeded the Non-Muslim League, a political party founded by Christian converts in reaction to the 1949 anti-missionary bill, and as a deliberate antithesis to the Muslim identity. For the objectives of the United Middle Belt Congress, see See United Middle Belt Congress, *The Constitution of the United Middle Belt Congress* (Kaduna: Ola Moduro Press, 1955). See further Rabiat Akande, *Entangled Domains*

<sup>16</sup> See Juma, Dan. "The British Tradition of Federal Ideas: Kenya and Rhodesia in the Interwar and Postwar Years Circa 1925-1960." SJD diss., Harvard Law School, 2017.

Rabiat Akande  
August 27, 2022

was further reinforced by the 1946 Constitution's provision for regional autonomy for Nigeria's major geographical regions. Yet, the federalism sought by these advocates went beyond the existing colonial design by seeking to transform the existing religion-based-territory classification. Whereas the previous arrangement had featured Muslim areas, mixed-areas and animist areas, the proposed design sought to create a state for non-Muslims, both Christians and animists.

At the 1957 Constitutional Conference in London, the United Middle Belt Congress tabled the Middle Belt state demand, arguing that the continued existence of non-Muslims *as a group* in Northern Nigeria was detrimental to its interests. The Colonial Office did not express his direct opposition. However, the Secretary of State for the Colonies, Sir Lennox Boyd, effectively defeated the proposal by pointing out that consideration of the state creation petition by the Colonial Office was bound to delay Nigeria's independence. Sir Lennox assured the conference that in the absence of such an intricate claim, Her Majesty's Government would consider granting independence to Nigeria. This connection of the state creation demand with Independence was well calculated: the idea of Nigeria's Independence had become popular in the 1950s, promoted by several political parties across Nigeria's unions, including the UMBC.

In what it framed as a gesture to the minorities, and in a discreet nod to the interests of empire,<sup>17</sup> the Colonial Office set up a commission "to inquire into the fears of minorities and the means of

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<sup>17</sup> Parkinson suggests that the creation of the Commission was a ploy to delay Nigeria's independence in accordance with the wish of the old-world group in the Commonwealth of Nations. The ascension of Ghana to the Commonwealth had raised the fear among the group that rapid independence of British colonies would lead to the creation of an Africa-Asia bloc that would effectively challenge the dominance of the old world group. The agitations at the 1957 conference presented an opportunity for the Colonial Office to set up a Commission as a delay tactic, a strategy earlier deployed in Malaysia. See Parkinson, Bills of Rights in a Decolonization Context. For critical accounts of commissions as tools of governance, see Sitze, Adam. *The impossible machine: A genealogy of South Africa's truth and reconciliation commission*. University of Michigan Press, 2013; Ashforth, Adam. *The politics of official discourse in twentieth-century South Africa*. Oxford: Clarendon Press, 1990.



allaying them” in September 1957. The Commission, headed by Sir Henry Willink, Queen’s Counsel,<sup>18</sup> was charged with ascertaining the “facts about the fears of minorities in Nigeria whether they are well or ill-founded.”<sup>19</sup> Based on its findings, the Commission was to make recommendations to allay the fears of minorities, including, if suitable, the creation of states.

The Willink Commission became a crucial site for the construction of the religious minorities identity. As it unfolded during the commission’s proceedings, however, the making of that identity was far from a straightforward reflection of the complex forms of domination that colonialism entailed. If the performance of the religious minorities identity invoked a history of marginalization of all non-Muslim colonial subjects, the emphasis of remedies that privileged the protestant experience reflected the forms of exclusion that the religious minorities entailed.

The UMBC brought the self-determination claims before the Willink-chaired commission of behalf of the religious minorities of Northern Nigeria, defined by the party by reference to its non-Muslim identity. To prove the existence of that “self” on behalf of which it brought the claim for political autonomy, the UMBC presented a history of a common experience of oppression of Christians and diverse indigenous faiths based on their status as non-Muslims. Even as it did so, however, the UMBC privileged the Christian experience by making missionary restrictions and the political marginalization of Christians central to the narrative of marginalization of non-Muslims.

The centering of the missionary experience in the narrative of non-Muslim marginalization elided the insidious disabilities that the colonial governance of religion and religious difference imposed

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<sup>18</sup> The other members of the commission were Gordon Hadow. Philip Mason. J. B. Shearer

<sup>19</sup> Henry Willink, ed. *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them* (London: HM Stationery Office, 1958) (hereinafter, “The Willink Report”)

on non-Protestant groups. Indeed, the hierarchies set in motion by the colonial governance design marginalized non-Protestant minorities in unique ways. The colonial-era classification of these populations as “pagan” had uniquely perverse consequences on indigenous laws and institutions which were designated by the colonial state as “primitive,” and expressions of “mob law.”<sup>20</sup> For Protestant converts whose inclination was now to accede to the jurisdiction of English courts to whom colonial officials transferred disputes, the crippling of indigenous religious institutions was not a prime concern. Further, the centering of the protestant experience in articulating the disempowerment that grounded the religious minority experience sidelined economic concerns. Indeed, Protestant champions of the Middle Belt State insisted that the claim was not informed by economic disempowerment. Speaking at the 1958 Constitutional Conference, for instance, JS Tarka, leader of the United Middle Belt Congress and foremost champion of the Middle Belt state project stressed that state demand was not founded on economic concerns, but rather on the social marginalization and political disempowerment of non-Muslims brought on by the colonial state’s co-option, and in his view, privileging, of Islamic institutions for indirect rule.<sup>21</sup>

Even the government-empanelled commission to examine the state creation demand, the Willink Commission, acknowledged the economically privileged position of the Protestant nationalists spearheading the state creation claims.<sup>22</sup> The government policy of permitting missionary access to indigenous religious communities had resulted in widespread western education with the resulting economic mobility through access to positions in the colonial bureaucracy and the new

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<sup>20</sup> Frederick J.D. Lugard, *The Dual Mandate in British Tropical Africa*. Edinburgh; London: W. Blackwood, 1922. 78

<sup>21</sup> Nigeria Constitutional Conference 1958. CO/879/174 National Archives. United Kingdom

<sup>22</sup> The Willink Report, 58. As submitted to the Commission, sixty-one per cent of the junior grade of the civil service were natives of Kabba, Benue and Plateau, three predominantly non-Muslim areas and from Ilorin, a largely Muslim area with a predominantly non-Muslim population. 20% of the senior cadre came from these areas and 20% were drawn from other predominantly non-Muslim areas. Given that Muslims constituted seventy-three percent of the Northern Nigerian population (according to the 1952 Census), those numbers were significant. CO/957/41 National Archives. United Kingdom

Rabiat Akande  
August 27, 2022

economy that the twentieth-century colonial encounter had set in motion. Yet, if the benefits of the missionary concerns made economic concerns marginal in the advocacy of Protestant nationalists, economic disabilities continued to plague indigenous populations, including those who had converted to Christianity.<sup>23</sup> Under these circumstances, the construction of the religious minorities as inclusive of adherents of indigenous religions was hardly consonant with the exclusion of the latter's concerns.

Beyond this substantive exclusion of the concerns of indigenous religious groups; the hinging of the religious minorities' identity on the colonial Muslim vs. non-Muslim binary effectively excluded Muslim groups long repressed (by the colonial state) for their actual or perceived opposition to imperial rule.<sup>24</sup> The exclusion of these marginalized Muslim groups precluded these populations from bringing claims against colonial government institutions to remedy their suffering. Indeed, when the Tijaniyyah, a Muslim group critical of the colonial government's alliance with the Masu Sarauta sought to bring a claim before the Willink-chaired commission, the commission barred the Tijaniyyah. In a ruling that shed light on the legal politics of religious differentiation in the colony, the Commission decided that intra-religious minorities were not competent to appear before the commission because groups constituted "dissident sects" rather than minorities *per se*.<sup>25</sup> Moreover, the Commission held that such groups were simultaneously

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<sup>23</sup> Chamba Federation Separatist Movement, Report on the Chamba Subordinate Native Authority Submitted to the Willink Commission. CO 957/17. National Archives. United Kingdom. See also Our Fears: Submission of the Alago State Union to the Willink Commission, November 12, 1957 tabling complaints of economic marginalization by people of Lafia. CO 957/32. National Archives. United Kingdom

<sup>24</sup> Rabiat Akande, Entangled Domains. See <sup>24</sup> See also the account of the six-month imprisonment of a Tijaniyyah leader for publishing "offensive" comments about the Emir in the *Daily Comet* newspaper from November 21, 1949. See CO554/1534 folder and CO957/5 NA. UK. On repression of NEPU members, see Memo of the Colonial Office West Africa Department to the Minister of State, "Confidential Note for the Minister of State on the Arrest of NEPU Adherents," August 24, 1954, in which the Department argues that NEPU had transnational communist links. CO 554/1069. NA. UK.

<sup>25</sup> See for instance see Willink Commission's Proceedings in Adamawa, NA.UK, Co/ 957/5. See further The Willink Report, 111.

Rabiat Akande  
August 27, 2022

precluded from making claims before the Commission as political minorities. The consequence was that all avenues for repressed Muslim groups to seek state-sanctioned remedies were effectively blocked. By doing so, the colonial government was, just like the Protestant advocates resisting colonial governance, systematically excluding groups that had suffered the most pervasive disabilities from constitutional politics.

The Protestant-championed religious minorities project was conceived as an emancipatory project that would shatter the disabilities and hierarchies that the colonial governance of religion set in motion. Yet, the religious differentiation and homogenization processes integral to the construction of the religious minorities identity perpetuated the marginalization of insular groups. Under such circumstances, the failure of the Middle Belt State creation demand hardly signaled the end of the consequences of the religious minority identity for constitutional politics of the late colonial state. If the Middle Belt claim failed, its champions ultimately succeeded in wielding the Protestant-centered religious minority identity to successfully constitutionalize a notion of religious liberty that protected missionary preaching and conversion across faiths.<sup>26</sup>

To legitimate the self-determination being demanded of the state, capture the historical experience of those non-Muslim groups, the relations of power from which that experience emerged, and most importantly, to legitimate the self-determination being demanded of the state, Protestant advocates embraced the Muslim non-Muslim binary central to colonial governance. By so doing, the self-determination project came to assume the colonial governmentality it sought to resist.<sup>27</sup>

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<sup>26</sup> For an account of the significance of the Nigerian struggles in the genealogy of events leading to the making of the foremost international legal provision on religious liberty, Article 18 of the Universal Declaration of Human Rights, see Rabiat Akande, *Neutralizing Secularism*, *Journal of Law and Religion* vol 37.2, 2022. For the constitutionalization of Article 18 in Nigeria's Independence Constitution, see *Entangled Domains*.

<sup>27</sup> On the limits of religious projects in the context of the modern state, see Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton: Princeton University Press, 2015), 32.

Rabiat Akande  
August 27, 2022

In seeking to produce the subject worthy of seeking redress, the making of the religious minorities sought to overturn rather than dismantle colonial hierarchies. Even as it sidelined indigenous religions and repressed Muslim concerns, the Protestant-championed religious minority identity utilized the colonial Muslim v. non-Muslim binary as the basis of narrating the experience of disempowerment on which it grounded its claims. At the same time, however, that Muslim vs. non-Muslim lens occluded the ways through which the colonial state's governance of all faiths led to the radical transformation not only of religion but also of notions of religious difference. The ultimate consequence was that a project conceived as emancipatory inadvertently opened new doors to inequality.