IMPACT OF CUSTOMARY LAW ON THE PRACTICE OF THE
ISLAMIC LAW OF SUCCESSION: A CASE STUDY OF
THE ADIGO OF SOUTHERN COAST OF KENYA.

BY

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A thesis submitted in partial fulfilment
for the Degree of Masters of Arts in the
University of Nairobi.

SEPTEMBER 1992
In the Name of Allah, 
the Compassionate, the Merciful, 
Praise be to Allah, Lord of the Universe, 
and Peace and Prayers be upon 
His Final Prophet and Messenger.
DECLARATION

This thesis is my original work and has not been presented for a degree in any other University.

HASSAN ABDUL RAHMAN MWAKIMAKO

"My Lord! bestow on them Thy Mercy even as they cherished me in childhood.
Quran 17: 23

This thesis has been submitted for examination with our approval as University Supervisors.

Dr J.M.O. Mtupah
Professor Mohamed Bakari
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## DEDICATION

To my parents

"My Lord! bestow on them
Thy Mercy even as they
cherished me in childhood"

Quran 17: 23

## CHAPTER ONE

THE ADIGO AND ISLAM

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Hassan A. Mwakimako
ABSTRACT

This work has been as a result of two perplexing views expressed in other works on the subjects, shariah and Islam amongst the Adigo people. On the Shariah, attention was drawn on the attitudes of orientalistic scholarship on the Shariah. Specifically this has been an attempt to counter the doubts and skepticism expressed in other works on the validity and authenticity of the Shariah as a system of law and doubts on its sources as viable for a system of law.

This survey therefore is an attempt to explain the Shariah and verify the doubts about the sources of Shariah. While other works tend to term the sources of Shariah as 'alleged' our study attempts to explain what the Shariah is, what are its sources and what is the scope of these sources in the formulation of the Shariah. On the sources of Shariah, this study defines the meaning of each one of them and proceeds to articulate how that particular source can be used to formulate the Shariah.

Collaborative evidence on all sources of Shariah is sought to verify the authenticity of the sources. It is found herein evidence from the Quran that explains why the Quran can be used as a source of Shariah. Thus on the authenticity and validity of the Shariah, this work contributes to knowledge and explication
of the sources of shariah and their limitations in the corpus of Islamic jurisprudence.

On the Adigo, concern has been on the fact that Adigo people are indigenous and Islam as a religion has been alien. This has been the basis of some scholars to contend that the traditional practice of inheritance of the Adigo is in conflict with Islamic teachings and practice of the law of succession. Basically the 'alleged' matrilineal practice of the Adigo has been argued as the factor that has shown the conflict between Islamic and traditional practice.

An attempt has been made to discuss the emergence and spread of Islam amongst the Adigo. The spread of Islam was not spontaneous. The gradual acceptance of Islam may have led to cases of parallelism. However the trend did change and strict Islamic practice has been observed.

Since the law of succession has been explained as the born of contention between Islam and traditional Adigo practice, this survey has specifically dealt with the principles of the two systems of law in order to compare them and discover the conflicts and possible accommodations. Our intention here has been to diagnose the problem and look for possible solution.

The Islamic Law of Succession is thus investigated in its development during the Jahilliya period. The reforms introduced by
the Quran and the general exposition of the Shariah and its rules of application give the corpus of the Islamic law of succession. The same has been done on the Adigo people. Basing our findings on the ethos and principles which are the guidelines on the administration of the law of succession, we find that the Adigo traditional practice is minimal, naturally its towards extinction.

However the study did reveal that, the Adigo traditional practice of 'Kuhala Ufwaa' which is synonymous with inheritance has been patrilineally based. The notion that Adigo are traditionally a matrilineal society becomes rather inconsistent when reference is made to their practice of inheritance. Further, Adigo people contemporarily recognise and trace descent both patrilineally and matrilineally. This makes it similar to the Islamic practice of reckoning family relationships. However amongst the Adigo the descent group has been found to have certain advantages over another in the life of an individual.

In practice of the law of inheritance, there has been minor conflicts contemporarily. This has been as a result of the Islamic awakening observed amongst muslim youth who aspire to be governed by the Shariah than the traditional practice. How Islamic education has managed to achieve this, and what challenges it might have faced may be of interest to other researchers.
INTRODUCTION

STATEMENT OF THE PROBLEM

Characteristic of an Islamic society may be identified as one providing relationship with the larger world of Islam, making it part of a wider Islamic community (Umma). It is furthermore a society that traditionally considers itself Islamic in both a cultural and a religious sense, and is so considered by other groups adjacent to it or otherwise in contact with it whether these latter groups be Islamic or not. Such a society, within the context of Islam, is one that exhibits the structure and organization of societies that are not only aceanalys and egalitarian, but also one that is both in its professed religion and culture.

Islam as known perhaps more than any other religion, provides for its practitioner a corpus of a near total social order. The Islamic state, like the whole of what one might call Islamic psychology, views the Dar al-Islam (Abode of Islam) as one vast homogeneous common-wealth of people who have a common goal and destiny and who are guided by a common ideology in all matters, both spiritual and temporal. The entire Muslim Umma lives under the Shariah to which every member has to submit, with sovereignty belonging to Allah alone.
Muslim people, however, have different ethnic and cultural origins, geographical situations historical backgrounds and present day conditions. The 'Muslim world' is likewise undergoing disproportionate but rapid transformation. The changes occurring amongst many Muslim societies, differ in scope, intensity, and velocity. Traditional cultural patterns, are in process of dissolution. There are cleavages in almost every sector of life, in ideas, institutions, between generations, and among classes and communities.

In places where ethnic societies embraced Islam, the Shariah is expected to dominate their lives. These ethnic societies, however, have been seen to have their own customary laws and practices. It is likely these societies practiced customs in parallel with Shariah, even at times at variance. Analysts have long been pre-occupied with those features of traditional cultures, which affect the direction and content of change and the receptivity of a society to innovations. Such conditions of flux may be unmistakable signs of internal changes in the value system of a society to innovations. This change may be unavoidably followed to some degree of secularization and a shift from prescriptive to principal value orientation. The acceptance of a secular orientation on religious, social and cultural matters could be universal in many Muslim societies, but attitudes towards the problems created by it differ in every case. With all this, there is a likelihood of a steady trend towards secularization in
traditional institutions amongst ethnic communities that embraced Islam.

The Adigo are an Islamized Bantu Society, who have their distinctive culture, and uphold their traditional values according to their own weltanshaugen (world view). After embracing Islam there was an encounter between their traditional values and the principles of Islam. Most traditional Adigo values in conflict with Islamic ideology had to change. This is so because Islam requires all aspects of life of its adherents to be regulated by the Shariah which is Divine and therefore perfect; perfect and therefore complete; complete and therefore final; final and therefore unalterable. In this sense, Islam had a great impact upon the traditional institutions of the Adigo.

Inheritance\(^1\) is one of the social institutions greatly influenced by both Islamic Shariah and Customary law and practice amongst the Adigo\(^2\). To Islam vis-a-vis Adigo custom, inheritance, especially its ideology and laws, are the most important. The Islamic law of inheritance is central in the Islamic and religious life. Accordingly "... the laws of inheritance form a vital integral part of the family laws of Islam..." in a sense may be said to constitute its focal point\(^3\).

The importance of inheritance, and its ideology may however vary between the Adigo customary law and the Shariah. The family is the most sacred social institution in Islam, as well as amongst the Adigo, but the Islamic family structure may not be the same as
the Adigo family structure. The Adigo family can be matrilineal, patrilineal and Bilineal. Heritage rights are in accordance to the structure of an individual family. Inheritance amongst the Adigo at times also followed one's clan. With the adoption of Islam, the Adigo abandoned (or they had to) those traditional practices which were in conflict with the Shariah, a factor noted as causing trouble amongst the Adigo. The nature of the trouble and its cause are, however, not explained in detail, though a clue is given thus "... a few Digo have adopted the patrilineal system and this invariably causes disputes since their (Adigo) claim to inheritance is upheld if carried to a Shariah court". We have tried to show however that the patrilineal system practiced by the Adigo was not as a result of Islam alone. In fact it might be that, it was the initial practice amongst the Adigo.

The nature of relations between the Islamic law of succession and the Adigo customary law of inheritance clearly indicates the conflict between 'traditional' ethnic, and the 'modern' Islamic. There is thus a disparity amongst the Adigo between the new and the old. Inevitably the Adigo underwent change, thus what metamorphosis of society may have forced such a dramatic rethinking of established values within the contemporary Adigo in its customary law of inheritance and the various relationships between the Adigo customary law of inheritance and its impact upon the practice of the Islamic law of succession is the subject of this inquiry.
RESEARCH METHODOLOGY

The study was primarily based on qualitative field and library research, participant observation, open and closed ended interviews. Two categories of informants were interviewed. These were Muslim scholars, mainly Madrassah Teachers, Mosque Imams and Kadhis, the second group comprised of Adigo sages. For the first category, the Islamic philosophy of inheritance was investigated. The second group discussed the alleged ideology of Adigo matrilineal inheritance and the development of the Adigo rules of inheritance.

Oral interview were conducted of as many informants as possible and as of various areas where the Adigo lived in order to get a cross section of the population. Caution was also taken to interview a considerable number of informants and avoid possible individual biases of the informants, especially in the areas of the origins of some clans. This seemed to raise eyebrows because some clans originated from slavery and a number of informants needed the confidence of the research in order to reveal facts. Only men informants were interviewed because the women approached for information directed the researcher to male relatives. The researcher found out that questions of law were mainly discussed by men who only became members of the Ngambi council. This also portrays some inconsistency with the alleged matrilineal practice of the Adigo.
The unstructured open and closed ended interview schedules (appendix I & II) were used for the purpose of guiding the researcher on the appropriate questions to be posed to the informants. These were not distributed as such. Tapes were used to record these interviews. Some informants however did not like the idea of being taped due to reasons best known to themselves, in such cases the researcher took notes on the discussions.

OBJECTIVES OF THE STUDY

Today, Islam is the religion of an overwhelming majority of the Adigo. Islam is therefore expected to be the focal point within the society, though somewhere else it is noted that the majority still subscribe to traditional customary practice, most of which are at variance with the basic teaching of Islam.

This study aims to provide a critical analysis of the Adigo ethnic society's understanding, interpretation and practice of its customary laws of succession, at the same time being Muslims, their practice of the Islamic law of succession. The study however bears in mind that the Adigo are Muslims, thus culturally and spiritually part of the Muslim world hence bound to the Shariah. It is within the scope of this survey to understand contemporary Islam amongst the Adigo society along with its initial potentiality for its adaption, with particular emphasis on the Adigo traditional customary laws of inheritance, and the Islamic law of succession.
The inquiry investigates and attempts to analyze what inbuilt, structural mechanism helps to perpetuate traditional values in the practice of inheritance, and what values enhance the Islamic practice of inheritance. This study shall also investigate the traditional and Islamic norms and mores that motivated the Adigo to permit and inhibit change and those which hindered change. Further on this study will attempt to investigate the relationship between the Adigo ethnic ideology and the Islamic philosophy on matters concerning inheritance. Additional objectives are:

i. To add to the available, historical, anthropological, philosophical and sociological works on the Adigo, a socio-religious analysis of the aspects on inheritance, touched but not elaborated by previous works.

ii. To attempt to show the Shariah law of inheritance when interpreted, can accommodate many aspects of the customary laws of inheritance that may be currently seen as innovations.

iii. To analyze and explain arguments, both for and against the concerned laws for the benefit of the Adigo people and other interested parties.

HYPOTHESES
H1 Aspects of the Adigo customary law of inheritance cannot co-exist with Islamic law of inheritance.

H2 The matriliny of the Adigo is the sole factor responsible for the conflict between the Adigo customary law of inheritance and the Islamic law of succession.

PROBLEMS ENCOUNTERED

Major problems encountered during the field work included unreliable means of transport. Kwale District where the Adigo live is a vast area. Covering the entire district proved difficult in the short time allowed for field research. The researcher depended on public transport which was unreliable on many occasions this explains why the researcher concentrated on areas that were easily accessible from the main Mombasa – Lungalunga Road.

It was also found that a lot of time was needed to arrange for interviews with some principal informants. Though the Researcher made it a point to have the interviews done spontaneously, whenever respondents were available, it certainly became clear that other informants had more information, and there was need for more interviews. Arranging for more interviews was a bit difficult bearing that respondents also had other things to do. Reconciling the two was a challenge to the researcher. Many times respondents could not keep time and often interviews had to be rescheduled.
The researcher also experienced some financial constraints, especially when covering distances which were far apart using public transport. Though the University offers research grants, this is usually inadequate to cover all the research expenses.

**LITERATURE REVIEW**

The primary sources upon which we have had to rely on the study of the Shariah are works done by prominent Muslim scholars like Abul A'la Maududi in *Islamic Law and Constitution* (1960), Abdulrahman Doi's *Shariah: The Islamic Law*, (1984), Fazlur Rahman's *Islam* (1966) and A.A.A. Fyzee's *A Modern Approach to Islam* (1962) and *Outline of Muhammedan Law* (1964). Secondary sources are works done by the Orientalists which includes Ignaz Goldziher, Joseph Schacht, N.J. Coulson and J.N.D. Anderson.

Maududis work, *Islamic Law and Constitution* (1960) stems from the time of the formation of Pakistan as an Islamic state, thus arises from the need of the Pakistan polity to be based on traditions and principles of Islam, as explained in the Shariah. In this text Maududi explains how the Shariah can be implemented in the modern states. The set up of the book is important in that it was at a time when Islam was passing through one of its most crucial periods, where the chains of political servitude were broken in many Muslim states, where intellectual and cultural
movements aiming at Islamic renaissance were emerging throughout the Muslim world. It was a time where everywhere Muslims were on the march.

Thus out of a period where Muslim Pakistan had recently emerged from political slavery, Maududi offers a translation of the Islamic ideology and how it can be put into practice to enable decaying Muslim societies reconstruct their socio-political life in accordance with the Islamic ideology which is not just a mere collection of dogmas and rituals but a complete way of life; an embodiment of Divine guidance for all fields of life. These may be private or public, political or economic, social or cultural, moral or legal and judicial. Maududi gives an explicit methodology on the application of the shariah amongst Muslims despite the many cultural and political interferences that Muslims may find themselves in.

Muhammad Muslehuddin's Philosophy of Islamic Law and the Orientalists, is yet another treatise by a Muslim scholar on the Shariah. It is a direct answer, and an Islamic view of the 'mischief' done to the Shariah by the orientalists. Critical tackled by Muslehuddin are the distortions done by the orientalists on the question of rational interpretation of the Quran and vis-a-vis the Shariah. The notion that the intellect of man and whatever has been decided by the use of that intellect must be good in the sight of God' is critically analysed and an Islamic alternative is
given in the fact that its not that Islamic Law has been revealed for the benefit of man hence maslaha or public interest is all important, rather, that maslaha has to confirm with the spirit of the revealed law. Thus being the Divine law, the Shariah cannot be exposed to the vagaries and whims of human reason, and has to be preserved in its ideal.

The definition of Shariah is given (p. xii) which enables the reader to embrace and appreciate the caution that needs to be taken when trying to comprehend the Shariah. Analogy as is used in the Shariah is said to have been preferred to reason because, reason is subject to change and also liable to err, hence, 'reason' is subordinate to analogy. Though analogy came to be seen as a source of law because it was used to decide on the caliphate, Muslehuddin puts it right that, in reality, analogy is only a derivative, a nature proved by the fact that whatever it extracts from the texts (Quran and Sunnah) is not law as such but has to be authenticated by Ijma to attain the status of Law.

Still to preserve the law in its ideal form and to protect it against the encroachment of the fallible reason, Ijma has to be surbodinate to the original sources. The idea that jurists can give their opinion on matters concerning the Shariah and their opinion' be binding upon the Umma has been taken by orientalists, that the opinions of the jurists is law. Muslehuddin takes issue with this and equips that their views (scholars), as such, are mere
opinions and not the law. Thus the divergence of opinion among the jurists should not be seen as tensions and conflicts in the Shariah itself.

In order to explain the Shariah in the contest of other systems of Law, Muslehuddin has compared the philosophy of the Shariah with aspects of law in general thus gives a discussion of what is law!; an exposition on Bentham's philosophy of Law and the Law as explained by Greek philosophers. For our study Muslehuddin's intellectual discourse has been relevant because it places the Shariah in a clear view to both Muslims and non-Muslims. The Islamic ideas on the principles of Ijtihad, Qiyas and Analogy, Istihsan and al-Masalih al-Mursalah have been relevant especially because it was the only work written in English language that critically analyses the orientalists' view on the philosophy of the Shariah and also uses the popular theories of Law used by the orientalists to exonerate the Shariah from the prejudices made by them.

Abdulrahman Doi's Shariah: The Islamic law (1984) makes analysis of almost all aspects of Shariah. He starts with definitions and proceeds to outline the sources of Shariah and the later development into the different schools of thought. Part II of Doi's work deals with aspects of Family relationships and the position of the Shariah on them. Issues like marriage and its relationships are discussed according to the Shariah. Part IV
discusses the details on the law of succession (mirath) aspects like shares of each heir, and ways of disposal of property are elaborated. Doi's work however is more of a Sunnite interpretation of the Shariah. Nevertheless it has been resourceful to our study, especially so because it gives the corpus of the Islamic philosophy of Inheritance.

A.A.A. Fyzee in *A Modern Approach to Islam* attempts to give an Indian experience of the problems experienced when the Shariah comes into contact with customary law. A unique approach is adopted by Fyzee in his notion of "reinterpretation" of Islam. Fyzee suggests a philosophical re-interpretation of Islam in those aspects of Muamalat, a fact deeply rooted in Fyzee's 'western academic orientation'. His discussion on the theory of Ijtihad is relevant to this study, since it is our adopted theory to explain social aspects of the Islamic law of succession and the customary law of succession of the Adigo.

In *Outlines of Muhammadan Law* (1964) Fyzee outlines the sources of Shariah and its development. He discusses the sects, their formation and the differences in their interpretation, application. Problems encountered, are highlighted though examples are mostly drawn from India, The Sunnite and the Shiite law of inheritance is discussed in Chapters XII and XIII respectively. Though Fyzee uses examples amongst the Indian Muslims, he highlights the global problems with communities that had their own
laws and had to change them to accommodate the Shariah. This justifies the need for such a study on an East African ethnic community.

We have found that the systematic study of the law from the western vantage point begins with the work of Ignaz Goldziher (1910) who is among those who founded the modern science of 'Islamics' or Orientalism. Goldziher's career as a scholar spans five decades from 1870 to 1921 when he died. It encompasses contributions written in German, French and English. Goldziher epitomizes the orientalist tradition in that his scholarly study of Islam is primarily removed from the actual cultural context of Islam. He was a Hungarian Jewish extraction and experienced persecution of anti-semitism in the fact that he never held a University position despite the depth of his scholarship. His only trip to an Islamic country consisted of eight months spend between Damascus and Cairo in 1874, where in the latter case he was the first non-Muslim student to enrol in Al-Azhar University. His knowledge of Hebrew led easily to the study of Arabic and Islam. Despite this, Goldziher also ascribed the authorship of the Quran to Prophet Muhammad (p.b.u.h.) and makes a number of other statements that are distinctly offensive to Muslims.

Joseph Schacht continues explicitly in the tradition of Goldziher (cf Preface to the origins of Muhammadan Jurisprudence, 1950) as is regarded as the pre-eminent orientalist scholar of the
law until the very recent period. In addition to his Origins, he is the author of Introduction to Islamic Law (1964) and numerous papers and treatises on the law. He may be credited with his exploration and analysis of the writings of al-Shafii, with respect to the traditions emanating from the prophet as the sole basis of his doctrine. Schacht's focus on this 'master' of one of the schools, stems from his interest in the development of legal theory of Islam itself, the essentials of which were outlined by him (1950:1). Origins is thus mainly an assessment of al-Shafii's thought and a deep probing of the history of traditions of the prophet. He as his predecessor, Goldziher, agrees with the position that Hadith and Sunnah only began to gain currency in Islam after the death of the prophet and his companions i.e. in the generation of the 'successors' in the first century and half of Islam. He sees in al-Shafii' the rescue of traditions and the securing of them in law and theology.

His Introduction to Islamic Law (1964) is a much more general treatment of the subject. During the intervening years since the publications of Origins, his terminology underwent an evolution from the characteristic orientalists' 'Mohammadan' to Islamic. This book corresponds to the demise of colonialism in many Muslim regions of Africa and Asia. In his discussion of Islamic law in this volume he aptly describes the Shariah and Figh as having developed as a jurists' law where legal science and not the state played the primary role in determining legislation. His discussion
of 'the nature of Islamic Law' Chapter 26, summarizes much of his orientalist view of the law, which is that; it is fundamentally sacred and therefore to a certain degree irrational; it is a systematic body of doctrine, but legal concepts are abstract and lacking in positive content, the law has a private individualistic character guaranteeing the rights and personal privileges of all individuals, the traditionalism of Islamic Law, viewed as beginning with the closing of the door of interpretation (bab al-Ijtihad) is perhaps its most essential feature.

In both his Origins and Introduction, Schacht is overwhelmingly concerned with legal theory and the purity of the sources and jurists' treatment of them. The secular character of the law is not addressed as such, except as deviations in applied law from the original sources. While admitting of modernist trends of the law from the Ottoman period to the Anglo-French occupation of Muslim territories, these influences are regarded as altogether altering the pure system of law, rather than being a part of its internal development. It is the reception of Western political ideas which, in Schacht's view, has provoked the unprecedented movement of modernist legislation in the twentieth century. Indeed he refers to 'modernist legislative interference with Islamic law' and cites the haphazard and arbitrary character of the legislation which has not sprung from any genuine demand but from governmental intervention. Indeed and in a sense Schacht has become more Islamic than many Muslims in his 'Sympathy' and demand for the
original purity of Islam and the law. As with Goldziher, this is caused by his own scholarly distance from modern times, i.e. nineteenth and twentieth century development.

Schacht's last work, published in 1974, five years after his death is an edited volume entitled The Legacy of Islam. His death did indeed leave a vacuum among senior Orientalist scholars of Islamic law in the West, one soon to be filled by N.J. Coulson, who is altogether a different manner of scholar. The volume (edited with C.E. Bosworth) is in many ways a culmination of Schacht's lifelong development as a scholar of the 'theology' of the law and Islam. "Islam in Africa and Asia", "Islamic Literature", "art and architecture", and a host of other topics are covered in the volume as well as Schacht's last statement on Islamic religious law which is a condensation of general points made in the Introduction to Islamic law. While there is much to be criticized in Schacht by 'his contemporaries', his works remain a basic starting point in any study of Islamic Law in English language. Unto themselves in the context of current scholarship, they are insufficient but as the essential orientalist treatment of the Shariah they are unexceptionable.

Another towering figure in the orientalist tradition regarding the Law is J.N.D. Anderson. Unlike Schacht, his scholarship has dealt almost exclusively with positive law and the application of Islamic law in contemporary Muslim countries and regions. Anderson
has also a host of articles on specialised topics in the law and its reform. His scholarship has always been expansive topically and geographically as represented by *Islamic Law in the Modern World* (1959) and *Family Law in Asia and Africa* (ed) (1968). Anderson's work is without peer as a survey of the applied Shariah in a variety of historical and political contexts from Northern Nigeria to India and Malaysia. To his credit Anderson is among the first orientalist scholars to take a serious scholarly interest in Islam in Africa, frequently collaborating with his colleague, Spencer Trimingham. From his research in Africa and Asia, his interest took more general concern with questions of law and the development in the less developed countries.

Although a healthy departure from many of the orientalists' firmly held biases regarding Islamic 'theology', Anderson's work falls within the tradition because of the close association with the colonialist authorities that is so evident in *Islamic Law in Africa*¹¹, and the usual distance from the subject matter of study that characterizes orientalist scholarship. The aforementioned volume, while truly a classic survey, was nonetheless the result of a six month visit to African Colonies with brief visits to three other countries. The work represented is prodigious, and few would attempt such a project today, but Anderson everywhere must have had the assistance of colonial authorities and their sanction of his research.
A progressivist and modernist though, Anderson still evidences some tyranny for the reformist movements which have resulted in a changed perspective on Islamic Law in a variety of circumstances. However, he, as compared to his predecessors applauds the reforms and speaks frankly about progressive and retrogressive change in the Shariah affecting the status of women in the Sudan. Indeed Anderson may have been faulted by some Islamic scholars for his 'modernist' bias which is alleged to be pro-western in the sense that positive change is viewed as emanating from the West. The argument follows that any move in the direction of 'westernization' is ipso facto part of the trend towards modernization. Anderson has been lumped with other orientalist scholars in one critical review. However his central contribution in my view, rests in the compilation of resources and legislation affecting the law and its operation in a wide variety of geographical and historical contexts, and making systematic statements about overall trends.

Perhaps the last of the orientalist scholars of the law is N.J. Coulson and his work already reflected the change in approach and thinking which is transforming orientalists scholarship. His book entitled, A History of Islamic Law, 1964, a large section of which deals with modern legislation, was strongly criticized by Schacht (1965) in an article which contrasts the major views of modernism and traditionalism. His sharpest break with Coulson is summarized thus:
I think on the contrary (to Coulson), correct appreciation of the history of Islamic Law shows that it developed into its final, rigid form by a natural and almost inevitable process (cf my origins, p. 55) and that the modernist movement, though taking place in a situation which parallels that of the earliest lawyers of Islam, really constitutes a break with the immediate past and can hardly be said to preserve the continuity of Islamic Legal tradition.

The outcome of the struggle between traditionalism, as represented by Schacht, and modernism, as represented by Coulson and Anderson, makes it clear that the latter is the contemporary historical trend in Islamic legal scholarship. In fact Schacht seems to acknowledge this when he says in the same article that the subject of the history of Islamic Law in Western scholarship has undergone a fundamental change in the last fifteen years.

Coulson's career, in a way, began with this sharp contrast to the work of Schacht, although both scholars agree on the central role of al-Shafi'i in the development of the Law. Coulson went on to establish himself as one of the important experts in Islamic Law in the English language. His series of lectures given at the University of Chicago Law School were published as Conflicts and Tension in Islamic Jurisprudence (1969) and represent a good statement of Coulson's non-static view of Law as opposed to the rigidity in the Law of which Schacht speaks. In this essay Coulson juxtaposes a number of principles held to be characteristic of the Law, for example: revelation and reason, authority and liberty,
stability and change. In consideration of each, Coulson explores the tension, the opposition of a Law which is at once both divinely inspired and interpreted and administered by human beings.

Coulson represents a break with the Orientalists' tradition in that he does not speak of the 'claim of Quranic revelations' or of the 'alleged' Hadith. He is more respectful of Muslims' beliefs, perhaps in part because he spent a year as a Dean of the Law faculty at Ahmadu Bello University in Northern Nigeria, but also because the style of scholarship in the West on Islamic topics is changing towards a less ethnocentric view of Muslim institution.

Coulson's *Succession in the Muslim Family* (1971) is a highlight of his scholarly career as it is a systematic elaboration of one of the most difficult topics in Islamic law, that of inheritance. As such it is a most welcome contribution to the lifetime, and it was a great assistance to the present study. Coulson emerged from the orientalist tradition but his work represent certain distinct break with it. Despite of this, criticism on orientalist has not been lacking amongst Muslim scholars and also from those in pursuit of fair academic discourse.

Fazlur Rahman reacted in a passive way to the offense against the religion of Islam conducted by the orientalists and has sought to correct the inaccurate descriptions of Islam. Rahman in his Work *Islam* (1966) devotes almost an entire chapter to a critique of Goldziher, Margouliouth and Schacht on law and their treatment
of the sources of Shariah. Through his view as a Muslim scholar, the enormity of the assault on Islamic beliefs and sacred traditions is conveyed. Otherwise the book is a basic description, objective treatment of the development of Islam including major sections on the law. The law as understood primarily from its sources, especially the Quran and Sunnah, and the various schools of Islamic jurisprudence, to which the orientalists have devoted so much time, are relegated to a secondary historical place. Most space is devoted to philosophy and sufist thought than to doctrinal differences.

One of the earliest and most outspoken critics of orientalism is A.L. Tibawi who suggested the relationship between orientalism, as a body of knowledge and system of analysis, and Zionism, as a philosophical and practical political system. He complains that the orientalists as a group, possess an attitude to Islam which is lacking in the most elementary sympathy for the Islamic religion and the nationalist aspirations of Muslim people. The denial of the divine origin of Islam and the suggestion that the prophet composed the Quran by some orientalists are cited as but two examples of the offensive character of orientalist scholarship, while those who claim Islam must be reformed in order to survive in the modern era are guilty of the law is of western inspiration is likewise unacceptable and J.N.D. Anderson is cited as one of the problematic scholar. Islamic beliefs are immutable; Islamic law, on the other hand, has its own instrumentalities by which change
can be and has been affected and has no need of alien guidance, so urges Tibawi.

Important critique of orientalism does not always stem from the violence done to religion. Philosophical objection to orientalism is also important. This is especially so from the inextricable relationship between orientalism and colonialism. The orientalist reduces other people to ethnic or racial stereotypes, the 'oriental'; his 'mind' his 'nature', and indigenous peoples become 'objects' of study non-active, and non-autonomous and non-sovereign.

Important critique of orientalist scholarship is the widely acclaimed critique of Edward Said (1978). Said's book entitled "Orientalism" in many ways is directed to a more general audience of intellectuals and not just the specialist in Islamic studies. His arguments are developed from basis premises inherent in orientalism (Imagine he asks the reader, a field called "occidentalism"), to the treatment of technical subject such as Said's own field of literary criticism. He cites H.A.R. Gibb as representing the orientalists preference for the term 'Mohammedanism' over Islam as another form of ethnocentrism which permits other erroneous statements such as the theology over Islamic law. Gibb the pre-eminent orientalist for Said, evidences the same hostility to modernizing currents in Islam and staunch adherence to Islamic orthodoxy as was discussed above with respect.
to Schacht. With respect to the law this means that indices of 'modernizations' of the Shariah in various countries and contexts will depend on standards established in the West using its own institutions as a measure. That polygamy continues to be judged as wrong and its elimination is viewed as a favorable step toward the 'fairer' western model is but one example. Certainly the overwhelming benefit of Said's book is that with its appearance the orientalist hegemony can no longer remain unchallenged in wider academic circles.

On the study of conflicts between customary law and the Shariah in ethnic societies, very little has been done. The Adigo as a subject is just mention inTrimingham (1964), J.N.D. Anderson (1954), and Berg Schlosser (1984). David Sperling (1988) has done the most extensive work on the Adigo.

THEORETICAL FRAMEWORK

Analysis of culture has long been pre-occupied with features of traditional cultures which affect the direction and content of change and the receptivity of a society to new ideas. There has been very little effort to examine types of traditional systems with respect to problems posed for cultural changes. The basic concern amongst theorists of cultural change has been describing the process of change and the mechanisms or cultural features that generate change. The direction and content of the process involved
in cultural transformation has rarely been addressed. There has been recent attempts made to relegate the general category "cultural change" for more precise concepts such as "modernization", "westernization", development etc. Contemporary approaches to cultural changes can be reviewed to bring to light the difficulties posed in attempting to organize a unified synthesis of the process of cultural dynamics.

Barnett theorizes that changes are commonly adaptation by individuals to "new ways" different from prior approved norms. He discusses all the circumstances that may favor or discourage innovations in any kind of society. There is a reminder that there are changes of one kind or another going on all times, and no changes be they small (like a new way of making gestures) are too small to be ignored in the generalizations of changes. Barnett is concerned with innovations that are imitated and so become standardized as accepted forms of behavior. He recognizes that changes are encouraged in some fields and discouraged in others, but does not treat this as a significant factor for the study of cultural change. Thus changes in technology accordingly are expected but not changes in religions, in political structures, or in family or organizations; thus while mechanical inventions are encouraged social deviation is not. This statement in fact puts in nutshell what seems to be the crucial problem of cultural change among ethical Muslim societies in general.
No social order would be possible without some generally accepted picture of the roles appropriate to the relation in which people find themselves and some confidence that these rules would be appropriately performed. The interesting thing in the study of cultural change is precisely the question of what kind of counter pressure (such as an ideology that can at least tolerate deviation, if not encourage it openly) makes non-conformity, worth while, and this is an aspect of the subject that I feel has practical significance for the transformation of traditional ethical societies.

Wilson and Wilson suggested that an increase in the "scale" of the society, facilitates progressive change and "economic development". Since the size of a society has a direct relation to technological receptivity by the "scale" of a society, it is meant that the number of people in relation and the intensity of those relations. In comparing the scale of societies, therefore, we compare the relative size of groups with relations of similar intensity.

The argument here is that change occurs when there are individuals whose background includes acquaintance with more than one community. The implication being that, if the world of an individual includes only a single village, the range of facts he has observed is probably so limited that they will hardly have that understanding of the diversity of causes and effects, which are a
prerequisite of change. However, expansions of the scale of a society can hardly be taken as a starting point in the analysis of social change. Except with the admission that one is breaking into the middle of a dynamic process without attempting to probe its origins. Also expansion does not occur either by accident or by some inevitable force which can be attributed to nature or to "the nature of things". Something, internal or external generates it.

McClelland argues that an increase could be realised by a parallel increase in personality characteristics. He is concerned here with interactions among social organizations, individual behavior and economic development. In its most general terms, he states that "... a society with a generally high level of an achievement will produce energetic entrepreneurs who in turn will produce more rapid economic development". His work tries to isolate certain psychological factors, and to demonstrate vigorously by quantitative scientific methods that these factors are generally important in economic development. He admits that psychologists have been of little help to date in the understanding of economic development, but he tells that recent improvements in techniques for measuring motivation permit the application of psychology to "a problem of real interest to economists and sociologists."

Despite his work being bold, imaginative and entertaining, it is hard to see what there is about his loosely related series of
psychological experiments and statistical tests that makes his methodology more 'rigorously empirical' than the cautious work of the econometricians who like to have a tight, logically consistent theoretical models, mathematically expressed to begin with. He is of the idea that societies conducive to the generation of effective entrepreneurship are likely to have more rapid development than societies that are not, he is therefore not adding much to what we already know.

To make real contribution, he must be able to identify an achievement clearly as an independent variable, measure it in uniform manner permitting inter-spatial and inter-temporal comparisons, show precisely that there is a stronger link between this variable and entrepreneurship than there is between entrepreneurship and other variables, and tell us how to create or direct an achievement in operational terms. His work stimulating as it is falls short of meeting these criteria.

It is interesting that most purposive models of cultural change have been articulated by sociologist more than any other social scientists. Moore\textsuperscript{24} and Levy\textsuperscript{25} come close to setting forth not only the socio-cultural process that leads to meaningful change, but also put forth explicitly what the end (quantifiable) consequences of such process will be. Anderson and Bowen\textsuperscript{26} are quite clear as to the particular role a specific process such as
education should and must play in the process of progressive cultural transformation. Few scholars would boldly state that education in not only a vehicle for change but it should above all serve as the stimulator and agent for change.

The sociologist approach nevertheless has been one of providing recipes for change. This is quite obvious of the structural approach put forth by Eisensdadt\textsuperscript{27}, whereby an overall blue print for an "idealized", structural arrangement is provided. Three main phases are differentiated: the pre-modernization, the process to become modernized, and lastly to stabilize and the maintaining of mechanism in the system for modernization.

In the light of the divergent views, the student of cultural change is ready to agree with Gabriel Almond\textsuperscript{28}, that in this field, the magnitude of the formal and empirical knowledge required staggers the imagination and lames the will. In studies concerning Muslim societies, the complex character of the development process is duly acknowledged\textsuperscript{29}. Nevertheless, considerable divergences of views are expressed with regard to the most effective conceptual framework to adopt in order to understand this process. There seems to be an agreement that the process of developmental change involves a progressive substitution of new modes of perception to replace those modes associated with traditionalism.

Nevertheless traditional and rational modes of perception and
behavior co-exist in even the most developed societies, "Modernity" cannot involve the total substitution of rationality for traditionalism. The mixture of the two, with predominance of traditionalism characterize Muslim societies.

Instead the achievement of a state of modernity must involve passing some critical point in the developmental process beyond which the rational mode of perception and behavior tends to dominate. Before this critical point has been reached, society is torn by the struggle between rationality and traditionalism with each trying to define the scope of the other. This tension, in turn, reflects the central diversion of the developmental process namely, "changing the contents of man's mind". The process of change calls for considerably more than punctilious adherence to a recipe of two cups economic planning, one cup administrative reform, three teaspoons of land reform, and a dash of violence.

What is called for is a fundamental intellectual reorientation, a shift from prescriptive to principal or "ideational transformation". The term "ideational" is deliberately used in lieu of 'ideology' for the reasons that: (i) the word 'ideation' refers to the transformation of ideas about things not present to the senses (ii) it does not carry the same value connotations as the term ideology; and (iii) it emphasizes perception more than a disposition to act. Briefly, ideational transformation suggests the adoption of a totally new intellectual constructions, which will provide a unified solution to socio-
cultural problems. Ideational transformation is a necessary pre-
condition for a change, it is not simply a final effect.

Ideational transformation in a Muslim society is always
fractional, intermittent and discontinuous. Those having made this
transformation at least in the past, constitute the modernizing
elite. Their effort to engender mass ideational transformation are
impeded by a vast array of psychological, institutional and
structural obstacles. Moreover the tendency on the part of the
tradition bound masses to interpret new ideas in traditional garb,
makes it difficult, if not impossible, to gauge adequately the
degree of which a society as a whole has actually made such an
ideational transformation.

As a result, a changing society, at any particular point in
time, tends to give reflection to this intellectual dualism in the
form of an unstable synthesis of both traditional and "modern"
modes of perception. The progressive restatement of this synthesis
over time to accommodate historical permutations suggests that the
development process may be fruitfully perceived by analysing the
dialectical interaction of these two antipodal ideational
orientations within a changing society. The purpose of adopting
this theory is to examine this possibility amongst the Adigo and
also the Islamic system in general.

The style of thought and mode of behavior associated with
Islamic traditionalism and the Adigo ethical ideation will serve as a convenient point of departure. However it is clearly understood that ecological nature of ethical Muslim societies may take much of its character from geographical and climatological conditions, nevertheless the intellectual foundations of the traditional culture in Muslim milieus derive directly from Islam. Any attempts to 'diagnose the situation' within Muslim societies without taking into account the ubiquitous influence that ethical ideas and orientations together with Islam would produce only sterile and distorted images of socio-cultural reality. For us to discuss reflections of the Shariah amongst a society that is undergoing changes, a glimpse at the sources of Shariah themselves is inevitable. We thus hereby take Ijtihad as it can be practiced in social aspects and its flexibility in applications of the Shariah as our theoretical frame work.

The sources of Shariah are the Holy Quran and the Sunnah of the prophet (p.b.u.h). These two sources, therefore will be principle references used in this study. The Quran is the word of Allah, it contains injunctions on laws which guide the lives of Muslims. The Quran is supplemented by Sunnah. The Quran has laws which regulate satisfactorily the relations between Allah, the Creator and his creation, an aspect of Shariah known as Ibadat (acts of worship). The other branch of Shariah is human relations (Muamalat), which mainly deals with the different and overchanging conditions of human society, is mainly left to the Muslim to define
and organize.

The Muslim community (Umma) is thus left to devise suitable means to deal with the problems of human relations. This is contrary to what has been called the classical Islamic theory of law, where law does not grow out of or develop along an evolving society, as is the case with western society. In Islam Law is imposed from above. In the Islamic concept, also, human thought unaided cannot discern the true values and standards of conduct; such knowledge can be attained only through divine revelation, and acts are good or evil exclusively because Allah has attributed this quality to them. Islamic Law therefore precedes and is not preceded by society; it controls and is not controlled by the society. Although in the western systems the Law is molded by society in Islam exactly the converse is true. The religious law provides the comprehensive, divinely ordained and eternally valid master plan to which the structure of state and society must ideally conform.

Obviously, the clash between the dictates of the rigid and static religious Law and any impetus for change that a society may experience poses for Islam a fundamental problem of principle. More so in ethical societies that had at one time upheld customary practices.

The objectives of the guidelines for the formulation of the
Laws on Muamalat, is to define the spirit of Islamic Law, which aims at the establishment of social justice, the guarantee of freedom of belief and practice and the provision for equal opportunities to all members of society. Details as to how social justice is to be established is at times left to the Muslim community (Umma) to work out. This is the function of Ijtihad on which the principalities behind its use as a source for the formulation of Laws on Muamalat will be the basis of our theoretical framework.

Neither the Quran nor the Hadith of the Prophet had given all necessary detailed information about the muamalat, such detail had to come gradually and in accordance with the overchanging social-economic conditions in which the Muslim society develops. The use of Ijtihad was not as great during the life-time of the Prophet (p.b.u.h.), as it became later. This was so as directives were forthcoming either from the Quran which was still being revealed, or from the prophet himself. Still, the prophet (p.b.u.h.) was known to have approved and encouraged the exercise of Ijtihad.\(^{32}\)

Thus there was a wide scope for the use of reason in the formulation of social principles. And it is not surprising that this freedom to speculate led to considerable divergence of juristic decisions (especially of muamalat) among different localities. For outside the limited field covered by the Quranic precepts, the thought of the scholars was naturally influenced by
localities, and local customary practices were accepted as part of
the ideal scheme of things where some explicit principle of the
Quran was not fragrantly violated.

Though Ijtihad was an accepted method of arriving at legal
decisions, on matters affecting the welfare of the Muslim
community, Muslim jurists at the initial stage of legal formation
were not unanimous in using it as a legitimate means to reach legal
decisions, some used ijtihad without restrictions, others either
rejected it or used it only in a very restricted sense. Those who
used it without restrictions were known as ashab al Ray, and beside
them were ahl al-Hadith.

During the early period of Islam, decisions reached by
Mujtahidun (those who exercise Ijtihad) were mostly Fatwas (legal
opinions), given as answers to questions raised. Later there were
attempts to write those fatwas down, or systematize them. This was
the period of the foundation of the schools of Law (Madhahib).
During this period Ijtihad was used widely. Decisions reached by
the great Jurists, were collected to form the basic tenets of these
schools. This marks the beginning of the systematization of
Islamic Law, from the different schools of Law. There emerged a
vast expansion of Islamic world, the collection and systematization
of Hadith, the emergence of the great Imams, and the founders of
the schools of Fiqh^33 (Islamic Jurisprudence).
Amongst the learned of this period were the Ahl al-Hadith (people who based their judgment exclusively on the texts of Hadith). These would not pass judgment unless there was text supporting it. In the absence of the text (Nass) they would refrain from passing any judgment. Besides, there were other groups known as Ahl al-Ray and Ahl al-Qiyas. These conceived Shariah as a subject of rational thinking, which they believed must operate under general principles based on the Quran and Sunnah. To these principles (Usul), they related all issues which might evolve. In the absence of a text, they never hesitated to use al-Ijtihad in order to reach a legal solution.

When exercising personal reasoning, they (Ahl al-Qiyas) did not hesitate, whenever they found something they considered as good and in conformity with the spirit of Islamic Law, to make use of it. This they called al-Istihsan or al-Masalih al-Mursalah. According to them, whatever is considered good (Hasan)\textsuperscript{34} by the Muslim Community (Umma), should also be good and acceptable to Allah, the Lawgiver. The purpose of using al-Istihsan and al-Masalih al-Mursalah, seems to have originated from the belief that heavy dependance on the text could lead sometimes to the deviation from the spirit of the Law which is to make things easy and not to complicate them\textsuperscript{35}. There emerged thus distinguished jurists, who made systematic studies of the Quran and Hadith. By means of Qiyas and Ijtihad, they synthesized the Islamic law, trained numerous disciples who devoted themselves to organizing legal theories and
opinions, handed down to them by their masters in the form of schools of law. These also exerted themselves in spreading the teaching of these schools and defending them against other orders. Muslim dominion, peoples, expanded territorially, and gradually disintegrated politically, culturally and socially. It became difficult, if not impossible, to impose a unified school of Law over all parts of the Muslim world. These new kind of societies and cultural patterns emerged amongst Muslims and with them they used to make new choices. Western scholars may believe this as a question that must involve the reformation of Islam. In fact, the great change preceding apace in the Muslim world is not the deliberate reformation of Islam as a religious system but transformation of Muslims as individuals and members of a new society. Despite this, most of the efforts of the learned scholars, at that time, was geared towards the promotion and the defence of the already established schools of Law. This situation produced a group of scholars known as the Muqallidun (the Imitators), who made some effort to exert themselves not to the study of the Quran and the Hadith, rather they satisfied themselves with what was written down in established schools.

This tendency gradually resulted in the closure of the gate of Ijtihad. This serious and rather unfortunate decision was reached, not by an official decree, but rather, by general feeling among scholars belonging to various schools of law that "all essential
questions had been thoroughly discussed, and finally settled, and consensus gradually established itself to the effect that from that time on, no one might be deemed to have the necessary qualification for independent reasoning in Law (that is Ijtihad). Thus all activities were confined to the application and interpretation of the doctrine laid down in the established schools.36

The closure of the gate of Ijtihad had led to the discontinuation of all personal efforts exerted by learned people to understand the Shariah. Others continued to say "Islam is not our property for us to offer to others, with alterations suitable to the requirements of the market"37. This again emphasizes blind imitation of the great Mujtahidun. Referring to the unfortunate situation and urging against the closure of Ijtihad, it is noted that it is through Ijtihad that the true teaching of Islam can be understood, and properly applied to promote the interest of the Muslims. We wonder, on what grounds can one deny others the right he claims for himself.38

Through the use of Ijtihad, Muslim people could decide on what was Mustahsan (good) and what was not for the Muslim community. This is because the text, whether of the Quran or the Hadith, is limited while events which are the subject of the text have no limit. Ijma and Qiyas thus evolved the exercise of Ijtihad. In addition, the concept of al-Istihsan (preference) and al-Masalih al-Mursalah (public interest) which the learned jurist used to
accommodate *al-Urf* (useful social customs) in Islamic Law, was accepted as a legitimate ground for interpreting Shariah on the basis and exercise of *Ijtihad* within the development of Islamic Law, that the Law of succession will ... The majority of decisions reached by the Muslim community were usually meant to serve the interest of the community, by solving specific problems peculiar to specific periods and circumstances and mostly based on certain customs (Urf) known to those communities. Such decisions could not always be binding to other Muslim community with different socio-economic conditions, unless such decisions can serve the same purpose and render the same services that they were initially designed for, regardless of socio-economic differences. Otherwise, the imposition of such decisions on Muslims in all times, will create more problems than they would have solved.

A *Mujtahid* bases his decisions on the prevailing customs in society set up or in a different period of time, he would be obliged to reach a different conclusion. The *Mujtahid* must acquire a thorough knowledge of all customs and social norms prevalent in his society. Also legal decisions suitable to a particular society may not necessarily be suitable to another different social set-up. Such decisions, when imposed in places and situations with a different social set up, will inevitably result in inflicting hardships on the people in the society, contrary to the spirit of Islamic law which is based on ease and flexibility in dealing with
human problems.

It is in the light of the theory and practice of Ijtihad, within the development of Islamic Law, that the Law of succession will be examined in relation to the customary law of inheritance of the Adigo. The adopted theory will initially reveal the need for, or not, of the practice of Ijtihad and its relevance to the problem. In putting the said theory to test, this study shall investigate how it can be useful when the Shariah is in conflict with the customs, with reference to the Islamic law of succession, and the laws of inheritance of the Adigo.
FOOTNOTES

1. 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 right and interests vis-à-vis person.


6. However this notion is not correct since the Hadith was there during the lifetime of the prophet (p.b.u.h.). Its only that it was not recorded in a large scale as it was done during the period of successors (the tabium which started from 11 A.H.)

7. We should note that despite Islam allowing human legislation in Islamic jurisprudence, legislative powers are vested in Allah. Hence Islam does not totally agree nor exclude human legislation. It only limits its scope and guides it on the right lines.


9. Ibid p. 103

10. Ibid p. 105

11. This was first published as Colonial Research Publication No.


22. Ibid p. IX.


29. See D. Lerner., The Passing of Traditional Society: Modernizing the Middle East. (Glencoe: The Free Press) 1964, also Berkes Niyazi: The Development of Secularism in Turkey.
(Montreal, McGill University Press), 1964.


31. Every Law should be of that nature but that in not the case with "man-made" Law.


33. These are Imam Abu Hanifa, Imam Ibn Anas, Imam Ahmad Ibn Hanbal and Imam al-Shafi'i

34. Here it should be clear that "to be good" means that which conforms with the "maqasid al-Shariah" i.e. the intention of the Shariah or the spirit of the law.

35. This notion is based on the interpretation of the verse of the Quran which says "Allah desires ease for you and He desires not hardship for you". Quran 2:185


CHAPTER ONE

THE ADIGO AND ISLAM

DEFINITION OF RESEARCH POPULATION

Digo people or perhaps more appropriately Adigo form the second largest cluster of ethnic Mijikenda in the Coast Province of Kenya. Berg-Schlosser\(^1\) argues that at the time of the 1969 Kenyan Census, Adigo comprised about 100,000 people of the approximately 520,000 strong Mijikenda (Amidzhenda) family. Reliable demographic data on the Adigo do not exist, and the Kenya Population census of 1969 subsume them under their collective identity; the Mijikenda. Adigo land however stretches several miles South-West into Tanzania's Tanga District, perhaps making the Adigo the most populous group among the Mijikenda\(^2\). Adigo live in the Southern-most part of the Coast Province of Kenya relative to the Chonyi, Duruma, Giriama, Jibana, Kambe, Kauma, Rabai, and Ribe. On average most of Adigo land lies below 300 meters above sea level except for the hills and plateau rising up to 46 m at Dzombo. There are two main rainy seasons. The short rains (Vuri) come in October and November, and the long rains (Mwaka) between April and June. Though the area receives two rainfall seasons, it is mostly hot and dry with annual rainfall totals nearly 800mm. Some pockets however such as Shimba Hills may receive up to 1500mm per annum\(^3\).
MAP III: KWALE DISTRICT SHOWING LOCATIONS AND AREA INHABITED BY ADIGO

According to documented history, Adigo people originated somewhere at a place called Shamat. This place is probably situated somewhere in Juba, in present-day South Sudan. Some oral traditions, however, suggest it could be further north. Archaeological researchers have tried to establish the reality of this place, could it be that the original thing was just a myth, that was important simply as an object of story?

However, why the Adigo people now inhabit is debatable. Family traditions indicate that the area has been the major home of the Adigo people for various reasons. They are a common and scattered community, but also major population, but also major

Adigo people lived in various parts of the world. According to genetic studies, they are reported to have migrated to the area as part of the Bantu movement and to have

KEY
- URBAN CENTRES
- RURAL CENTRES
- DISTRICT BOUNDARY
- DIVISION BOUNDARY
- LOCATION BOUNDARY

Nida Area Inhabited by the Adigo

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M.A. Thesis
Prepared by I Kipera

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SOCIO-CULTURAL ASPECTS OF THE ADIGO

According to documented history, Adigo people originated somewhere at a place called Shungwaya. This place is probably situated somewhere in Jubaland in present day Somali, some oral traditions however suggest it could be further North. Archaeological researchers have virtually failed to establish the reality of this place. Could it be that the Shungwaya thing was just a myth, that it was important simply as an object of history? However, why the Adigo migrated from their previous homeland to the area that they now inhabit is debatable. Famine, domestic quarrels and major epidemics may have been the major causes.

Characteristic of Adigo settlement today is the village. Adigo people live in various forms of settlement but the more common are the scattered homesteads and villages (midzi), the latter often containing several hundred people, sometimes even more than a thousand. Villages today not only serve as centers of population, but also major points of trade and commerce. Formerly Adigo people lived in small fortified settlements called 'Kayas' and according to Gerlach a safety bases against the more wars in pre-colonial times, though at petty raid scale from hostile neighbors especially the Maasai (kwavi). The Kayas also served economic as well as political and religious functions. The one at Diani was reported to have still been serving ritual and symbolic festivals.
Our own research among the Adigo has revealed that Adigo system of authority rested upon elders who formed councils (Ngambi) in the Kayas which performed judicial as well as public decisions making duties. From each of these councils, usually the three most senior or most respected elders were selected, usually men. These were referred to as 'atsi', or 'enyetsi'; literally meaning possessors of the land. In this case centralized system of authority existed but did not consist of the entire society or some sort of a paramount chief. This segmentarian-gerontocratic kind of leadership is still manifest.

Gerlachs's account of the Adigo indicates a movement in the nineteenth century towards a form of government with a ruler titled 'kubo' exercising authority over a large section of the Adigo. The kubo in the tradition of the paramount chief had no standing army but maintained military as well as social alliances particularly with the Vumba polity, then a strong neighboring confederate Arab State. 'Kuboship' however is reported to have been disowned by the Adigo because it was not originally meant to be authoritarian. Some of the Kubo even enslaved their own people. It is noted that Kuboship was perhaps as the result of the need for a protective mechanism in the presence of a strong neighbor and that the structure of the institution was derived from the Arab example.

The Adigo also have various clans and all of them belong to one or to the other clans. Thus there are for example AchinaNgome, Adziriphe, Achinalela and Achinakalangwa clansmen and women amongst
others. Clans used to inhabit specific areas. However this pattern is changing with increased social mobility through the process of nationalism and inter-nationalism. Inspite of this change, clan members wherever they settled are expected to remain linked and mutual help is obligatory. It has been contented that the Adigo, unlike most other Kenyan ethnic groups were traditionally matrilineal, according relative power and autonomy to women. Under the Adigo matriliney as expected women played recognised economic and public roles, inherited and transmitted property and were key figures in the descent system. This important finding is somewhat inconsistent with what our study reveals regarding the origins of matriliney and the role of men on decision making functions.

We thus contend that it is important to distinguish the descent rules amongst the Adigo from such social rules as those governing inheritance, succession, residence and the locus of formal authority over descent group activities, whether the group is matrilineal or patrilineal, or formal authority over descent group activities is found (if at all) in the hands of men. While matriliny means matrilineal descent, patriliny indicates descent group membership is gained through the father. If either form operates exclusively in a given society, the system is called bilineal.

Thus matriliny is not necessarily matriarchy; in matriarchy women hold ultimate authority over the family, household, community
or state. Matrilineal descent, matrilocal residence and a complex of other related customs were supposed to be associated with a system in which women hold the reins. Whether such a state of affairs preceded or followed patriarchy (its logical counterpart) in evolution is debatable depending on societies. Few societies are known to be organized matriarchally.

If there ever were matriarchates in the very earliest times there is little evidence for their existence. In the light of established data, there exists no single, indivisible complex that can be called a matriarchy; particularly, the empirical absence of the crucial element of matriarchy (ultimate authority in the hands of women); this strips the term its relevance especially when reference of it is given to the Adigo. Although in some cases 'queens' may rule with almost absolute power, a society as a whole has never been found in which women in general have authority over men in general. Formal authority in a patrilineal group resides in the husband, father, father's brother and father's father. The authority in a matrilineal lineage is in the hands of brothers who share the same matrilineal clan, mothers' brothers, the grandmothers' brothers and so forth.

While there is no necessary and inevitable correlation between matriliny and any particular rule of inheritance, succession, residence or authority; nevertheless certain rules tend to occur together in logically and functionally consistent clusters. Thus, of all the rules of residence and matrilocal and avuncular rules
are (in a sense) the most consistent with the rule of matrilineal descent. Descent groups differ in terms of the particular combination of social rules under which they are organised. Matrilineal and patrilineal descent groups might be thought of as precise mirror images of each other in the essential features of their structures. However empirically they may have important structural differences. No one believes that mankind everywhere was once matrilineal or matriarchal. Attempts to explain matriliney may never be successful, and all hypotheses to account for the persistence of it, or patriliney and mixed descent methods, may fail, since the advantages of remaining true to a customary pattern long survive the circumstances which produced custom.

Whether a community develops from patriliney to the sort of bilateral possibilities known to modern Western Societies-a development very slowly occurring among the Adigo, can be predicted from the behavior of people today and from the sort of disposition they will make if that are dissatisfied with their law of succession. A polygynous society will tend to be patrilineal, but it by no means follows that matrikin should not have rights peculiar to themselves cutting across the patrilocal and patriarchal family structure.

In such cases a tendency is seen to modify exogamy to enable matrilineally inherited assets to remain within the patriclan. The key of it amongst the Adigo seems to be this: to whom did the propositus belong. If he belonged to one family, one line, in that
family and line his assets and liabilities will be attended to if he belonged to two in two different senses (for even the patrician had the labor of the individual because his mother bore him), by two different sources or two different allegiances, some assets will go in one direction, some in the other, and doubtless his liabilities should be shared. In that sense the belonging is much more important than succession and succession itself is only one manifestation of it. The point in both these views or their synthesis are part and parcel of the collective creation of the perception or knowledge we have about the Adigo people.

Culturally the Adigo used to believe in a deity whom they called 'mlungu'. Between the two were ancestral spirits (koma) which acted as mediators. There were also the non-human or impersonal spirits referred to as 'Mizuka', considered to be of a malevolent nature they were often consulted to punish evil doers as in cases of moral transgression. But what kind of 'god' was the Adigo 'god'? was he a high 'god' with attributes identical to those in Islam? Okot 'P'Bitek points out "... African people may describe their deities as "strong" but not "omnipotent", "wise" not "Omniscient", "old" not "Eternal", "great" not "Omnipresent"...". The clothing of the present understanding of God amongst the Adigo with those attributes were the contributions of Islam.

Contemporary the Adigo are overwhelming Muslims. The Adigo who live at Mtwapa for example, Parkin notes "... acknowledge their non-Muslim African origin but aim constantly to transcend them
(their indigenous African practices and origins) through Islam. Thus the Adigo as indigenous African people embody in their contemporary culture what has been termed as the "triple heritage-African tradition, Islam and Western influences. While studies have tended to show the Adigo as traditional being matrilineal, a distinguishing feature of the Adigo and important to our study, is their unique combination of matrilineal and Islamic background.

Islamization, however together with colonization and capitalist penetration induced changes from matriliney to patriliney with a corresponding corrosion of the female status and autonomy if at all it existed. Elements of matriliney may still be traced in the Adigo culture today, but both the national state through legal system and formal education, media and Islam reinforced a patriarchal ideology. Today the Adigo are beset with conflict between matriliney and patriarchy, thus-traditional and modernity.

Generally the Adigo of today are at significant point in history. We are at a crucial point on the road of rebirth, rediscovery and redirection. Our history is at last being unveiled, the overwhelming factor being the paramount roles, Islamization, colonization and foreign intrusion and capitalist penetration which have played in shaping our indigenous-tradition. And even here our study gives itself away. It is part and parcel of the collective creation of knowledge and history. John Mbiti, has written: "with the undermining of traditional society, has come the search for new values, identity and security..." He believes
however that the end to this search will be religion in general and
Christianity in particular'.

Implied by all this is that maybe philosophical reflections are required to direct society. However advocates of critical pedagogy on other hand have noted that educational research requires not only empirical inquiry but also an ideological perspective directing man towards emancipation and human liberation (humanization). This exercise points to a basic kind of concern: an elucidation and explication or reconstruction of indigenous traditions of society as it is found in the logos of man, the aim being interpreting the framework of thought, beliefs and vehicles of action in view of the fact that the 'welfare' of man is a first priority.

**ISLAMIZATION AND ISLAM AMONGST THE ADIGO**

Discussing Islam amongst the Adigo needs a brief discussion on Islam in the East African Coast. The first arrival of Muslims in the East African Coast is uncertain some records say the first Muslims to arrive were Zaidiya refugees who were freeing after the failure of their appraising uprising in Kufa (ca. 740 A.D.). Sperling records that among the Swahili Oral-tradition, it is said that the first Muslims to reach East African Coast may have come overland through Ethiopia and Somalia rather than the sea.
Nevertheless the complexity of evidence about the beginnings of Islam in East African Coast does not over-rule evidence that Islam was brought to this region by Arab foreigners whether traders, slave raiders, refugees or immigrants. These foreigners settled in or near towns along the Coast of East Africa and in their trades they intermingled with the indigenous people. This factor brought about an exchange of cultures between the two groups. The contact of cultures was gradual and of varying degrees. It was also a 'bi-process' where both peoples adopted from one another. The indigenous were Islamized and the Muslim foreigners and their offspring became indigenized.

Historians may tend to overlook the impact that Islam has had on the indigenous people during the initial contacts, hence they only make general conclusions about Islamization amongst the people. However, today, the influence of Islam and its adoption amongst the indigenous peoples of the coast of East Africa speaks for itself. Though the Arab immigrants who settled at the coast of East Africa were mainly traders, they never ventured initially to look for merchandise into the interior. They depended on the local people to bring goods for sale to the island towns. As the local people brought their goods, they established the initial contacts between the Muslim immigrants and the non-Muslim indigenous people.

It is reported\(^4\) later during the 19th century when the pattern of trade began to change, the need for larger volumes of goods allowed Muslim traders to venture into the interior, thus
.... some traders began regular journeys deeper into the interior, where supplies of ivory were known to be abundant. Caravans were travelling inland from Vanga by 1820[15]. This allowed a closer contract with many people in the inland as opposed to only those who travelled to the coastal towns. Furthermore it enhanced the spread of Islam in the hinterland. Thus apart from the Adigo who carried their merchandise to the towns for trade, those who remained in the hinterland managed to come into closer contact with Islam not only from their fellow kinsmen who had already been influenced but also by the Arabs directly.

Trade as a factor for the spread of Islam was confined according to D.C. Sperling in between ten and twelve miles parameter, thus making the Adigo who lived in Adigo villages of Kiteje, Likoni, Mtongwe, Pungu and Tiwi the first adherents to Islam, during the last two decades of the 19th century[16].

In the inland, Islam spread due to contacts later on by the converts who associated in the first instance with one or more of the coastal towns, because they had been converted by someone from the towns during the trades, or because they went to town for community prayers and Muslim festivals. Naturally, such visits would result in sending a teacher to the hinterland who would establish first a mosque, with the help of the local community. From these 'mosque lessons' (darasas) the tenents of Islam were taught to the adherents. The building of mosques[17] marked a turning point in the rural development of Islam. It brought a
direct contact between the rural Adigo people with the urban Muslims.

The building of mosque and the sending of teachers to the hinterland of the Adigo homes encouraged a widespread of Islam, let alone instilling strict Islamic practice and observance of prayers. This also helped a lot in the spreading of Islam amongst the Adigo women who rarely took part in the coastal trade. The students of Quran who studied under their Swahili masters and those teachers who were sent to teach amongst the Adigo encouraged Adigo youngmen and women to be more ardent Muslim than their immediate ancestors.

The younger generation of Adigo Muslims portrayed a steady growth of Islam amongst the Adigo. The teachings of Islam and the observance of the Shariah signified a period of conflicts between the traditionalist Adigo and the Islamised. The traditionalists would have been more at ease in conducting their lives in accordance with their traditions, while for the Muslims, the Shariah and its strict adherence was their goal. Relations between the two groups became a bit tense when the need to practice Shariah in matters of inheritance was advocated. These were instances of cultural conflicts not amongst the Adigo Muslims, but between the Adigo who had not yet embraced Islam and the Muslims, especially so when these were from the same family. Even those who had embraced Islam would at times be perplexed by the Islamic laws that were in direct conflict with the accepted norms practiced by the majority amongst the Adigo.
Though conflicts did occur, intermingling of Islam and Adigo custom was striking. Thus in some respects, Islam has appeared to be more accommodating to the wider culture of Africans, more ready to compromise with African ancestral customs and usages. Islam has been less militant against certain practices which were non-Islamic. The ability of Islam to accommodate many cultures can be argued from its various organs of its Shariah such as al-Masalah al-Mursalah, Istihsan, urf etc. to encompass and merge into its fold any change occurring in society.

Hence doctrinally, almost from the beginning, Islam had the seeds of multi-culturalism. Thus in African generally and here specifically amongst the Adigo, Islam was more culturally accommodating and less subject to dis-Africanization. This is also from the fact that Islamic religion is not under a formal priesthood, and not subject to formal structures of decision making, hence a major element in its cultural flexibility. There is no priestly hierarchy, no Vatican in Islam's infrastructure. Much of the business of the religion has been completely decentralised. Islam does not have to look for a fountain head of authority to legitimise particular departures from mainstream rituals.

Also the concept of conversion in Islam has enabled many of the differences between the Adigo and Islamic ideology to prevail. While conversion may mean to others as an aversion from something accepted, thus a full change of life which brings about a complete
change of outlook, a break with the past and a kind of disintegration from, for example the converts ethical society, in Islam such a dichotomy does not occur. African custom was accepted, a convert could continue with traditional life as before as long as that traditional life did not conflict with the spirit and beliefs of islam. The Adigo thus left on their own developed a less politicised kind of islam. Despite Muslims being an overwhelming majority, they are likely to explode in defence of ethical interests than in pursuit of religious concerns.

Inter-marriages between Muslim emigrants and the Adigo was responsible for much of the assimilation of Islam and expansion amongst the Adigo. From the allies made between the Adigo and the Islamized Swahili at the coast, intermarriages between the two groups were domant. Thus

....the Tangana, one the three tribes of Mombasa were closely allied with the Adigo, especially the Shamba and Longo. Though resident on Mombasa Island since the 17th century with the Adigo throughout the 18th century... some Tangana took Digo wives, and Digo migrants to Mombasa and lived amongst the Tangana18.

These intermarriages did not only give rise to a strong force of Islamization to the Adigo but also gave rise to some Adigo clans. The 'achina Lela' clan amongst the Adigo is said to be from the descendants of a woman (Adigo) who married an Arab at Mtwapa19.

Islam amongst the Adigo was thus as a result of trade, assimilations, through voluntary and individual adoption,
intermarriages, proselytization and Islamic education. These factors played significant roles in the nature of Islam amongst the Adigo today. It is important to discuss some of their influences when dealing with the problems of conflicts that the Adigo experience with islam. Something in them will explain the origins and nature of the conflicts amongst the Adigo Muslims.
12. To avoid ambiguities of historical dates, we shall only be concerned with the factors that influenced the spread of Islam generally. For those interested in historical dates on the spread of Islam amongst the Adigo they can consult D.C. Sperling, Op. Cit.
13. It is also important to note that the date of entry of Islam in the coast of East Africa cannot be fixed with precision. It was unannounced and unplanned.
17. The first mosque built by Adigo is recorded to have been built in 1899 at Likoni. See Ibid. p. 106
Sharīʿah (Islamic Law) is a concept derived from the word sharīʿah. Originally it meant the path or road leading to the water, that is, a way leading to the very source of life. In its religious usage, it now means the highway of good life, that is, religious values expressed functionally, and in correct terms, to direct man’s life. This notion is further explained by others. The definite practical intent is part of the concept of Sharīʿah, it is a way ordained by Allāh, wherein man is to conduct life in order to realise the Divine will. Sharīʿah is not just a practical concept having to do with conduct as such, it is also includes all behaviour: spiritual, mental and physical. The comprehensive nature of the Sharīʿah is explained: “... comprehends both faith and practice, assent to or belief in Allāh is part of Sharīʿah...” All legal and social transactions as well as all personal behaviour, is subsumed under the Sharīʿah as the comprehensive principle of the total way of life.

The religious code of conduct thus established is an overall embracing one in which every aspect of human relationship is regulated in meticulous detail. Furthermore, the Law, having once achieved perfection of expression, was in principle, static and immutable; for Muḥammad (p.b.u.h.) is the last prophet, and after
CHAPTER TWO

THE SOURCES OF SHARIAH

Shariah (Islamic Law) is a concept derived from the word shar'. Originally it meant the path or road leading to the water, that is a way leading to the very source of life. In its religious usage, it has meant the highway of good life, that is religious values expressed functionally and in correct terms, to direct man's life. This notion is further explained by others. The definite practical intent is part of the concept of Shariah, it is a way ordained by Allah, wherein man is to conduct life in order to realise the 'Divine will'. Shariah is not just a practical concept having to do with conduct as such, it is also includes all behaviour: spiritual, mental and physical. The comprehensive nature of the Shariah is explained "..... comprehends both faith and practice; assent to or belief in Allah is part of Shariah....." All legal and social transactions as well as all personal behaviour, is subsumed under the Shariah as the comprehensive principle of the total way of life.

The religious code of conduct thus established is an overall embracing one in which every aspect of human relationship is regulated in meticulous detail. Furthermore, the Law, having once achieved perfection of expression, was in principle, static and immutable, for Muhammad (p.b.u.h.) is the last prophet, and after
his death in A.D 632, there could be no further direct communication of the divine will to man. From then on, the religious law was to float above Muslim society as disembodied soul, representing the eternally valid ideal forward which man must aspire.

The Shariah comprise of two categories of commandments. One

The objective of the Shariah are the protection and promotion of the well being of religion, the human mind the human honour and dignity, the human body, and wealth. Religion bears the sense that it inspires awareness of the Creator's Presence, Power, and Omniscience, or it ensures discipline on the part of it's adherents. Shariah also urges the pursuit of whatever would lead to the fertilization of the human mind, and forbids all that which might be harmful. Human dignity being the right of every individual, the Shariah teaches that this honour must be protected. The Shariah urges that the human body must be taken good care of and forbids all that can be harmful to it. Wealth and its resources, according to the Shariah, have to be sought, developed, invested and treated, and made ready for human good use and consumption.

The Shariah is thus comprehensive. It comprises the spiritual and material domains, the individual and social life. It defines the relationship of the individual to his creator and his position in the universe. It explains the individual's obligation to himself and to all those around him. Shariah is thus a creed, worship and a harmonious social order. Islamic iaw thus is
"... the epitome of the true Islamic spirit, the most decisive expression of Islamic thought, the essential kernel of Islam"6. It is at once law and morality. These factors have been recognised not by Muslims, but orientalist as well5.

The Shariah comprise of two categories of commandments. One was given in fixed categorical details, while the other is a set of general rules which, when combined, comprise a flexible and adaptable framework that fosters peace and harmony. The former category involves the details of the creed the rules of worship, and a few cases dealing with certain human relationships and activities, emphasis of which are numerous6. The shariah is Divine, which means it is infallible, perfect, and cannot be altered. Man must apply the Law, thus Allah proposes and man disposes.

People differ due to change of time and social life. In between the original divine proposition and the eventual human disposition, is interposed an extensive field of intellectual activity and decisions. During the time of, and after prophet Muhammad (p.b.u.h.), two sources were recognised as the original of, and for, the explanation of the Shariah. On one hand is the traditional sources, the authoritative 'given', that is the Quran and the Sunnah of the prophet, which serve as the base. This notion has its own basis in the Quran7. The other sources of the Shariah are "Qiyas" and "Ijma". The term "Qiyas", according to Muslim Jurists, means analytical reasoning, that is concluding from a
given principle embodied in a precedent that a new case falls under this principle, or is similar to this precedent on the strength of a common essential feature called 'reason'. "Ijma", or consensus, is used to decide whether certain opinions of a jurist, or decisions made by a practising judge, are correct or incorrect; Ijma authenticates Qiyas. The basis of Ijma, as a source of Shariah is from prophetic tradition which states, "my followers will not agree on an error.

THE QURAN: A DEFINITION

The oxford Dictionary spells the word Quran as 'Koran' and defines it as the "sacred book of Mohammedans", the collections of mohammad's oral revelations written in Arabic". In Encyclopaedia Britannica, the Quran is described as "the sacred book of Islam on which the religion of more than seven hundred millions of Mohammedans is founded, being regarded by them as the true word of God". In Arabic, the language which the revelation came down, the word Quran means "that which is often recited and read over again". The root of the word Qur'an being Qara'a, the Arabic word meaning "he read" or "he recited". Thus the noun Quran can signify "special reading or recitation". The literal connotation of the Quran can be, the book that is often read — referring to none other than the sacred Book of Muslims.

The Quran however has numerous title and names. In Arabic it is seldom mentioned without the addition of such exalted
appellations as al-Quran al-Karim (The Bounteous, Noble and Honourable), al-Quran al-Hakim (The full of wisdom, the Great or Sublime), al-Quran al-Majid (The Glorious). However, each of these translations can convey only a shade of the true, rich meaning of the Arabic original. Thus

No translation can convey more than the barest suggestion of what is in the Quran, that can move men to tears and ecstasy.\textsuperscript{11}

The Quran as described by Prophet Muhammad as quoted by Ali Ibn Abi-Talib\textsuperscript{12} is ......

The Book of Allah. In it is the record of what was before you, the judgement of what will come after you. It is the decisive; not a case of levity. Whoever is a tyrant and ignores the Quran will be destroyed. Whoever seeks guidance from other than it will be misguided. The Quran does not became distorted by tongue nor can it be deviated by caprices; it will never dulls from repeated study; scholars will always want more of it. The wonders of the Quran are never ending. Whoever speaks from it will be just and whoever holds fast to it will be guided to the straight path.

The Quran can however be described by Muslims as the word of Allah, revealed to prophet Muhammad (p.b.u.h.) through Angel Jibril (a.s). It contains the knowledge imparted by Allah and the guidance for humankind. The Holy Quran also describes itself in some of its verses as the declaration (Bayan)\textsuperscript{13} of truth and light (Nur)\textsuperscript{14}. It is the wise (al-Hakim)\textsuperscript{15} and the clear message (al- Balagh)\textsuperscript{16}. The Quran also describes itself further as the rope of Allah (Habl-Allah)\textsuperscript{17}, thus by holding unto it individuals and societies can achieve salvation. Most important is that the Quran describes
itself as a criterion (al-furqan) to choose between the truth and falsehood. Nasr S.H. referring to the Quran as the criterion says

"... the Quran also a furqan or discrimination in that it is the instrument by which man can come to discriminate between the truth and falsehood, to discern between the real and the unreal, the absolute and relative, the good and the evil, the beautiful and the ugly."

All this helps in defining the Holy Quran and understanding its message. The Quran thus is revelation of Allah and the Book in which Allah's message is contained. It is the word of Allah revealed to prophet Muhammad (p.b.u.h) through angel Jibril (a.s.). The prophet then was the instrument chosen by Allah for the passing of His revelation to humankind, in which both the spirit and the letter, the content and the form are divine.

**THE QURAN: ITS SCOPE AS A SOURCE OF SHARIAH**

The Holy Quran is divided into 114 chapters, each of which is called a Surah, literally meaning 'eminence' or 'high degree'. The chapters are of varying length, the longest comprising one twelfth of the entire Quran. All chapters with the exception of the last thirty five are divided into sections (ruku), each section dealing generally with one subject and the different sections being inter-related to each other. Each section contains a number of verses, which brings a total of 6666 of the verses of the entire Quran. In its verses the Quran is addressed to the entire humanity, transcending all barriers and limitations of race region and time.
Further, it seeks to guide humankind in all walks of life, spiritual, temporal, individual and collective. It contains directions for the conduct of the head of state as well as a simple commoner, of the rich as for the poor, for peace and for war, for spiritual well-being as for commercial and material prosperity.

The Quran seeks primarily to develop the personality of the individual and then shapes them into an ideal society, for ushering in an era when goodness and virtue may flourish and evil and vice eliminated. It declares that every human being will be personally responsible to the Creator. The Quran does not only give commands, but also tries to educate the people and convince them about the validity and usefulness of its injunctions. It appeals to the reason of humanity and invites them to exercise their own intellect in order to understand themselves, their station and purpose of life, their conduct with one another and, above all humanity's relationship with the Sustainer.

The fundamental root of the Shariah is that Allah is the sovereign of the universe. Allah is not only All-Powerful but also Just, Most Gracious, Most Merciful and Lord of the Worlds. It is Allah who has sent messengers to mankind in order to propagate His Divine Laws. Thus the system of Shariah is built upon the principle that Divine Laws are transmitted to mankind through the messengers. For Muslims Prophet Muhammad (p.b.u.h) is the last prophet and unto him was revealed the Holy Quran which he conveyed to humankind.
In its verses the Quran contains guidance and wisdom which can be divided into verses which relate to the science of Tawheed, or the Unity of Allah (ilm al-Kalam), verses which relate to principles (ilm al-Akhlāq) and verses which deal with human conduct (Fiqh) thus contains matters as marriage, usury, transactions, penal matters and state matters. Nevertheless the Quran also says of itself as a source of Shariah thus...

We made for you a law, so follow it, and not the fancies of those who have no knowledge.20

Other verses that authenticate the Quran as a source of Law include specific injunctions which Muslims are obliged to obey. Such issues like fornications and adultery, the Quran does not only warn Muslims but also explains the consequencea that will befall those who may not heed the warning. Hence...

Do not come nearer to adultery for it is shameful (deed) and an evil, opening the road (to other evils).21

And to those who transgress this commandments vis-a-vis a law on adultery and fornication, the Quran outlines their punishment as..

The woman and the man guilty of adultery or fornication, Hog each one of them with a hundred stripes, let no compassion move you in their case in a matter prescribed by Allah, if you believe in Allah and the last Day and let a party of believers witness their punishment.22

The Quran thus stipulates the Law and its punishment for those who
do not observe the commandments.

Most important however of the Quran as a source of Shariah are its Legal Injunctions (Ayat al-Ahkam). These injunctions are of primary importance in the life of Muslims for amongst other verses, they form the basis of the Quran as a source of the Shariah. The number of verses with legal connotations in the Quran is still a subject of study by Muslim scholars, others claim that there are five hundred verses of this type and others say there are more than this. Whatever the case, these Ayat al-Ahkam form the code of conduct of every Muslim from birth to death. These verses provide the touchstone to distinguish the truth from falsehood, good from bad and lawful (Halal) from unlawful (Haram). The Ayat al-Ahkam can be grouped into 3 categories depending on how concise their contents are. Thus we have:-

(i) Concise injunctions

(ii) Concise-cum-Detailed Injunctions and

(iii) Detailed Injunctions.

(i) Concise Injunctions

These are the precise commandments contained in the Holy Quran. However the Quran does not give the detailed rules regading
these commandments. We have in the Quran injunctions concerning purifications (Taharah), prayers (Salat), fasting (Sawm), Alms (Zakat) and pilgrimage (Hajj) and many others. Detailed rules and practice of these are to be found in the traditions and practice (Sunnah) of the Prophet.

(ii) Concise-cum-Detailed Injunctions

These injunctions are contained in verses which mention the commandments in brief, but other verses mention them in detail and further leave them to the hadith and Sunnah. Here are found injunctions on war, pease, Jihad, Prisoners of war, Booty and relations with non-Muslims among others. The details though left to the Sannah, can also be explained through Ijtihad.

(iii) The Detailed Injunctions

These Injunctions are contained in the verses of the Quran which give complete details of the commandments such that there is no question of Ijtihad in order to find solutions. These are commandments that Muslims must obey without question. In here are found verses that deal with Hadd (punishment), Qisas, Equitable relations amongst others. By and large, the Quran being the revelation of Allah to humankind stands alone as the only source through which Allah could order humanity on how to conduct themselves in the universe, hence no doubt the primary source of the Shariah.
The Sunnah is the second source of the Shariah after the Holy Quran. The word Sunnah may have different meanings depending on the context and usage. According to Arabic Lexicographers, Sunnah; means a way, course, rule mode or manner, of acting or conduct of life. Sunnah may therefore mean, a way of behavior which is arrived at after actual practice by a society. At times Sunnah may be confused with Hadith, whereby hadith means a piece of information, account or story narrated by a person. When these terms are used in their Islamic context they may as well give different meanings.

As noted that according to Arabic Lexicography sunnah means mode of life, its Islamic usage will give us the meaning of the mode of life of the Prophet (p.b.u.h). That is to mean, the way the Prophet led his life in its daily basis. Thus even when the Almighty Allah ordered Muslims to obey the Prophet and to take his life as a good example and follow it, the expression Sunnah of the prophet came into use. Henceforth the notion Sunnah to Muslims has always meant the mode of life of the prophet.

Hadhith on the other hand though at times used interchangeably with Sunnah, came to mean, the narrations about the life of the prophet, thus imply that hadith is a record of the Sunnah. This is so because, while not all ahadith (pl. of hadith) may be Sunnah, hadith of the prophet may at the same time contain as many Sunnah
as possible. Through the record of hadith the Sunnah of the prophet has been brought down from the period of the companions of the prophet (p.b.u.h.) to the present era. In a broad sense both the Sunnah and the hadith cover the sayings and deeds of the Holy prophet. There are then three types of Sunnah of the prophet, through which Muslims learn about the actual practice of the prophet and also in implications with the real meaning of the message of the Holy Quran. The kinds of Sunnah are:

(i) Qaul, which is a statement given by the prophet (p.b.u.h.) which has a bearing on any matter concerning the Islamic code of life.

(ii) Fiq, which includes the action or practice of the Holy prophet which has a bearing on any matter concerning the Islamic code embracing all spheres of life, and

(iii) Tafghir, which are the action or practices of some person (usually companion) of the prophet which has the silent approval of the Prophet.

**SUNNAH: ITS USE AS A SOURCE OF SHARIAH**

We have already seen that when we talk of Sunnah, we are as well talking of Hadith, mainly that part of the Hadith which has the content on the text (Matn) of the Hadith. The practice of the Prophet can be used as a source of Shariah because of the unique
position of the Prophet Muhammad amongst the Muslim Umma. Muslims are unanimous that the authority of the Quran is binding on all Muslims and the authority of the prophet comes next. The authority of the prophet is derived through the community's acceptance of the prophet as a person of authority, rather his authority is expressed through Divine will. Because of this the narrations and recordings of the mode of life of the Prophet has this Devine authority over Muslims. The Sunnah as a source of Shariah has its basis in the Holy Quran a factor that is emphasised by the position of the Prophet as explained in the Quran as the expounder of the Quran appointed by Allah. The Almighty Allah says in the Quran:-

We have revealed unto thee the Remembrance (the Quran) that you may explain to them that which has been revealed for them. And whatsoever the messenger gives you, take it, and whatsoever he forbids abstain from it. In the above verse the prophet is given the authority to explain and expound the Quran to humankind. It is found that allah commands the faithfull to perform prayer (Salat), but there is no part in the Quran that explains the mode of praying. It now became the duty of the Prophet to show the Muslims how to perform prayers through his own practice. The prophet then demonstrated the mode of prayer practically and orally.

Prophet Muhammad also has the legislative power bestowed upon him by the Almighty Allah. The Quran speaking about the legislative power of the prophet says:-
He will make lawful for them all good things and prohibit for them only the foul, and will relieve them of their burden and the fetters which they used to wear....

That the authority of the Prophet is binding upon Muslims is explicitly declared by the Quran again that, "O you who believe, Obey God and His Messenger" (Quran viii:20) and, "whoever obeys the messenger, he indeed obeys God" (Quran iv:80). These verses of the Quran explain clearly that that the Prophet is charged with the responsibility to explain the laws, such that his actions are the correct ones and Muslims should emulate him. Through the Sunnah the Prophet formulates the do's and don'ts of the society. Yet another verse of the Quran explains the basis of the Sunnah of the Prophet as source of Shariah:-

And whatsoever the messenger gives you, take it, and whatever he forbids abstain from it....

The verse and many others state the authority of the Prophet and emphasizes the fact that his whole life, decisions, judgements and command, have binding authority and ought to be followed in all spheres of life. Obviously the authority of the Prophet does not depend on his acceptance by the community through the opinion of scholars. The Muslim Umma thus ought to accept the authority of the Prophet as binding as the Quran, and accept all his verbal commands, his deeds, his facit approvals as the way of life, and a binding factor and model which has to be followed as again explained in the Quran:
A noble model you have in Allah's Apostle for all whose hope is in Allah, and in the Final Day, and who often remember Allah.

Since the activities of the Prophet are covered by the Sunnah, Sunnah will therefore remain one of the main sources of Islamic Law, second only to the word of Allah; the Holy Quran.

SECONDARY SOURCES OF SHARIAH

Apart from the Holy Quran and the Sunnah Being the primary sources of Shariah Islamic Jurisprudence recognises Ijma, Qiyas, Ijtihad, Istihasan, Istislah (Masalih al-Mursalah) and Urf as secondary sources of Shariah. However in the recognition of these as sources of law, laws that are enacted from them are derived from the injunctions of Quran and the Sunnah of the Prophet. Thus the final sanction of all intellectual activities in respect to the development of the Shariah comes from the Holy Quran. These sources are discussed below.

IJMA: THE CONSENSUS OF OPINION OF MUSLIM SCHOLARS

Ijma in the concept of Islamic Jurisprudence can be defined as the 'consensus of Juristic opinions of the learned ulama of the Umma after the death of Prophet (p.b.u.h.),' and the agreement reached on the decisions taken by the learned Jurists on various matters pertaining to the Muslim Ummah. The use of Ijma as a source of Shariah brought about different meanings of the term. Thus Ijma
can be an agreement of the Islamic community on a religious point or it is the consensus of opinion of persons competent for the practice of Ijma when religious issues arise, whether rational or legal. Ijma can as well be a unanimous agreement of the Jurists of the community of particular era on a certain issue.

Ijma has been noted to have played crucial roles in the development of Islamic Law. In the history of Islam, it has been a natural process for solving problems through the gradual formation of majority opinion of the community. The idea of using Ijma came into use as a socio-political necessity, approved of later on the Quranic verses and tradition (ahadith) of the Prophet. The usefulness of Ijma as a source of Shariah can be summarised as ".....the consensus guarantees the authenticity and correct interpretation of the Quran, the faithful transmission of the Sunnah of the Prophet (p.b.u.h.), the legitimate use of analogy and its results. In short it covers every detail of the Shariah, including the recognised differences of the several schools of Jurisprudence". Ijma is therefore a principle for guaranteeing the veracity of the legal content that emerges as a result of exercising "Qiyas" and Ijtihad.

The practice of Ijma has its basis in the Holy Quran when Almighty Allah encourages seeking the opinion of others on religious matters. The Quran say:-

It is through the mercy of Allah that you are lenient with them: if you were to be hard-hearted; they would have deserted you;

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pardon them and seek for the forgiveness
for them and seek their opinion in the matter;
wherever you decide upon something, have belief
in Allah, Surely Allah loves those that rely
on Him.²⁹

Again about the practice of consultations and agreement within the
Ummah, Allah advises:

Those who answered the call of their Lord,
and established regular prayer (salat) and
whose affairs are a matter of counsel and
spend out of what we bestow on them for
sustenance.³⁰

However the concensus of the Ulama must be based on the book
of Allah, the instructions of the Prophet (Qaul al-Rasul), the
actions and demonstrations of the Prophet (Fi'il al-Rasul). Muslim
Jurists are of the opinion that any Ijma that has to do with some
marginal issue on the Ibadat (acts of worship) must be ratified by
every member of the community that is concerned. However if laymen
say that they do not agree on a matter raised it must be ignored
and accepted as invalid. On the other hand, if the Ijma has has
any thing to do with Mu'amalat (transactions) which need thorough
reasoning, the layman's point of view has to be considered.

Nevertheless no matter the rank of the pious Ulama and their
thorough deliberations, no amount of Ijma can abrogate a text, that
is a provision laid down in the Quran or the Sunnah of the Prophet
(p.b.u.h.). If any Ijma is soundly founded on a text of the Quran
and the Sunnah, it can not be repealed by any subsequent consensus,
but if the Ijma is merely based on public interest (al-masalih al-mursalah) it may be repealed if the public welfare so requires.

**QIYAS (ANALOGY)**

Muslim Jurists have described 'Qiyas' as analogical reasoning. Qiyas is then concluding from a given principle embodied in a precedent that a new case falls under this principle or is similar to this precedent. The earliest predecessor of this conscious analogical reasoning has been called 'personal judgement' or considered personal opinion (ra'y). Whenever the Ummah was faced with a new or refined and complicated issue, the Quran or a general principle or specific case in the Sunnah was taken and a decision was made on its strength with regard to the present issue. When no clear and unambiguous decision was found in the Quran and Sunnah, the tendency to use Qiyas was predominant. However in both the choice of the model and the discernment of the point of resemblance almost unbridled liberty was taken and the result varied between sound analogy on the one hand and almost complete arbitrariness on the other. Thus after several decades, the unregulated products of this pure personal opinion produced a strong and bitter reaction against itself.

In the first half of the 2nd/8th century more systematic thought arose both in Medina and Iraq. In Medina, Imam Malik (d.179/795) continued to use the term ra'y, but the procedure had became systematic, helped no doubt by, the further strengthening,
the fact that a more or less uniform doctrine by this time emerged in Medina, characterised by the concept 'agreed practice' of Ijma. Meanwhile in Iraq Abu Hanifa - the examplar of logical thought in Islamic law and his early followers formulated expressions like 'this is the category of', 'this is similar to', in order to explain Qiyas. At the same time the concept of Ijtihad or 'systematic original thinking' which from its narrower beginnings in the first half of 2nd/8th century bloomed into a powerful principle of original thought in the later 2nd/8th and 3rd/9th centuries, swallowing up Qiyas as its method.

The introduction of Qiyas as a source of Shariah is said to have been introduced by the founder of the Hanafi school of law in Iraq. He is said to have introduced Qiyas with intention of curbing the excessive thinking and digression of the people from the Islamic legal point of view. This he thought so because during the Abbasid period, people engaged themselves in reading various texts of logic, philosophy, etymology and literatures of various places; which was said to corrupt their minds.

These wanted to apply what they had read to Islamic Jurisprudence. Also many Muslims in far away lands had thought with them their philosophical outlook, their culture and even some religious and legal notions in the fold of Islam. Abu Hanifa thus introduced Qiyas as a measure to curb their excessive thinking and to keep them on check.
The argument about Qiyas brought about groups who agreed with its introduction into Islamic Jurisprudence and those who objected to its introduction. Those against Qiyas argued that Almighty Allah revealed the Holy Quran to humanity for its guidance, no more no less. A Muslim thus must look for solutions of his problems in the Quran. For those who advocated the use of Qiyas, they supported their claim through the verse of the Quran that "think deeply, 0 ye who are understanding". The people of understanding in the above verse are those who use common sense to deduce Islamic Law. They also quote a Hadith of the Prophet which says:

"The Prophet send Muadh Ibn Jabal to Yemen as their Judge and governor. Before Muadh left the Prophet, he asked the latter on what basis would he judge if he was confronted with a problem. Muadh said that he could judge on the basis of the Quran. The Prophet then asked him: "assuming that you do not find it in the Quran, on what basis would you judge?", Muadh said he would judge on the basis of the Sunnah of the Prophet. The prophet asked him: "assuming you do not find it in both the Quran and the Sunnah of the Prophet, on what basis would you judge?", Muadh replied that he could use his own individual judgement. And the Prophet was very happy to hear this statement".

Thus Qiyas can be accepted as one of the principles of Islamic law provided it is strict Qiyas. By strict Qiyas it is meant that it must be based on the Quran, the Sunnah and Ijma. Still Shafi'i and other jurists laid down conditions which Qiyas can be accepted, amongst which are that, the Qiyas must be applied only when there is no solution to the matter in the Quran and the Hadith; that Qiyas must not go against the contents of the Quran neither
conflict with the traditions of the Prophet; and that it must be
strict Qiyas based on either the Quran, the Hadith and Ijma.

A. A. A. Fyani describes Shariah as the central core of Islam:
"...the road to the watering place...." as a technical term
it means the Canon Law of Islam, the totality of Allah's
beginning with A. A. A. Fyani: Criminal Law and Legal

Urf, the known practices and customs (adat) are recognised as
a subsidiary source by all schools of Jurisprudence. These are
customs which do not contradict the four principal sources of the
Shariah. Hence customary rules are valid as long as, there is no
provision on the matter in the Quran and the Sunnah. If any of the
customs contradict any other rule of Shariah, they will be
considered outside the pale of Islamic law. The authority for this
source is defined from the doctrine of (al-Masalih al-Mursalah),
things that are of benefit to the society about which the source of
the Shariah neither speak nor oppose them.

See Quran 4:69. cf. Said Ramadan where he quotes "...a
teaching, bear in mind what I am saying, for I might not see you
again. I have left two things: If you hold fast to them,
I will let you go astray after me. They are God's book
and his prophet's Sunnah said Ramadan, Islamic Law: Itraq

It is categorical to reject the adjective "Mohammadan" as a
description of their religious group as it falsely implies
that their worshippers of Muhammad rather than the one God,
Allah. Muslims nevertheless love Muhammad and feel such
indubitably to his and frequently pay that peace be upon him.

New Encyclopaedia Britannica Vol. will p. 94.

E. M. Lanu, Selections from the Quran with an Interpretation (London: James Madden, 1843) p. 83.


See Al-Ghazaly Exegesis of the Quran (Arabic classics) 8 vol (Cairo: Dar-al-sha'b, 1960) vol. 1 p. 8
FOOTNOTES


2. A.A.A Fyzeel describes Shariah as the central core of Islam; "...the road to the watering place..." as a technical term it means the Canon Law of Islam, the totality of Allah's commandments. A.A.A. fyzeel, *Outlines of Muhammad Law*, 3rd ed.


5. This is emphasized by J. Schacht when he writes "the sacred law of Islam is an embracing body of religions duties rather a legal system..... it comprises an equal footing ordinances regarding cult and ritual, political and legal rules" J. Schacht, *An Introduction to Islamic Law* (Oxford University Press, 1964) p. 1.

6. A.A. Maududi notes "the most distinguishing characteristic of Islamic law.... is that it is a sacred law, emanating from Allah Himself as the sole Law giver and transmitter to mankind through prophet Muhammand (p.b.u.h.) whose practice, "Sunnah supplements this Law "A.A. Maududi, *Islamic Law and Constitution* (Lahore: Islamic Foundation Publication, 1960) p. 46.

7. See Quran 4:59. cf. Said Ramadhan where he quotes "... 0 people, bear in mind what I am saying, for I might not see you again. I have left two things. If you hold fast to them, never will let you go astray after me. They are God's book, and his prophest's Sunnah said Ramadhan, *Islamic Law: It's scope and Equity* (London: P.R. Macmillan Ltd, 1961). p. 24.

8. Muslim categorically reject the adjective "Mohammedan" as a description of their religious group as it falsely implies that they are worshippers of Muhammad rather than the one God, Allah. Muslims nevertheless love Muhammad and feel much indebted to him and frequently pray that peace be upon him.


12. See Al-Oortoby *Exegesis of the Quran* (Arabic classics) 8 vol. (Cairo: Dar-el-sha'b, 1960) vol. 1 p. 4
13. Quran 3:138
14. Ibid., 4:4
15. Ibid., 10:1
16. Ibid., 14:52
17. Ibid., 3:103
18. Ibid., 25:1
20. Quran 45:18
21. Ibid., 17:32
22. Ibid., 24:2
24. See Quran, 53:3 & 4
25. Ibid., 16:44
26. Ibid., 7:157
27. Ibid., 59:7
28. Ibid., 33:21
29. Ibid., 33:159
30. Ibid., 42:38
31. With the development of systematic reasoning, the use of ray was severely condemned by the Ahl al-Hadith. Every major and systematic collection of Hadith contained alleged Prophetic tradition denouncing personal opinion.
CHAPTER THREE

MIRATH: THE ISLAMIC LAW OF SUCCESSION

In legal terminology, Mirath means inheritance to be divided from the property of the deceased among the successors. The science of mirath in the Shariah gives rules which guide as to who inherits and who is to be inherited, and what shares go to which heirs. The death of a person brings about the transfer of most of his rights and obligations to persons who survive him. Rules regulation on inheritance in the Shariah are based on the principle that property which belonged to the deceased should devolve on those who by reason of consanguinity or marital relations have the strongest claim to benefit by it and in proportions to the strength of such claims.

During the pre-Islamic (Jahilliya) Arabia, society was patriarchal and patrilineal. The customs of the Arabs of the time had one principle object in view with regard to succession of deceased's property. This was the practice of keeping property within ones family. Accordingly, succession of a deceased property was confined exclusively to the male relations and further among them to only those who were capable of bearing arms. With the pre-Islamic tribal Arabs being patrilineal in their structure and patrilineal in ethos; individual tribal societies were formed to adult who traced their descent from a common ancestor through

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exclusively male links ('asaba). The tribe was bound by the body of unwritten rules that had evolved as a manifestation of its spirit and character. These rules served to consolidate the tribes military strength and to preserve its patrimony by limiting inheritance rights to the male agnate relatives of the deceased, arranged in a hierarchical order with sons and their descendants being first in order of priority.

Relations through females in pre-Islamic Arabia was not a ground for succession because; it were, property would pass to another tribe. The daughters, widows, mothers and sisters as well and the minors were excluded from succession. The daughters because they ceased upon marriage to be members of the original family. The widows were excluded because they were placed in the same category as chattels. The minors were excluded because they were unable to defend by their arms the tribal rights and privileges, and their goods therefore belonged to their chattels.

The aim of the pre-Islamic system of succession amongst Arabs was to preserve the fighting unit of the family or tribe. Hence women may marry out of the tribe, but they would remain no longer connected with their ancestral tribe. Therefore no right of inheritance was accorded to them. The principle of priority of inheritance amongst the 'asaba was:

(i) Descendants are superior to ascendant and ascendant are preferred to collateral. Minors were not
allowed to inherit because they could not bear arms.

(ii) The nearer in degree among the 'asaba excludes the more remote, and there is no representation in the rules of inheritance.

(iii) Among equal collateral, the strength of blood ties is to determine priority.

With the advent of Islam, the normal and social position of women was raised giving the widow, the mother, the sister and the daughter heritable rights; the Quran made it obligatory by providing certain specific shares to certain relations most of whom were females. These shares are called 'Faraidh', of which the Quran mentions nine and three others were latter added by the general consensus of the jurists by way of Qiyas.

**REFORMS INTRODUCED BY THE HOLY QURAN IN INHERITANCE**

The Quran introduced reforms in the law of succession by giving specific share to about twelve captain relatives who could not have received anything at all under the customary law of the pre-Islamic Arabs. The novel rules of inheritance introduced by the Quran emphasized the tie existing between a husband and his wife and between parents and children. Those rules also had a particular goal of raising the status of women within the nuclear
family, thus....

The Quranic inheritance legislation came to reform the tribal customary law of pre-Islamic Arabia. The Quranic reform came as a super structure upon the ancient tribal law. It corrected many of the social and economic inequalities then prevalent. Thus the Quran is not to be likened to an amending Act rather than an exhaustive act. The sunnite law of Islamic inheritance has wedded together the 'asaba and the Quranic heirs in distributing the estates, thus it gives the Dhul-Faraidh (the Quranic heirs) their shares and then distributes the rest among the 'asaba. The newly created heirs were mostly women equal to the customary heirs in proximity to the deceased. However the Shariah gives her half the share of the male. Contrary to the customary law, where the nearest male agnate succeeded, the female and cognates were excluded, descendants were preferred to ascendant and ascendant to collateral.

It is found that in the sunnite schools of law as opposed to the shiite, the same tendencies, are still at work, where to a certain extent retain these principles of ancient law. On this account it may be argued that the Islamic law of inheritance is often considered an arbitrary system. However this may be a superficial view, for on a systematic examination of the fabric of the law, it will be found that it consists of the two distinct elements, namely the custom of the ancient Arabia and the Quranic reforms.
Through the spirit of reforms introduced by the Holy Prophet (p.b.u.h.), the ingenuity of Jurists and the forces of circumstances, the two distinct elements were welded together into a wholesome and complete system, yet it is still possible to distinguish them. Here is an example of a location of the 'Asaba representing a classical patrilineal system. In its most patriarchal form, women in the patrilineal line do not possess inheritance rights. At the core of the patrilineal system are the father, the brother and the sons; the uncles and the grandfathers are secondary.

Diagram 1: The 'Asaba, the agnate male (△ shaded)

Comparing the diagram of the strict agnatic kin (diagram 1) with the one which the Quranic heirs are shown (diagram 2), the shift away from the 'asaba and forward the recognition of female heirs is clear.
Diagram 2 Quranic heirs (represented by slash is $\Delta$ or $\emptyset$)

It is apparent that there is a certain structured tension between the two classes of heirs, and certain principles setting the priorities have been established in juristic practice. The primary heirs are within the nuclear family and after they have taken their portion, the Quranic heirs take their share; the residue is taken by the 'asaba. This is the basic rule and within each of these levels of nuclear family, Quranic heirs and the
'asaba, there is a separate set of priorities which can be very complex indeed depending on the total size of the estate and the number of eligible heirs. It may be, for instance, that the required distinction of the estate among the Quranic heirs exhausts the heritage, and the 'asaba, though recognized as real relations and potential heirs, in fact receive nothing.

The combination of the agnatic heirs and the Quranic heirs completes the picture of the Islamic law of succession and encompasses those relations who are entitled to a portion of the estate of a deceased Muslim. To this basic diagram (diagram 3) we only need to add mention of the descendants and ascendant of those named, however low or high, for if they exist, they are likewise entitled. The Islamic pattern of inheritance is unusual in that it represents a compromise between the established rights of the patrilineal or agnatic kin and the entitlement of important females in the kin system not necessarily grouped together by the descent principles alone. It is not the addition of the matrilineal kin as a descent group, but the addition of certain females and males related to the deceased as often by marriage ties as by blood ties. Thus it recognizes the importance of inter-group alliance through marriage, along with the primary male descent group.
Taking a broad view, the Islamic scheme of inheritance discloses three peculiarities viz:

1. The Quran gives specific shares to certain individuals.
2. The residuary goes to agnatic heirs and
3. Failing them to uterine heirs.

The main reforms introduced by the Quran may be stated as that:
1. Husbands and wives were made heirs.

2. Females and agnate were made competent to inherit.

3. Parents and ascendant were given the right to inherit even where there were descendants and,

4. As a general rule, a female was given one-half of the share of a male.

It is found that the new heirs are close relatives of the deceased, and often related even closer to them than agnatic heirs. These were mostly females, equal to one-half of the share of a counter part.

Despite the Quran giving explicit rules on inheritance, Muslim groups nevertheless portray some differences in actual practice and ideology of the law of succession. The Shiite law of inheritance in practice is different from the Sunni. Entitlement to succeed on intestacy vests, for the Sunnis unlike for the Shiite, on three distinct groups which produce three separate groups of legal heirs viz: the Quranic heirs, the male agnate relatives of the deceased and failing these, two primary groups, females and cognate relatives. The Shiite on, the other hand recognises one basis for entitlement only, that of relationships (qaraba) simply and accordingly divides all relatives (with the exception of the spouse relict who always takes the Quranic shares)
into three classes, which are in order of priority. Thus

(i) Lineal descendants and parents of the deceased

(ii) brothers, sisters and their issues and grandparents
     of the deceased and,

(iii) Uncles and aunts and their issues.

Entitlement thus, according to the shiite, depends solemnly upon the position of the claimants, and while the Quranic heirs, when entitled will take their allotted share, and the basic rules also apply that a male relative gets twice the share of a female relative of the corresponding order and degree. This system thus differs vitally with the sunnite law in that it affords no distinctive place to the male agnate relatives. All in all the Shariah distributes the estate among the claimants in such order and proportions as is most in harmony with the natural strength of their claim.

CONDITIONS PREVAILING INHERITANCE AND HERITAGE

The estate of an individual who died intestate can be inherited after the satisfaction of the death of propositus, the survival of heirs at the time of death and ascertaining relationships which justify inheritance. It has to be proved that heirs are surviving at the time of the death of the propositus,
before they are allowed to inherit. In the case of an embryo the practice has been that it will not be accounted to inherit unless born alive. At times their share is put aside pending their delivery, usually the share of a male child. According to other practices the whole estate should be saved awaiting the delivery of the child before the distribution. The heritage that which inheritance is to be divided comprises of:

1. That which the deceased owned before their death in the form of tangible property, debts and any pecuniary right like the right consequent to demarcation of ownerless vacant land with the intention of cultivating it, where they intend to cultivate ownerless vacant land and demarcates it by constructing a wall or fence or its equivalent thus acquiring a right to cultivate it in preference to others; or an option in a contract of sale; or a right for pre-emption; or a fight of retaliation (qisas) for murder or injury, where there is a guardian of the victim e.g. if a person kills your son then dies before retaliation, causing the right to qisas to change into a pecuniary right payable from the murderer's estate exactly like debt.

2. That which the descendant comes to own at his death e.g. compensation for unintentional homicide (qatl al- khat'a), where the heirs opt for compensation instead of (qisas). The rule applicable to this compensation is the one applicable to all other properties, and all those entitled to inherit.
That which the descendant comes to own after their death e.g. an animal caught in a net that they had placed in their lives and similarly where they are indebted and their lives creditors relinquishes the debt, after their death or someone volunteers to pay it for them. Also if an offender mutilates their body after their death and amputates their hands and legs, compensation will be taken from them. All these will be included in the heritage.

Different deductions are made from the heritage. Some are deducted from only a third of the heritage and some deductions are made from the whole heritage. Hence if the heritage suffices, they will be completely met and what remains of it after these deductions and the execution of the will, will be for the heirs. If the 'tarah' (deceased property) falls short of meeting these deductions, the more important among them will be given precedence over those of lesser importance. If anything remains after the preferred deductions are made, the next in order will follow; otherwise only the deductions of higher preference will be covered.

According to the consensus of Shiite jurists, the first deductions before any other thing is to meet the wajib funeral expenses of ablution (al-ghusl) shrouding, carrying of the body and digging the grave, if required irrespective of whether the descendant has made a will to this effect or not. Thus funeral expenses are prior to debts, irrespective of debts related to the fulfillment of the religious duties (haqqu Allah) or to the
creditors (haqq al-nas). Differences also occur among the shiite jurists (of the Imamiyyah school) regarding the case where a creditor has a right over the estate itself, such as where the decedent dies after mortgaging his/her property with a pledge, the property being all that he/she owned. Some jurists may give the funeral expenses preference over the right to the pledgee, because of the nature of the tradition which includes the order of preference where no difference is made between pledged and unpledged properties. Other jurists give precedent to the right of the pledgee because the owner of the pledged property is forbidden by the Shariah to exercise his/her right of ownership and that which is forbidden by the Shariah is like that which is forbidden by reason³.

Thus meeting the funeral expenses, the repayment of debts will start, irrespective of their being haqq Allah or haqq al-nas, such as unpaid zakat, pecunary atonements (kaффarat) and other similar religious and non religious liabilities. All these debts are in a single category, thus if all of them cannot be completely met from the estate, they will be covered pro-rata like the liabilities of an insolvent person, allowing no exception to this except zakat, provided these relate to the actual items of their incidence present, in which case the two will be preferred over other debts. Moreover before the distribution of the estate of the deceased among heirs, it is required by Quranic injunctions first to settle the claims of debt and other rights of Allah and His servants on the deceased as well as the Will that they may have left behind.
The Holy Quran emphasizes that:

The distribution in all cases is after the payment of legacies and debts.

Normal debts are those which are proved by the admission of the dead before the death sickness either in writing or by any other way and secondly the debt which was mentioned by the admission of the dead person while on death sickness. Funeral expenses are usually deducted from the estate of the deceased. Islam preaches simplicity, particularly so when one dies. Every one is given a seamless shroud, therefore funeral expenses must be reasonable. In conclusion the schools of law of the Sunnite and those of the Shiite, concur that funeral expenses are preferred over debts payable from the estate after death.

**IMPEDEMENTS TO SUCCESSION**

According to the Shariah there are three reasons than can stop one from inheriting. These are homicide, difference of religion and slavery.

(i) **Homicide**

Muslim jurists agree that a killer or murderer shall not inherit. Sayyidna Umar (R.A.) is said to have prevented a murderer of one's father from inheriting him. The rationale for this is that if such people were allowed to kill and then benefit from the estate of the victims, it will seem as though people were
encouraging incidents of homicide because the accused persons were allowed to benefit from the crimes they have committed. Due to circumstances that prevailed in murder, jurists have classified murderers into two categories:

(a) Qatl al Amd: intentional murder

(b) Qatl al - Khat'a: unintentional murder.

The Qatl al-amd is an intentional and premeditated murder, while an act of an insane person or a minor will be considered as neither intentional or unintentional. Qatl al-khat'a may be through mistake or through mistaken identity. There are cases of murder recognised by the Shariah where the right to inheritance will not be affected. These are:

(a) When one kills as a result of excersing judicial punishment resulting to death, and on the battles between Muslims and non-Muslims.

(b) Killing if it's as a result of self defence which has to be proved.

(c) In an act of a mad person and a minor.
(ii) **Differences of Religion:**

Differences of religion will definitely prevent succession subject to certain conditions. The majority of Muslim jurists agree that a Muslim will not inherit his/her deceased relative who happens to be non-Muslim and vice-versa. Thus when a Muslim husband dies leaving behind his Christian or Buddhist wife, she will inherit him through Wasiyyah (will). However, her inheritance (shares) will not be more than one third of the net estate. This notion still is not universal amongst Muslims. The shiite jurists are of the opinion that the people of a different religion will always not inherit one another, thus a Jew will inherit only a Jew and Christian will inherit only a christian. They base their view on the hadith that.....

Yahya related from Imam Malik from Ibn Shihab from Ali Ibu Husayn Ibn Ali from Umar ibn Uthman Ibu Affan from Usama Ibn Zayd that the messenger of Allah (may Allah bless him and grant him peace) said, "A Muslim does not inherit from a Kafir".

(iii) **Slavery**

All Muslims jurists agree that slavery is a bar to inheritance. They will not be inheritance. If a slave died he/she would not be inherited by his/her relatives, because, as a slave he/she owned nothing since all that a slave owned belonged to his/her master and was himself/herself treated as property. Islam has, however, made it a great reward to free slaves as an act of merit and included it in expiation (Kaffarah). Thus there are no
slaves today and the problem does not occur.

THE QURAN AND INHERITANCE

Islamic law is regarded by Muslim as an ordinance of Allah; and when Islamic experts are called upon to give evidence of it in disputes, it is to the Holy Quran first of all that they will refer as their authority for the basic principles before referring to any textbook on the subject which gives details. It is therefore to the verses of the Quran itself that we must turn to for the original text of the law before directing our attention to any expositions on the Islamic law.

Chapter 4 verses 11 and 12 of the Quran set out the law of intestate succession in a rather detailed and exhaustive manner. It is as follows:

Verse 11. "Allah enjoins you concerning your children; for the male is the equal of the portion of two females; but if there be more than two females, two thirds of what the deceased leaves is theirs; and if there be one, for her is a half. And as for his parents, for each of them is the sixth of what he leaves, if he has a child: but if he has no child and (only) his two parents inherit him, for his mother is the third; but if he has brothers for his mother is the sixth, after (payment of) a bequest he may have bequeathed or a debt. Your parents and your children you know not which of them is nearer to you in benefit. This is the ordinance of Allah. Allah is surely ever Knowing, Wise".

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Verse 12. "And yours is half of what your wives leave if they have no child; but if they have a child, your share is a fourth of what they leave (after payment) of any bequest may have bequeathed or a debt: And if a man or woman having no children leaves property to be inherited and he/she has a brother or a sister, then for each of them is the sixth; but if they are more than that, they shall be sharers in the third after (payment of) a bequest that may have been bequeathed or a debt not injuring (others). This is an ordinance from Allah, and Allah is knowing, For bearing. Commenting on this law of inheritance as given in these verses of the Quran, Anderson said

...... It should also be observed that there is no aspect of the law in which the logical and technical excellencies of the Islamic system are more advantageously displayed than in the law of inheritance indeed there is a famous dictum attributed to the prophet that a knowledge of the shares allotted to the various heirs under this system constitutes the equivalent of one-half of all human knowledge. However this may be, it would, I suppose, be true to say that there is no system of inheritance that has been worked out with the detailed thoroughness, the meticulous preciousness, and the religious devotion even to the discussion ad nauseam of hypothetical problems that could scarcely ever arise in the vicissitudes of real life - which has been accorded so lavish by Muslim jurist to the Islamic law of succession.

Detailed treatment of the shares are dealt with in Anderson's work. We do not consider it necessary to repeat these complicated rules. All we need to do is to refer to a few general important points embodied in the rules relevant to our study. One general principle is that a spouse, parent and son or grandson (son's son) exclude all other heirs in succession to a deceased; further than
this one class of heirs had definite shares of the net estate prescribed for it, while another class of heirs share the residue of the net i.e after those entitled to specific shares have had their shares.

The Islamic law of inheritance also makes a great difference between male and female that may be seen by others as insubordination of women. Firstly, in the shares a male gets more than a female though they may be of equal entitlement e.g. sons and daughters, the brothers and sisters. Consequently whatever shares of the estate is left to children, sons and daughters, each son will take double the portion of the daughter. Secondly, relations in the male line direct and collateral are with one or two exceptions preferred to relations in the female line. Thus a person's male heirs are: (i) sons (ii) the paternal grandson (son's son) and lower such descendants (iii) the father (iv) his father's father (the paternal grandfather) (v) the brother (vi) the brother's son (vii) paternal uncle (viii) the son of paternal uncle and (ix) the husband. And the female heirs are; (i) the daughter (ii) the son's daughter (iii) the mother (iv) the grandmother (maternal as well as paternal) wife's sister.

Upon this principle a person cannot be succeeded by the sister's son or by the daughter of a brother or the daughter of an uncle, or the maternal grandfather or mother of the maternal grandfather. In this respect the Islamic law is quite at variance with the Adigo system of inheritance.
Another general principle is that the full-blood relations have preference over the half-blood. Therefore, a brother germane will exclude a brother consanguine, and a brother consanguine will have preference over the son of a brother germane. Another general principle is that the lower in relations exclude the remote in relation; therefore children, parents and spouse inherit together and do not exclude each other except that the son's share is of the residue. These principles can also be expressed using diagrams.

Inheritance thus according to Islam is the entry of living person into possessions of a deceased persons' property and exists in some form whenever the institution of private property is recognised as the basic of the social and economic system. The actual forms of inheritance and laws governing it, however differ according to the ideals of different societies. The law of inheritance in Islam is seen to be based upon five main considerations:

1. To break up the concentration of wealth to individuals and spread it out in society.

2. To respect the property rights of ownership of individuals earned through honest means in their lives.

3. To hammer in the consciousness of man the fact that man is not the absolute master of the wealth he produces but its trustee and he is not therefore authorised to pass it on to others as
he pleases.

4. To consolidate the family system which is the social unit of an Islamic society.

5. To give incentive to work and encourage economic activity as sanctioned by Islam.

We can even say that Islamic law of inheritance is geared towards a just society, unlike during the pre-Islamic period, and even modern un-Islamic society where its laws of inheritance have many evils which may include denying women any share of inheritance, because they were rather regarded as part of the property of the deceased and therefore their right to property through inheritance was ignored. Also unlike during the pre-Islamic Arabia and even other societies today which are tribal, where not only are women deprived inheritance, but even the weak, sick and minors were not accorded any shares because the common principles of inheritance was that he alone is entitled to inherit who wields the sword.

Also in certain societies there had existed the law of primogeniture which entitled only the eldest son to inherit the whole of the father's property or to get the largest share. Islam has thus introduced many reforms in the perception of inheritance and its laws which can be summarized as:
It defined and determined in clear-cut terms the shares of each inheritor and set limits on the right of the property owner to dispose of his property to his whims and caprice. It also made females who had been previously thought as chattels, the co-sharers with the male. This has not only restored her dignity but safeguarded her social and economic rights. It has also laid the rules for the break up of the concentrated wealth in the society and helped in its proper and equitable distribution among a large number of persons.
FOOTNOTES


3. Maghniyyah "Inheritance According to the Five schools of Islamic Law" Pt 1 Al-Tawhid Vol VII No. 1 1989 p. 120.

4. See Quran 4:11-12.


CHAPTER FOUR

THE DEVELOPMENT OF THE ADIGO RULES OF INHERITANCE

THE FAMILY: THE ADIGO BASIS OF INHERITANCE

The family according to the Adigo is the social group into which a person is born. That unit consists of all members of the social group linearly descended from one common ancestor, female or male, who in ancient times, together occupied the house or compound (kaya) in which a child first finds itself in this mortal world; a group of people united together either by the possession of common blood, or united together by common controlling spirit or personality.

Thus of all the important qualities in a human being, the Adigo belief attaches special significance to two things, the sacred blood which sustains and maintains their physical or material body and the sacred spirit which constitutes their full personality and builds them up into real being. The former is of maternal ancestry, the latter of paternal ancestry. Each of these two groups constitute a distinct family. Every Mdigo belongs to each of these two groups of ancestry, the maternal and the paternal (Kuchetuni and Kulumi). They may belong to one of the groups, for one or more purposes and to the other for one or more other purposes; they may belong to both for all purposes. We say then there are two family systems amongst the Adigo, the matrilineal and
the patrilineal.

The family which succeeds to self acquired property upon intestacy may therefor be; maternal, paternal and in special cases joint matrilineal and patrilineal.

MEMBERSHIP OF FAMILY

Membership in a Chidigo family is an incident of birth and depends upon generations of ancestors (akare)⁴. Each person is born into families, these are: (i) the family of the generation immediately preceding theirs, i.e. the family originating from their father of mother, (ii) the family of the last generation but one before theirs i.e. the family originating from their grandfather of grandmother (iii) the family of the generation before that i.e. the family originating from their great grandfather or great grandmother and so on, until the family of the remotest known ancestors, male or female. This family may be added to by evolution of raising of subsequent generations i.e. by birth of a child to a member of the last generation, but it may not be subtracted from, since once a generation has come into being, it must always retain its position in the ring of the ladder, it cannot be undone, even though every single individual who constituted the particular generation may become extinct.

The family of the generation that gave birth to a person i.e. the family originated by a person's father or mother is the
immediate family of that person e.g if 'M' is the father or the mother of A, B, C, the immediate family of each of A, B, C, is the group of the circle of persons generated around 'M' namely (M + A + B + C). The family of the generation of the grandfather, the grandmother or of the remotest known ancestress is called the wider or extended or ancestral family. Thus if 'X' was the father or mother of 'M', 'N' and 'O', the extended family to which each of 'M's' children belong will be (X + M + N + O) + (A + B + C) and if 'Y' was the remotest known ancestor of 'A' the child of 'M' and extended or ancestral family to which 'A' 'B' and 'C' belong is Y + (X + M + N + O) + (A + B + C).

Therefore to ascertain the family of the person you have to go back to their birth, to their father or mother unto whom they were born and the first circle or group into which they were born, that is the circle or group into which they were born, that is the circle having their said mother and father as its center or origin together with all the radii thereof; and to ascertain, their extended or ancestral family you go further back to their grandfather or grandmother or the remotest known ancestors male or female. In short a person's immediate family does not begin with himself or herself; it is the immediate family of his or her children which begins with her or him.

We may illustrate the principle with a tree; the trunk of a tree with buds on it: a bud may or may not be fertile to develop and generate a branch permanently fixed or attached to the trunk.
Each bud at its first appearance forms part of the trunk, and the trunk together with all the buds on it constitute the first body in which each of the buds has its existence or the body to which each bud primarily belongs. The trunk therefore constitutes the immediate family to which each bud on it belongs, the trunk being the father or mother, the buds, are children. Some of the buds may be fertile, others may not.

A branch of the tree may develop out of a fertile bud, and that particular bud or root which produced the branch is inseparable either from the bud emanating from the trunk which it emanates unless the one is completely severed from the other. By producing the branch, the bud links up the branch with the trunk. In other words which in later life a person comes to have children, he or she becomes inseparable from either the immediate family into which he or she was born, or from the generation he or she raises; he/she therefore must of necessity belong jointly to the trunk and to the branch. It must be remembered that an infertile bud is incapable by itself of adding to the trunk.

It is most important that these concepts of membership of the family should be clearly understood in order to appreciate and apply the principle of regulating succession to property amongst the Adigo. We may summarize the principle as:

(i) The immediate maternal family of a deceased male or
female consists of his or her mother, the mother's brother and sisters and all who were descended matrilineally from the same womb or himself or herself i.e. their surviving uterine sisters (if any) in the case of a woman or her own children and uterine grandchildren, and in the case of a man surviving children of all his sisters, dead or alive, save that as long as their mother lived, such children of sisters would not normally be regarded as principal members of the said family: in short the immediate maternal family consists of all children of his or uterine grandmother and all descendants of his or her mother in the direct female line.

(ii) the immediate paternal family (Kulumeni) of a deceased male or female consists of his or her father, the fathers, brothers and sisters, and all who descended paternally from the same father as himself or herself, i.e. his or her surviving paternal brothers (if any), his or her paternal sisters (if any) in the case of a man, his own children and paternal grandchildren, and in either case, surviving children of all his or her paternal brother, dead or alive, save that so long as their father lived, such children of brother would not normally be regarded as principal members of the family.
MISCONCEPTION ON THE ADIGO MATRILINEAL FAMILY

Amongst the Adigo as earlier pointed out, the term "Family" may denote a large number of people grouped in one or another of two categories, or in a combination of these two categories, all of whom trace descent or are united by the belief in a descent from a common ancestor, male or female, however remote that ancestor may be. Among the Adigo matrilineal system, for the purpose of succession to and ownership of property the family denotes a group of all the members each of whom was fed and natured by a common sacred blood in the mother's womb. That common sacred blood runs through each of the persons lineally descended from the common ancestress in the direct and broken female line.

Being a peculiarity of the womb, that blood is passed on by each female member of the family to each child born of her. It however dies with every male member, as biologically it is impossible for a male so to feed and nurture a child in the womb. Consequently the maternal family which the Adigo call "Kuchetuni" is traced through the mother, the maternal grandmother, the maternal great-grand-mother, right down to the remotest female ancestors in the direct female line. This has been defined as "..... that family which consists of all persons lineally descended through females from a common ancestress"5.

As a male member of a matrilineal family is incapable of transmitting to his children the blood he receives from his mother,
his children do not possess that blood and therefore cannot be members of his maternal family; and since membership of the matrilineal family with a deceased person is one of the essential conditions which determine a person's right to succeed to or to a share in the enjoyment of property left by the deceased, children of a male member of a matrilineal family do not inherit their fathers estate, and are normally not entitled to be appointed successors.

Thus children are not considered members of their father's family, as far as having any right to his property. Thus concerning inheritance the maternal clans have been predominant, hence the Adigo have been branded a matrilineal society. However it is likely that patrilineal clan had at once dominated the affairs of the Adigo inheritance. Amongst the factors that have enabled many to see the Adigo as a matrilineal society are the rules of inheritance. It is important to have a closer look at the Adigo and establish the basis of matriliney in their rules of inheritance.

**The Development of Adigo Rules of Inheritance**

The Adigo people have often been referred to as a matrilineal society, more so because the maternal clans have been known to have dominated certain aspects in the lives of the Adigo. The maternal clans had an upper hand in decision making on matters pertaining to a clansman. Maternal clans have always exercised considerable
control over the clansmen, let alone taking responsibility on behalf of a clansman. The maternal clans thus paid blood-money (Kore) in order to bail out a clansman in trouble and arranged for the payment of dowry for a clansman's wife, let alone making decision on which clans they can inter-marry. Maternal clans have always been known to take the most active role in organising for the burial of a deceased kinsman.7

Within everyday life of the Adigo members of the same clan have always recognized themselves as brothers and sisters, fathers and mothers and so on. Other aspects that the Adigo people emphasise about the importance of the maternal clan are like inheritance. However, despite the dominance of the maternal clan in the affairs of the Adigo, the paternal clan has always exercised a considerable influence if not prevailing over the maternal clan in other aspects.

The Adigo can be matrilineral hence it has always been assumed that their rules of inheritance also follow strictly matrilineral rules. In a matrilineral system a man's own sons are members of his wife's lineage, not his own (for his lineage is that of his mother and his sister's); and the most closely related male in next generation, who would inherit his goods and titles at his death, was his sister's son. The relationship between a man and his sister's son (or to proceed in the opposite direction between a man and his mother's brother) was the key link in questions of inheritance. The logic of matrilineral system emphasised by the
Adigo is also that you always know who your mother is, if not your father.

However, a closer study on the evolution of the idea of inheritance amongst the Adigo portrays a system of inheritance not static and uniform rather one that has evolved over a long time and influenced by the socio-economic and political condition for that time. Nevertheless there seems to be a process of evolution in the ideas and rules of inheritance amongst the Adigo to-day. It is important to look at the history of the Adigo people, if we are to understand the evolution taking place in the rules of inheritance as practiced by these people.

The history of the Adigo is mainly intertwined in the history of the Mijikenda. The Adigo are thus incorporated in the history of the migration from Shungwaya and the settlement along the south eastern coast of Kenya and Tanzania. Though the rules of inheritance of the Adigo portray a matrilineal bias, it is not ascertained from the migration history which were the first clans to migrate from Shungwaya or if clans were there before the migration either. Oral history on the Shungwaya migration is today in conflict. The Adigo are said to have left Shungwaya under legendary leader known as Digore who also led the war against the Galla (Oromo) and the subsequent expulsion of the Adigo from Shungwaya.
The difficult in ascertaining the clans of these people is from the fact that they moved as one group under one leader. Clans amongst the Adigo started maybe during the migration and up to the time of settlement and formation of the Kayas. Probably at this time authority was through the system of age sets, a system which portrays male dominance amongst the entire Mijikenda people. With the absence of clans, transfer of authority and property which could be referred to as a from of inheritance was from father to son. This system is what the Adigo called 'Kuhala ufwaa' - "to take from the dead", where the eldest son, most certainly because he will be the first to be initiated into the next age set within the family, and so become the elder hence take the responsibility as the head of the family after the death of the father. Usually the father's brother would take care of the property in consultations with the mother of the children (widow).

In this 'Kuhala ufwaa' system of inheritance practiced by the Adigo, the symbolic tools of authority were the one's 'taken' (inherited) by eldest son thus as recognized "... a son would receive personal items that had been used by his father such as a knife, a chair, a hat and the bows and arrows". As recognized, it should be noted that the eldest son here did not only inherit, but also become the head of that particular household (Mudzi), who symbolized the father. The personal belongings 'taken' by the son symbolize authority in the Adigo tradition. Also recognizing the seniority factor in Adigo patrilineal inheritance McKay writes:
Theoretically where the son of the deceased is a minor the deceased’s eldest brother acted as guardian till the son was of age. Practically the uncle continued in possession till his death when the real heir might succeed.

Thus in reality succession to office and inheritance of property went to the most powerful and influential member of the family. Hence within the formed clans, the Kaya as well as within the homestead, seniority based on a monopoly over knowledge and material resources provided the principle of hierarchization. The head of the Kaya controlled and allocated land to various heads of homesteads (Midzi). The principle is also institutionalised in the age set organization, but confined to the individual Kaya. The men of the Kaya were formed into age set (rika) and they progressed corporately from childhood through adolescence to adulthood. The rika were in turn sub-divided into sub-rika and the three most senior of which constituted the senior elders (Ngambi) who collectively "ruled" the affairs of the Kaya for a definite number of years.

The claim that matrilineal inheritance amongst the Adigo was not the original system of inheritance may not be easy to establish bearing in mind the influence that matriliney has had amongst the Adigo. However a look at the origins of some clans gives a hint that matrilineal inheritance was an aspect of evolution and change that the Adigo were undergoing. A brief look at some major clans may reveal the fact that clans were not there in Shungwaya, and their emergence during the settlement was as a result of deeds by
individuals during the settlement, and due to slavery and famines.

The 'Achina Ngome' clan is a well known clan of the Adigo, it is reckoned to be the first clan of the Adigo. The origins of this clan is said to have been during the settlement on the Coast of Kenya. A group of Adigo men wondered from the hinterland to the sea shore where they saw the Fort Jesus in Mombasa. When they returned to their Kaya, and reported what they have found, they were subsequently known as the 'Abiri Ngome', the Chidigo word 'Biri' means 'to see', and 'Ngome' is the fort. Thus these became the people who saw the fort. Today, the 'Abiri Ngome' are just known in short as the 'Abirini' and 'Achina Ngome' denote later generations of the original 'Abiri Ngome' clan. Different from the notion that the Adigo are matrilineal, the Abiri Ngome (or Abirini or Achina Ngome) was a clan formed by the activities of men, it was also not there in Shungwaya, rather it came as a result of the settlement.

There are also the 'Ayombo' clans, these were also as a result of the migration. Amongst the Adigo, those of the Ayombo clan are the descendants of amongst the last group to settle along the East African Coast. The people are said to have travelled by sea vessels to the East African Coast. Thus they would anchor and go to the mainland, either looking for places to settle or looking for their kinsmen who migrated earlier. These were referred to as the 'Ayombo', a Chidigo word meaning vessel, since that was their means
of migration. Again the Ayombo clan did not originate from any prophetess as many of the matrilineal clans would be expected. These factors of clan formation may mean that matriliney was not dominant here. The influence and strength of matrilineal clan was as a result of factors during the migration, settlement and external influence. Inheritance at this time was not yet matrilineal oriented.

The known practice of 'inheritance' amongst the Adigo immediately after the immigration was known as "Kuhala Ufwa", to "take from the dead". This was a form of guardianship by the eldest son, or uncle (fathers brother) when the eldest son was not yet mature to take responsibilities. Family ties at this time were increasingly stronger and closer parternally, and inheritance was after the event of death, hence something of the burial rituals of the Adigo is intimately bound up with succession and inheritance.

If the elder's death is expected the members of his major patrilineages will remain at home waiting. When the elder actual dies, his sons -especially the eldest who is at home, reveals the death to the other people. Ideally it is the task of the eldest son of the deceased to direct the burial. If he is absent, the eldest son present should take charge, and he will be recompenseted for his expenses by the eldest son at a later date. The burial leader is strongly supported by his minor patrilineages, and major patrilineage members will also take part, as well as others in he compound who are not related by descent to the deceased; The
senior male member of the minor patrilineage, or the eldest son, sends out younger members to notify the adult male matrilineage relations of the deceased and also any prominent members of the dead man's clan who do not live too far away to come to the funeral. The eldest son also asks a number of young men of the compound, to dig the grave at the dead man's patrilineal graveyard (Vikurani).

Patrilineal kinsmen of the son in charge, if they are closely related, or if they like the son may sit about and sympathize with him as the funeral progresses, but the son is usually busy directing the funeral and receiving advice from senior patrilineal relatives as to how to proceed. The deceased's own matrilineal relatives normally take part in the burial usually providing some assistance in things needed to bury the deceased. There is very little known today of the pre-Islam Digo burial rites, thus the Islamic way of preparing the body for burial is practiced.

Space has been taken here to describe the burial of a male elder and to indicate the nature of subsequent funerals because it is through these rituals that the basic patterns of social relationships in inheritance and succession operate. Crucial features present in these rituals are:

1. First, the heavy load of ceremonial duties associated with burial and funeral ceremonies fall primarily on the eldest son, and also on the eldest sons of the other 'houses' of the
deceased and on the minor patrilineage. The matrilineage stands ready to perform these rituals, sparrowed on by the possibility of the vengeance of a neglected ancestor, if these persons fail;

2. Second, the deceased becomes an ancestor. As such he is sociologically not dead; rather, his role has changed within the domestic grouping and the patrilineage to which he belongs. He can become reincarnated and he can cause sickness amongst or and the living members of all his descent groups. The death of a man brings about a series of re-organizations in the domestic roles which take patterned forms. His transition from male elder to male ancestor is part of the pattern.

Property transfers following the death of a male elder, is such that moveable household goods or personal effects including boxes, clothes, spears, arrows are divided among the 'houses' a short time after the burial. This is usually supervised by the matrilineage - head of the deceased (Mwenehu Mwanamayo), a person who generally lives outside the dead man's compound, and often outside his village as well, and thus is not usually a fellow patrikinsman. The head may live at some distance and may appoint a younger matrilineal relative who lives closer to the compound to carry out the duty.

The value of the property to be divided is not great, and it
is not considered a very exacting task to be the divider, though there was a strong feeling among the Adigo that the division should be done according to customary practice and rules. This was based on the same ranking of 'house'. The 'house' of the eldest son gets the largest share, the next 'house' with the next eldest son, the second share, and so on; then houses with no sons determined by seniority of age of the eldest daughter of each 'house', receive shares and finally, 'houses' with no children, although these usually get a small share. For wives who did not have children, it was common for the husband, if he is sympathetic to give her special presents, and he may do so again when he thinks he is going to die, for he knows that she will receive little after his death. Further, if a man has a favorite wife he may give her special gifts if he knew he was going to die, though he is not supposed to do this, and if other wives discovered it they would be jealous.

If there are both males and females in a 'house' the divider gives the 'house' goods suitable for each sex for there are some goods which are clearly male e.g. spears, others such as water pots which can be used by daughters. If there are only females in a 'house' he sees that the house receives only those items which females can use. A 'house' with more children than another does not necessarily get a larger share than another 'house' it depends upon the usual ranking of the 'houses'.

During his lifetime the husband is supposed to treat his wives more or less equally with respect to gifts, provision of
farmland, sexual relations, and so on, though the first wife usually has a somewhat better position than others. In the division of the deceased's personal effects there is again the idea of roughly equal treatment for all the 'houses' except that priority is given to the 'house' of the eldest son, which is not necessarily the 'house' of the first wife. The burial of the husband and the division of his personal effects is a reminder of the inheritance conflict among Adigo wives between position based on order of marriage and position due to birth of children, of the success or failure of the wives in childbearing, one of the chief status-symbols of the Adigo. It is a time of reckoning of what the domestic grouping has accomplished up to the time of the husband's death.

The division of the personal effects is said by the Adigo to be within the patrilineal grouping, and to be on essentially patrilineal transfer, rather than merely husband - 'house' inheritance. The Adigo feel that it is desirable that a non-patrilineal relative acts as a divider since he will not be subject to bias or influence in the manner that a patrilineal relative of the deceased might be. Maternal inheritances amongst the Adigo are changes in the rules of inheritance that these people have experienced due to factors like famines, slavery and colonial policies. These factors and how they have influenced the Adigo rules of inheritance are the subject of the discussion below.
FAMINES AND THE FORMATION OF CLANS

Disasters such as famines can be quite disruptive by tearing apart societies. They put great stress on local institutions and can threaten the very existence of a society. Famines can also be constructive or desirable as they create new forms of life. At times famines provoke unusual unity among members of a household, and also often inspired a breakdown of traditional social values. They sometimes trigger off human advancement due to the adoption of new ideas and building up new institutions. Famines therefore have varied social, economic and political implications. Societies affected by famines at the same time may possess a repertoire of adaptive mechanisms which lie dormant in good times and stand out in their boldest reality in a crisis. Thus social roles within a society are mobilised into action, sometimes there are structural changes to better manage the crisis.

Famines have been a major historical factor in the evolution and change of the Adigo rules of inheritance\(^\text{16}\). Perhaps famines have played a more significant role in determining and influencing the course of historical events pertaining to inheritance amongst the Adigo than generally assumed. This is so since scholars have tended to have thoroughly debunked those once popular myths of ethnic group insularity. While evidence from these myths might be adequate, few attempts have been made to study these myths much deeper.
However famines that have occurred amongst the Adigo provide interesting case studies of their implications on the social organization of the people. The history and events of famines as explained by the Adigo is certainly a history of desperation made necessary by a series of natural catastrophes culminating in famines of breadth and severity unprecedented in recorded history of the people. Under these pressures, the Adigo society devised a series of innovations affecting inheritance through Kinship and marriage.

The Adigo rules of inheritance have been greatly influenced by famines. As a result of famines many Adigo clans were formed which directly influenced the rules of inheritance from patrilineal bias to matrilineal and dual inheritance. The clans formed during this period were either through sub-division of majors parti-clans or through adoption of aliens displaced by the famines. Famines or varied magnitude affected the Adigo people during the period 1836 - 1947 and probably earlier. Various famines have been recorded which occurred within the Coast Province of Kenya today. These famines were caused by amongst other factors drought and pests. Thus we have famines like Maere 1836 - 1838, Chingo 1857 - 1862, Mkufu (1889), Bom-Bom 1894, Magunia 1898, Memarongwe (1910 - 1912), Faini (1914 - 1915) Dzua Bomu 1921, Nzige 1934, Ngano 1943 - 1945, Kabushutsii 1947 and the recent recorded one named Makusudi 1979.

Amongst the clans that were formed due to the events of famines is the Achina Kalangwa clan. It is said that during one of
the early famines there was need to store enough seeds anticipating enough rainfall in order to plant these seeds. These seeds were kept under the care of a woman, who was to ensure that they were not used for any other purpose other than planting. The effects of the famines was diverse, there were no food and the weak did not survive. The woman could not endure the hunger and see her children dying. In order to save them she cooked the seeds for her children. Out of rage, she was sent away from the other members of the family together with her children and was disowned by her original clan. She and her descendants were named 'those who roasted the seeds' (Chidigo: Achina Kalangwa) and thus was formed the Achinakalangwa clan from the descendants of the matriarch. It is from this fact that the children could not 'hala ufwaal' from the patrilineal clan, because they were disowned. They had therefore to depend on what their mother could give and what she left after death.

Here was started the idea of matrilineal inheritance, and also a clan that emphasized the maternal side more than the paternal. The recognized ancestor was the mother rather than the father. Because of famine therefor, there was formed a clan that emphasized the matrilineal lineage since they were disowned by the patrilineal lineage because of the actions of their mother. No doubt offsprings here looked only at the matrilineal side for almost everything inheritance being one.
The 'Achina Nyiro' is another Adigo clan that was formed due to activities of people during the famines. The descendants of the Achina Nyiro were nevertheless prophetess, this time it was members of one patrilineal group. It so happened that these people were not so much affected by one of the famines, because they had kept for themselves enough food supplies. While others went hungry people in this household always had enough, so they were called 'those who were over fed' (Nyirwa is to over feed in Chidigo), the adjective, Achina Nyiro or descendants of the people who over feed during the famines. The Achina Nyiro were originally amongst the Ayombo clan discussed earlier, so they are a sub-clan or the Ayombo.

The 'Achina Chinyavu' clan also came about as a result of famines. Again a woman was widowed during the famines. She was left alone to take care of her family. This keeps in mind that famines at this time had greatly weakened social bonds and the need for survival was no longer communal but individual. This poor mother was always participating in activities like hunting with men. However, due to male dominance of the act of hunting, she was always given a share smaller than others. She was always complaining. It is from these complaints that she was named together with her descendants as "those who complained of being given a small piece of meat" - Chinyavu is a Chidigo word derived from 'Chinyamafu' meaning a small piece of meat. The Achina Chinyavu clan amongst the Adigo are the descendants of that particular matriarch.
Major clans of the Adigo were thus formed because of their activities during the migration and settlement and the famines. It is evident that during the migration and at Shungwaya before settlement, the Adigo had not known one another by clan name. The basis of matrilineal inheritance as the original form of inheritance is disputed by this evidence. What is of concern here is to look at how famines emphasised a change from patrilineal to matrilineal.

**CLANS AND A SHIFT FROM PATRILINEAL TO MATRILINEAL INHERITANCE**

The rise of Adigo matrilineal clans was thus through naming individuals from what they did incorporating into the Adigo aliens displace by natural calamities such as famines, and marrying from other ethnic groups thus incorporating these people into the clan matrix and form a sub-clan. Nevertheless, his does not explain how inheritance came to be matrilineal from patrilineal. These changes occurred latter on due to a shift in the importance between the matri-clan and parti-clan. Again events led to the drastic change of ideas on inheritance.

Famines left many of the Adigo and generally the Mijikenda people weak and desperate. They were prone to Arab attack and taken to slavery. During the famines many Adigo were reduced by pawning themselves or their children for food. While it is not clear which famine the Adigo sent their children in order to get food, the father would give out his children as Kore. It is said
that one man did exactly that and gave out his child to pay for 'Kore'. Incidentally the marriage contract had not been completed though the father was leaving with his children. The mother and her brothers objected to this because the child was still the 'property' of maternal clan. The father was thus in a dilemma to be sold himself or produce someone to bail him out. Luckily his sister managed to sacrifice her child and bailed out her brother.

This incident radically changed the importance of the children to their father, mostly it was seen that the children will not always help the father anymore, especially so when certain marriage rites were not completed. The nephews and the nieces who could always save their mothers' brothers gained considerable importance. Thus whenever one was expected to pay 'Kore' because they had killed someone, or they were indebted they would rather give their nephews and nieces instead of their own children. These were the ones who 'saved' or bailed out their mothers' brothers. Sons were no longer useful to their fathers. Inevitably the importance that the father had initially place on his sons weaned away since they could no longer be useful.

During the first and second world wars, the British demanded that the Adigo should send their sons for duty as porters or as soldiers. This, they would do if the parents could not be enlisted themselves. Again the aspect of 'who bails who out of trouble' arouse. The idea that a member of a clan should be the one to bail ones clansmen was again emphasized. For those who did not serve
themselves, and had nephews they would send them instead. Sometimes the British insisted that sons or one's own children be sent. Both sons and nephews were sent in some cases. Thus:

At times sons would just be pin-pointed at home and they were taken to fight in the wars.

Thus for the father to give out his nephew it was because he was giving out a member of his clan as 'Kore'. Also the fact that a son would be taken forcefully by the British, it was a form of a patrilineal version of 'Kore'. Hence another factor that brought about a change was that in which the sons claimed to be as important as the nephews because they were also given out as 'Kore'.

The basis of Adigo matrilineal inheritance is that the nephews would bail out the uncle in times of disasters, because they belonged to the same clan. It was thought fair that the nephews benefit from those they can bail out, hence they inherited from the mother's brothers. It is a form of a compensating relationship between mother's brother and the children. It is basically a change on who is important in the family hierarchy. Here the family is now composed not of the father as the head of the household (Mudzi) but of the mother's brother as the head of the matrilineal clan. Another factor that emphasized matriliney amongst the Adigo was slavery.
SLAVE TRADE AND ITS INFLUENCE ON INHERITANCE

Slavery and slave trade existed along the Kenya coast prior to the 19th century. Its scope expanded greatly as a result of the expansion of trade and agriculture. The recruitment of slaves, that is the enslavement of persons took place in many different ways. One important means of recruitment was that people were born into slavery, out of slave parents. Other mechanisms of capture included warfare in which the slaves resulted as prisoners of wars and booty, raids aimed particularly at the capture of slaves but also other booty; kidnapping on an individual level, court proceeding in which persons were enslaved for violating rules of society; witchcraft accusations in which persons were enslaved for carrying on illicit supernatural activities or sale of ones kin in the wake of famine or epidemic. These mechanisms were of varied importance at different times and climes.

There are no major slave raids that have been recorded in the land of the Adigo. Nevertheless a considerable number of Adigo were taken into slavery especially to work in plantations. Since 1840's there had always been at one place or another in the hinterland the petty type of warfare which produced slaves. In the course of such wars men, women and children were carried away and villages burned. Thus of 145 slaves freed in Kwale District in 1898, fifty-five were Adigo, nineteen were Yao, eighteen were Shambaa, ten were Zigua, three were wa-shenzi (Bondei) and three were Nyasa. When famines occurred either because slave raids
destroyed crops and people were taken away for the necessary labour force, families sometimes sold their children and sometimes gave themselves into slavery, as this was reasoned to be the best guarantee available of food and security. Many Adigo people are reported to have pawned their nephews into slavery in order to stave off starvation²⁰.

It was impossible for the Adigo society to have accommodated to the effects of the slave trade without undergoing serious damage. Examples amongst the Adigo indicate that their social system emerged as a consequence of the slave trade which seemed to have depended upon the entrance of intrusive cultural elements into this particular region; the disruption, by slave traders and other factors of the indigenous political and social systems; and the relatively permanent settlement of new slave merchants and their locally recruited minions. Given this intrusions; disruption and settlement, a new stratified social order began to develop, further fragmenting Adigo society and leading towards the emergence of distinct cultural groups from amongst the detribalized offsprings of slavery.

Slavery reinforced the social order amongst the Adigo people. Structures of Kinship, status and seniority were transformed. In Kinship, slavery influenced the rules of marriage and patterns of lineage structures, and in seniority, the pervasive chronological categories of age sets distinguished by ritual initiations were transformed. The Adigo cases provide a straightforward example of
slavery reinforcing a social order though in other areas slavery did more to corrupt, subvert and otherwise transform kinship systems than it did to reinforce them; these systems were not corrupt by slaveholding amongst the Adigo rather the corruption was as a result of the societies need to transform and fit with prevailing situations.

Because of slavery the Adigo matrilineage structure is further developed and reinforced, at the cost of a minor increase in the social distance between husband and wife. In the Adigo matrilineal system as stated earlier a man's own sons are seen to be members of his wives lineage, not his own (for his lineage is that of his mother and his sisters); and the most closely related males in the next generation, who would inherit his goods and titles at his death were his sister's sons (or proceeding in the opposite direction between a man and his mother's brother) was the key link in questions of inheritance. The logic of the matrilineal system emphasized by the Adigo also is that you always know who your mother is, if not your father.

Slavery substantially emphasized patterns of matrilineal inheritance. As explained earlier such calamities like famines aroused the need amongst the Adigo to establish a social system to cope with the disasters. During the famines and slavery it was important that one was able to save the others. Activities during famines emphasized matrilineal inheritance because many Adigo pawned their nephews into slavery in order to stave off starvation.
as reported ...

When nephews (or nieces) were sent to Mtongwe they would have to go and work there and the father of the boys or girls had no say in the matter\textsuperscript{21}.

While the fact remains that it was the nieces or nephews given out, it should be noted that emphasize here is on 'who saves who' during times of calamities and disasters. The nephews and nieces from the fact that they belonged to the same matrilineal clan as their mothers' brother (Chidigo; Aphu) were given out to save or bail out their clansmen. In order for the elder clansmen to escape slavery an element of 'Kore' (bloodmoney) is given in the form of niece or nephew. These practices that were enhanced by famines and slavery did nothing amongst the Adigo other than emphasizing the continuity of matrilineal inheritance.

Were it that the clans did not exist and society remained one where patronage was based on seniority of age, no doubt fathers would have had enough control over their children. They could have been the one's who would, have suffered in the form of being taken to slavery, or for the wars; and with their subsequent return or possible freedom, they would have been in a better position to demand a share in inheritance. Because it was the nephews or nieces who suffered, they had every right to demand inheritance from their mother's brother's property as their right in the same way as it was the right of their mother's brother to pawn them when need aroused. The nephews thus displace the sons in strength of

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their claim to inheritance.

Marriage to slave wives amongst the Adigo, or women displace by slavery activities was responsible later on in the process of change, for again it brought the corruption of matrilineage. The children by slave wives had no mothers' brother standing in opposition to the father. Also since a slave woman had no known matrilineal lineage except that of his husband a man's son by slave wives would be in his own lineage or in no lineage at all. Thus for a man to marry slaves provided more than the advantage of his personal power over her. It also gave him a new control not to be shared with his brother or elders over the labour of his offspring and inheritance of his goods without breaking matrilineal descent rules of inheritance. Again slavery creates and reinforces paternal supremacy amongst the Adigo. However, here the concept of patriarchy underwent definition. The initial one meant that community leadership resided with the senior male - the patriarch, and was maintained by a consensus of the community, but now the patriarch's position is defined more by raw power than seniority.

Slavery thus brought about changes in the Adigo rules of inheritance in that it gave rise to clans and changed at a later stage the ideology of inheritance due to the situation of the time. These changes might not be the only changes which took place at that time and conceivable not even the most important changes that this society underwent. Other changes are however beyond the scope of our study. Changes brought by slavery in the Adigo rules of
inheritance not only verify a succession of transformation in Adigo life but demonstrate that these changes were part and parcel of the transformations of the modern world. Slavery has been abolished for nearly three generations. Yet its great extent in earlier days and the repeated and tumultuous social changes which it brought about over a three century period cannot be ignored as a factor of influence in the Adigo life today. Effects of slavery still mark the social realities of the modern Adigo society.

The combination of all these factors have shown amongst the Adigo, a body of law developing, at a time that is still recent, without deliberate guidance from either legislator of authorities, colonial or indigenous. It is this law thus developed that we shall discuss in our next chapter.
1. Interview, Juma Keke (Galu) 11.1.1992, Hamisi Mwachidegere (Waa) 15.1.92 and Bakari Kufaa Mwadzowa (Waa) 15.1.1992


5. Interview with Said Rimo 12 Oct. 1991


10. T.T. Spear op cit p.7

11. Kuhala Ufwaa, may as well include the widow marrying one of the deceased brothers.

12 D.C. Sperling op.cit 135

13. W.F. McKay op.cit p.136

14. Many of these stories about Adigo clans are from interviews conducted with Adigo sages from various areas where Adigo leave today. Their names are given in appendix III. However special mention is made here of Saidi Rimo Mwagumbo (Ukunda), Juma Keke (Galu), Khamis Mwachidegere (Waa) who seemed to be precise with the information on Adigo clans.

15. This usually gave rise to women owning property individually which later gave rise to matrilineal tendency towards inheritance.


17. See T.T. Spear op. cit p.7
Law is such a common word that most people in different cultures are not likely to seek its meaning in a dictionary. We may think that they know what law means, even though they show ignorance of specific laws. Law may be accepted in a society as part of its social system, in a society's dealing with fellowmen it may equate law with ordinary politics with government and religion with God.

For jurists who designate their disciplines as social science, the task is less simple. They are confronted with problems of deduction and generalizations when defining law. Thus they must use familiar concepts and probe beyond current verbal symbols to reach axiomatic meanings. Hence they ask are politics, religion, and law conventional ethnocentric categories of western intellectual development, rather than analytic constructs of general validity? Are they reflections, not of any universal validity, but of our pragmatic culture-bound methods of organizing people and behavior? Do they provide any units for systematic empirical answers to those questions from different societies and provide meaning of law.
CHAPTER FIVE

THE ADIGO CUSTOMARY LAW OF SUCCESSION

LAW: AN OVERVIEW

Law is such a common word that most people in different societies are not likely to seek its meaning in a dictionary. People may think that they know what 'law' means, even though they admit ignorance of specific laws. Law may be accepted in a society together with government and religion as part of its social equipment; in a society's dealing with fellowmen it may equate law with order, politics with government and religion with God.

For jurists who designate their disciplines as social science the matter is less simple. They are confronted with problems of comparisons and generalizations when defining law. Thus they question familiar concepts and probe beyond current verbal symbols to deeper cultural meanings. Hence they ask; are politics, religion, and law conventional ethnocentric categories of western intellectual development, rather than analytic constructs of general validity? Are they reflections, not of any universal reality, but of our pragmatic culture bound methods of organizing thought and behavior? Do they provide any units for systematic comparisons? Answers to these questions from different societies give a perplexing meaning of law.
In studying societies and their understanding of law there has been much controversy over definition, in terms of the relative emphasis to be placed on function, structure or ideation. The functional emphasis served to distinguish among general principles of social control; functionalist analyzed the operation of sanctions (moral and ritual as well as 'legal') behind rules of conduct, rather than the structured units through which they were affected. Structurally, the legal system was conceived as embedded in corporate groups whose boundaries might be deduced by regulations of membership, the alignment of these groups vis-a-vis one another provided the broad framework for social behavior. The ideational dimension was derived from interpretations of justice, rights, wrongs and obligations of people towards one another and towards those selected meaningful things that the property constituents of their society.

Law can be considered as an inclusive rubric for all rules of conduct. Sometimes it can be narrowly defined as rules enforced by a specific and limiting procedure. If defined in narrow legalistic terms as that which is recognized by courts, or as social control through the systematic application of force by politically organized society, the existence of 'Law' is denied in many societies. When such a denial of law occurs, it does not however deny the maintenance of order in a society by other mechanisms, since "... some simple societies have no law although all have customs which are supported by sanctions".

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Societies may not have separate law making body, no courts, and specific legal machinery for enforcing rules, yet they carry on a regulated existence and are able to cope with disputes without self-annihilation. Such societies apparently continue to operate effectively through other types of organization and control. In societies that are relatively undifferentiated the component units of the structure are multifunctional. Multifunctional in that they serve purposes we commonly define as religious, political and legal. Multifunctional units are also more frequently based on the limiting principles of status - descent, locality and age, than on contracted relationship established on the basis of individual training or interests. Even when their structures are consciously separated, they may operate within a single conceptual framework of reference, so that the ideology of religious activity may act as a legal code or a political dogma. So is the law of the Adigo.

**JUDICIAL PROCESS OF THE ADIGO**

Traditionally Adigo law was expounded and applied by the Ngambi elders. In terms of rank they were ordinary men who had no ascribed authority or status; their position depend on skill in reconciling disputes and on 'knowing the society well'. People would patronize them for these special abilities in much the same manner as a skilled herbalist or a harp player might be patronized.

Every Adigo accepted in principle certain codes of law, usage and convention. Political and legal relations were scarcely
differentiated. As competition is considered inherent in the nature of man; Adigo clans competed for territory and power; families and individuals for cattle and personal influence. There were no recognized agents for peaceful settlement of disputes between clans.

Within the clans the most specific procedure for dealing with, and lessening recourse to violence, was provided by appeal to these individual men who were sufficiently recognized to be specifically designated. Despite their position being based on personality, knowledge and ability, they were not rigidly defined nor attached to any corporate body, and carried no executive authority. Yet, their opinion was taken as expressing a general consensus, which, if not accepted by a disputant, permitted the other party to seize his due with the approval of the community. Paradoxically, in a society emphasizing the principle of descent, the main position of legal significance was hereditary.

In the Adigo traditional system of law, the decisions of the Ngambi elders were not backed by force, but by the moral consensus of the community. The promulgation of a decision gave the successful disputer an assurance of his legal and moral right, and if satisfaction was not made then, one might forcibly seize his due, with the community's approval. It was largely at the Ngambi level that the Adigo began to evolve new codes of rules about inheritance.
Disputes over succession to an estate may arise between members of the succeeding group or between them and non members of the group. No matter who are the parties to succession disputes, the Adigo are reluctant to engage in a protracted succession dispute or, in fact, to be involved in one at all. The reasons for these attitudes are varied. Among them are superstition, fear and respect for the dead. Most Adigo feel it is disrespectful to a deceased person to dispute over their property. The reasoning being that, people should not quarrel over wealth arising from a sad occasion, the death of a person. It is always thought more important and honorable to mourn the dead than to dispute over property left behind.

The underlying spirit of administration of estates is that of the alleviation of disputes through reconciliation; the objective being attainment of family unity and peace. The rules of the distribution of property can sometimes be so flexible to allow administrators to by-pass many causes of disputes. While an adjustment of the rules of distribution within the broad general principles may spark off disputes, administrators have, on the whole exercised their discretion in such a way that disputes are likely to be avoided than created.

Every effort was made to nip succession disputes in the bud. It is the duty of the family and elders of the society to bring about understanding between the parties. Disputes must not be made a public affair. The result of this being a handful of succession
disputes amongst the Adigo reached the courts. It is also a common cause of complaint by the elders (Ngambi) of a kindred that their 'power', and, in consequence, the family solidarity, had been severely undermined by some of their members referring cases to courts. Disputes over inheritance are usually settled by the settlers of the kindred concerned, and if they were unable to settle them, they would refer them to a meeting of the whole local group.

Other reasons for paucity of succession disputes are that, until recently, people did not leave much property for distribution. The bulk of wealth was land and the practice was that it was not divided but inherited as family property by the group of successors, care to this land being the responsibility of the head of the family. Also, the oral form of testamentary disposition of property in customary law, as opposed to testamentary succession by written rules did not occasion the problem of construction of will and the ascertainment by courts of a testator's intentions for his written wills. Arguments as to the meanings of words, particularly technical words of limitation and proportions (shares), do not arise in the Adigo customary law.

THE ROLE OF CUSROMARY LAW OF PROPERTY AND SUCCESSION AMONGST THE ADIGO

A discussion of the functions of the law of succession in any society cannot present a complete picture unless it also refers to
the functions of the law of property. One of the most important property amongst the Adigo is land. Land forms the bulk of wealth and group ownership of land was a characteristic feature of land tenure in the region. Thus the birth of a person into a group entitles him to succession rights in the ancestral property owned by the group. Thus within a family, the succession laws guaranteed property and succession right to land to most of its members at birth, irrespective of their parents' wealth and no matter how little it is worth.

By its rules of management and succession to land, the Adigo customary law, has ensured that ancestral property is not wasted by the living members of the owning group. Sometimes strict rules are adopted to achieve this. About ownership of land some informants noted "... land belonged to a vast family of which many are dead, few are living and countless number are still unborn". Hence the protection of this heritage is understood by the Adigo in the background that there are those who are born and those who are still in the womb, they will require means of support whereof, the family land and possessions must not be wasted or squandered.

Group property ensured group unity, solidarity and inter-dependence amongst the Adigo. These characteristics were more significant in the not-so-distant past of the Adigo when might and strength rather than the rule of law were instruments for the preservation of life and property, not only of the individual but of the community. A community must be strong enough to resist
threats from its neighbors. As a general principle, the succession laws of the Adigo ensures that males derive property and succession rights in the family or community to which they belong.

Because property and succession laws have evolved in such a way as to promote family cohesion, the laws deny daughters succession rights to land, in particular and to chattels to a lesser degree. The exogamous system of marriage removes daughters from their parents to their husbands' family. The result is that daughters are not regarded as permanent members of their fathers' family and for that reason are denied rights of succession to a man's property. In the case of an unmarried daughter, the possibility of a future marriage subjects her to the same consequences as if she were married. In her husband's family, the possibility of a divorce and the fact that she is not a blood descendant of her husband's family deprive her of succession rights in the family.

A distinctive characteristic of the Adigo customary law is the principle that a successor inherits not only the assets in an estate but also the liabilities in the estate. This means that the successor assumes the duties of the deceased dependents. In this way, customary law of succession ensures that a deceased's duties and obligations survive him. Thus a successor is liable to pay all debts owned by the deceased even if the estate is insufficient for discharging the debts.
We should also note that intestate succession is more frequent in customary law than testate succession. The result being property of the deceased person is succeeded by his successors according to the rules of intestate succession. In testate succession, property may be succeeded to by anybody to whom a valid bequest or demise has been made. Thus customary law of succession in which testacy is the norm, ensures that only a deceased's successors within his lineage, and not outside it stands to gain or lose materially from the death of a member of his lineage.

**The Estate Amongst the Adigo: Categories of Heritable Property**

An understanding of the categories of property which constitute an estate and the nature of the rights and interests in them is essential for an appreciation of the law of succession of the Adigo.

No doubt the definition of the term 'property' may be an abstraction of an abstraction. Informed cognition occurs that an object belongs to X. The fact that the cognition occurred can be called 'property'. But when we speak of a man living property by will, the word 'property' means the asset, what was called an object above. For our present purposes a man's property will mean nothing but his asset. The heritable rights constituting an estate may include rights of succession to title and offices held by the deceased in his lifetime. Within the family it may include the
status of the headship of a family - either headship of a deceased's household comprising his children and wives, or the headship of the extended family. The headship of a family is intimately connected with the administration of estates. However in our study we are least concerned with succession to status. Our concern is on the broad and conventional classification of property into immovable and movable.

**IMMOVABLE PROPERTY**

It is common amongst the Adigo to find that ownership of land, on which trees and buildings stand, and the ownership of or the usufructuary rights in some of the trees, crops or buildings are vested in different persons. This situation arises from the practice by which a land owner may choose to sale or pledge only the economic trees on his land, or he may lease his land while retaining the usufructuary rights over the trees on the land. The significance of this distinction in the rules of succession is that, since land and the objects on it may belong to different persons, the successors to these respective owners will inherit the property owned by their deceased relative. We therefore subdivide immovable property into land, trees, crops and buildings.

**LAND HELD ON PLEDGE**

The pledging of land is common amongst the Adigo. It consists in the transfer of land from the pledgor to the pledgee as security
for a loan or money. The pledger delivers the possession of the land to the pledgee who enjoys usufructuary interests in the land until its redemption. The pledgee appropriates the product accruing from the land as his interest for the loan. The interest so derived does not diminish the capital. A pledge in customary law differs from a mortgager in the general law, in that a mortgagor retains both legal title and possession of the property until he makes default in the payment of the money, at which event the mortgagee may exercise his right of foreclosure. In the Adigo customary law, the possession of the property passes to the pledgee while the legal title or ownership of the property remains with the pledger. The mortgage type of transaction in Adigo customary law is rare.

A detailed treatment of the law relating to the pledgee is outside the scope of our study. We are here mainly concerned with indicating the nature of heritable rights and interests in a pledge transactions. We may, however point out that the payment or tender of the money to the pledgee determines the pledgee's interests. This money may be paid to his successors, and may even be paid by the pledger's successors. This is one of the consequences of the maxim in customary law that 'once a pledge always remains a pledge'.
LAND HELD ON LEASE

There are two types of lease in the Adigo law. One type is granting of land to a tenant on payment for a fixed period or on a year to year basis. Subsequent renewal depends on the mutual agreement of the parties. The second one is granting of land for an indefinite period on payment of a token sum of money or gifts. This type of grant is made for the building of house, and for agricultural or industrial uses. The permanency of the grant is essential to the grantee. Therefore, provided the grantee uses the land according to the terms of the grant, does not attempt to alienate the land as distinct from the fruits of his labour, and pays the agreed yearly rent, the grantor cannot at will terminate the tenancy. A grantor will not be allowed to eject people who have spent a considerable amount of money in developing land granted to them, provided the development is limited to the agreed or to other uses ancillary to it.

THE CREATION OF FAMILY PROPERTY

Kinship is the major basis of land-holding over many societies. It is particularly so amongst the Adigo. Societies are organised into kin groups known to social scientists as 'lineage', that is to say, groups consisting of all the descendants of a particular ancestor through a determinate number of generations. A number of related lineage (or lineages which believe themselves to be related) constitute a 'clan', and we may find a single
village or group of villages occupied by a clan in this sense. On the other hand, a large lineage may consist of a number of segments or sub-lineages, so that it is not always easy to distinguish between a 'clan' and a large lineage.

Kinds of immovable property that can be held by a family include land - both residential and farmland; trees - economic, timber and other trees, crops, buildings - living houses and houses put to other uses.

Family property amongst the Adigo is created by the operation of the rules of intestate succession. A deceased's property, on his death intestate, becomes the family property of his successors until the property is divided amongst them, and if it has not been disposed of otherwise. Before death 'self acquired land is not turned into family land though the owner might have been kind enough to allow some of his family to live on the land and enjoy the use of it.

Another method by which family property arises is by the making of wills. A person may, in a will make under the general law, constitute some of his property as family under customary law. Family property is thus created by a declaration to that effect in an oral will by an owner of property before his death. It is respectfully submitted that such dying declarations do not, in customary law, constitute property as family property unless such property would have devolved otherwise on intestacy, but for the
declaration. A declaration of what is already provided for in the law is superfluous. A dying declaration in this respect is relevant only where property is given to one or more specific persons to the exclusion of others who would have been entitled to it on intestacy but for the declaration.

THE NATURE AND EXTENT OF A MEMBER'S INTEREST IN FAMILY PROPERTY

As noted earlier, the ownership of family property amongst the Adigo is the corporate body of the family and that a member of the family can only acquire possession and subordinate interests in the property. A member's interest in family property terminates at his death and does not form part of his heritable estate. Thus there is no question of a deceased leaving behind him an estate in the family property for his children to inherit. They inherit as members of the family, not by virtue of any estate left behind by their father. As a matter of fact the deceased will have left no estate in the family property. Nor could he have left any such estate, because up to the time of his death he had no separate and alienable estate in the family property.

A member cannot, therefore validly bequeath his interest in family property to anybody, not even to his children. The general principle is that the right of a member to make use of and enjoy family property never ripens to ownership. The occupation of family land does not pass ownership of the land to the occupier. When one is allowed to live in a family house, he has only personal
occupational right which can never ripen into ownership. A member lacks the power unless, with the consent of the family, to sale, mortgage or lease his interest in family property. Neither can he assign his interest in individual family property in payment of his debt nor can it be attached by his creditors. A member has the right to live in family house, but if he lives outside it, he cannot let to tenants any rooms which were allocated to him. The rooms will be re-allocated to other members of the family. It will be seen that these examples reflect different aspects of the same general principle that a member's interest in family property is not co-extent with the right of ownership of the property which is vested in the family.

**HOW INDIVIDUALS ACQUIRES LAND, TREES AND CROPS**

An individual may acquire the totality of interest in immovable property by gift, purchase or inheritance, and, in the case of trees and crops, by cultivation as well. Houses may be built by their owners, as well as acquired through one of the ways above. Some trees are self-sown. The general rule is that ownership of such trees follows that of the land on which they grow.

It is important to emphasize that inherited land becomes the individual property of the successor if he is not obliged to utilize it with any other person and if the principle succession under which it was inherited confers on the successors the power to
alienate such land without the consent or authorization of anybody. A person may be the sole successor to a piece of land, nevertheless his interests are only for his lifetime and, at his death, the land passes to another member of his lineage. Thus the mere fact that a person enjoys alone, to the exclusion of other members of the succeeding group, the interest in an ancestral land or building (for example their father's living house), does not, by itself, confer on the successor unqualified rights in the property. The eldest son in a family has, amongst the Adigo, a life interest in some economic trees and pieces of land, other than the father's living house. Such property is still family property until is partitioned by the successors, in the case of land, or shared in the case of trees.

**PRINCIPLES UNDERLYING THE DIVISION OF THE ESTATE AMONGST THE ADIGO**

The main patterns of distribution of property amongst the Adigo corresponds to different methods of reckoning family relationships in the succeeding group. There are, therefore, the patrilineal, matrilineal and bilineal families relationships. The patrilineal is the pattern in which a man's estate is inherited by his children and in lieu of his children, by his patrilineage. In a matrilineal system, the matrilineage is entitled in the estate in the exclusion of a man's children, and his patrilineage. In the bilineal pattern each of the lineages, succeeds to different parts of the estate. The succession rules of the Adigo family which is patrilineal is not however, as homogeneous as is one which is
bilineal, especially as regards the choice of successors within the patrilineage. Sometimes the Adigo may sub-classify the patrilineage family, following the patterns of choice of the succeeding group. For our study we shall adopt a classification of inheritance based on both the pattern of distribution of the estate and the choice of successors. The result being following classification of patrilineal, bilineal and matrilineal families. We shall further discuss the nature of these families below.

THE PATRILINEAL FAMILY

In a polygamous Adigo family, an individual owner of property may have a number of wives. Some of the wives may have male issues as well as daughters. Some may have only daughters and some may have no issues at all. During the lifetime of an individual, all his self-acquired property is his and does not become family property, although he may be making use of the property with his children and wives. A man and his children may be described as a family. It is important to note that within each Adigo polygamous family there are sub-families each comprising the father, his wife and children. This organization of a polygamous family into sub-families is important in the distribution of property at intestacy.

At the death of a man, his property is by the operation of the law of intestate succession, vested in his children as a corporate body. The children of the male members of this owning group become members of the group as they are born.
We earlier noted that a patrilineal family is that in which its members run through all descendants of a common male ancestor in the direct male line and is transmitted by each man to his children - male or female. Membership of the family cannot be transmitted through a woman member and consequently her children are not members. The owning groups amongst the Adigo are male-biased in that female members have no rights of succession but are entitled to be maintained from the property by the male members. Wives of the member of the owning groups have no succession rights in the property on the ground that they are not descendants of male members of the family.

Thus a 'family' may comprise members of different generations of the family. The number of generations of members of a 'family' will continue to increase (ad infinitum) as long as the property is in existence and still belongs to the family. After a partition of the property or distribution in case of chattels, each member becomes the owner of his or her share. It must be emphasized that the self-acquired property of an individual remains his own freely disposable property, so that at his death it revolves on his own children as family property and from this point, a new family owning group starts to grow. Thus at the death of a male member of the original family, his children will constitute a new family in respect of his self acquired property. By applying the above principle, the owning group of every property can be determined. A man may therefore have rights in more than one 'family property' within the same extended patrilineage. A patrilineal family is
normally a residential group and this facilitates the administration and use of the family property by its members.

**THE MATRILINEAL FAMILY**

The matrilineal family consists of all persons male and female, linearly descended in the female line from a common female ancestor. Membership of the family is transmitted by each female member of the family to her male and female children, but the children of the male members will in turn belong to their mother's matrilineal family. A fiction has been evolved amongst the Adigo whereby children of a man by a woman married from a patrilineal society becomes a member of their father's matrilineal family. The wife also becomes a member of her husband's matrilineal family and therefore becomes entitled to succeed with others to her husband's property.

This is the only instance in either the patrilineal or matrilineal families of the Adigo where a wife has succession rights in her husband's property. The reason for this custom, the matrilineal families explained above is to enable the wife and her children to belong to an existing matrilineal family, for since the woman comes from a patrilineal society, she has no matrilineal family in her husband's society and her children will be exposed to social and economic hardships for some generations to come, until they develop their own matrilineal family. This custom has encouraged men from the matrilineal families, whose families are
diminishing to marry women from patrilineal societies so that their wives and children will increase the number of the matrilineal family. Many young Adigo men who resent the matrilineal rules of inheritance decide to marry from patrilineal societies to ensure that their children will have succession rights to their father's self acquired property.

Since marriage is exogamous in the matrilineal as well as in the patrilineal families, the matrilineal family is not normally a residential unit. Members of the matrilineage tend to live in neighbouring villages. As in patrilineal families, the self-acquired property of a member of a matrilineal family is his or her freely alienable property until the death of the owner, when it will be inherited by his, or her matrilineage.

THE BURIAL AND FUNERAL

Before the estate of a deceased is sub-divided, it is usually administered by an appointed person. This administrator and its administration serves at least a four-fold purpose: (i) it ensures that a deceased person shall be buried in accordance with agreed practice (ii) that the property comprised of the estate is protected, preserved or accounted for before distributing (iii) that the deceased's responsibilities to his dependant - children, wives and wards in particular are discharged until the responsibility for caring for them is formally shared and (iv) that the balance of the property in the estate after the funeral
ceremony of the deceased person is distributed among his successors in accordance with the rules of interstate succession.

The burial of a deceased person in customary practice is followed by a funeral ceremony (Hanga). Normally it lasted seven days, though it takes only three days now. There was also the 'second burial' (Hanga Ivu) which would be done normally between a month and one year after the burial. Responsibility for both ceremonies lies with the same person or persons. The burial of a deceased person is relevant to customary law of succession because the responsibility for the burial of a deceased, as a general rule falls, on his successors. It is thus important to examine the nature of this duty and the consequences of its non-performance.

THE RESPONSIBILITY TO BURY IN A FAMILY

The person entitled to the lion's share of the estate assumes the responsibility of financing the burial of a deceased person. In the case of the death of a man in a patrilineal family, his eldest son is the principal mourner and on him falls the responsibility for the burial of his father. However, on a married woman's death, the husband buries his wife although he may not be entitled to a lion's share of the estate. Her sons who are her successors usually provide most of the burial requirements. The person primarily responsible for the burial of a deceased person does not always shoulder the expenses alone. All the other successors are obliged to contribute their share, usually less than
the chief mourner.

Contributions among successors may be per capita or by each sub-family in the case of a polygamous family. Apart from the successors, the extended family and relatives generally make contributions (Mzikwa) to the funerals. These contributions may entail providing livestock, money and food. In the case of a woman, her husband, where he is not the successor to the property, is under a duty to assist his wife's successor, her sons, in the burial of their mother; but if he is the chief successor, the full responsibility is on his shoulders.

Within the Adigo matrilineal family, the burial of a married woman does always follow the right of succession to her property. The line of succession in respect to a married woman's property is her children, her brothers, sisters and father. A husband does not inherit his wife's property. At the death of a married woman her father and brother have the privilege of nominating who should bury her. If the husband is wealthy, and particularly where the woman had issue from him, he is asked to bury his wife. This duty does not confer on him any rights of succession. He normally does not refuse, so as not to antagonise his children by that marriage. If the husband cannot shoulder the expenses or refuses to do so, her children would be responsible and, if they have not the means, her father, brother and sisters will do it. Where children do not inherit their father's property the duty to bury follows the right to succession. Thus a father buries his sons; if the father is
dead, an elder brother buries his junior brothers and sisters, and sons bury their mother.

In bilineal families, the general principle is the same as in the patrilineal families: that the duty to bury follows the right to succeed. It is the primary duty of the matrilineal family to bury one of their deceased member. Thus despite the fact that sons are expected to make a substantial contribution towards the burial of their father, yet the matrilineage accepts it as its duty to do so. While in the bilineal families the sons of a man succeed to his living house, yet this does not saddle them with the primary duty to bury their father. The legal responsibility is on the matrikin who inherit a great bulk of the estate. Where the matrilineage assumes its legal responsibility to bury, the patrilineage normally makes a contribution towards burial. On the death of a married woman, it is the primary duty of her sons and her matrikin to bury her. But patrilineal family and husband normally contribute, though it's not their primary duty to do so.

THE POSITION AND RIGHTS OF THE ELDEST SON

The eldest son is the most senior in age among his brothers at the death of their father. Between twins, the older is the first born. A son who dies in his father's life time has no succession rights in his father's estate.
This rule is based on the general principle that rights of succession are vested in a successor's at the death of the owner of the estate. If however a son survives his father but dies before his father's burial and the distribution of the estate, the deceased son's son succeeds only to those rights to which his father is entitled absolutely and not to any property in which his father would have had a life interest.

The eldest son is entitled to special property by virtue of his status in the family. He enjoys this property during his life time to the exclusion of his brothers. He is entitled to reside in his father's dwelling house. Subject to the accommodation required by his own family, he will allow his junior brothers to move into this house with his sisters. In case the younger brothers move into the house with their wives, then customs do not allow the elder brother to occupy the house anymore. The eldest brother is also entitled to the use of the piece of land within or surrounding the father's compound and to harvest the economic trees in it. The movable property to which the eldest son is entitled includes his father's hat, stool, knife, spear and arrows. He is also entitled to the dresses which his father wore on special occasions and to the walking stick. A common characteristic of the moveable property which is left for the eldest son is that it is the property an average man in society is expected to own.

The eldest son enjoys these special rights in addition to his share in the remainder of the estate. In the Adigo society the
eldest son does not succeed to the remainder of the estate to the
exclusion of his junior brothers. Though it is often said that the
eldest son succeeds to his father's estate, what it means is that,
as the head of the family, he succeeds to the estate not
exclusively but for himself and his junior brothers. Thus the
eldest son administers his father's undivided property as a trustee
beneficiary on behalf of himself and his brothers. There is an
application then on this principle of primogeniture which may mean
one of these three:

(i) Succession to man's estate by his eldest son, where
all his sons, were born of one and the same wife.

(ii) Succession by a man's eldest sons the eldest sons
by his various wives irrespective of their ages, or

(iii) Succession by the oldest man among a class of
persons each of whom can in turn be described as
his nearest patrilineal blood relation.

It is to be emphasized that amongst the Adigo, when people
talk of the eldest son succeeding to his father's, what this means
is that the eldest son succeeds to his father's status as the head
of the family. As regards succession to property, he is entitled
to the largest share when the property is distributed, but until
then, he holds the property as a trustee - beneficiary for himself
and his brothers.
When the property is distributed according to the number of sub-families in the larger family, that is number of wives or mothers with sons, the eldest son of each wife or mother does not take the property to the exclusion of his junior full brothers. The share of each of these sub-families is then divided again if need be between the individual sons who compose it. It has often happened that brothers have left the whole of their inherited land with their eldest brother. In a sub-family in which the brothers are united, there will be no necessity for dividing their inherited land. It will remain their sub-family under the eldest son's management until it is divided. The principle of primogeniture in sub-families applies only in succession to the headship of a family but not in succession to property whether movable and immovable.

RULES OF DISTRIBUTION

There is no legal distinction amongst the Adigo between inheritance of real and personal or movable and immovable. The physical nature of an object will always affect the manner in which it is to be shared. The classification that can be made of movable and immovable property should not suggest different rules of applying to them. This type of classification can only serve to bring out the kinds of interest in different categories of property. In Adigo families where women do not succeed to a man's property no distinction is made between succession to reality or personality, and where women do not succeed to a man's property no distinction is made between succession to realty or personality, and
where women succeed to a man's property, they succeed to both
realty and personalty.

There is no fixed ratio for the sharing of an estate among the
successors. The share of the eldest son, which is usually larger
than that of his junior brothers is determined on the basis of what
the administrator thinks reasonable, taking into account the size
of the estate and the number of the successors. When division is on
sub-families, they would inherit (sons) what their mother
cultivated (land). Thus the size or area under their mother
cultivation will be theirs. After the eldest son's special
property has been allocated, the deceased's sons decide which of
the remaining property they wish to divide amongst themselves. The
undivided property remains the family property of the sons. Usually
movable property is divided. It often happens that the whole of a
man's estate is not divide on one occasion, but in bits as the need
arises.

METHODS OF DISTRIBUTION

There are two main methods of distribution of estates: (i)
distribution per capita (ii) distribution into as many sub-
families which comprise the family as eligible. Under the
distribution per capita, the property is divided into as many
portions as the number of sons to inherit irrespective of the
number of sons of each of the deceased's wives. The eldest son
receives the largest share and shares of the other sons diminish
correspondingly according to their seniority in age.

The distribution of heritage among sub-families involves dividing the property into as many portions as there are wives or mothers with male issues. The eldest son takes first for himself and on behalf of his full brothers, then the eldest son of another wife who is next in age takes for himself and his full brothers, the eldest son of yet another wife who is next in age takes for himself and his junior full brothers etc. Thus in sub-families again the eldest son of each wife or mother receives the share again as trustee - beneficiary for himself and his full brothers. Let us look at some examples on how property can be distributed in the event of death of certain figures in the family. The rules will be considered in relation to the estate of the following persons:

i. a married man with male issues.

ii. a man without male issue.

iii. a married woman.

iv. unmarried woman.

**SUCCESSION TO THE ESTATE OF A MARRIED MAN WITH MALE ISSUE.**

The rules of distribution of estate which will be discussed under this heading affect the estate of married men who are survived by at least a male issue. The estate of a married man without male issue falls to be distributed as if he had not married
at all since a wife or daughter does not inherit a man's estate. There are two important characteristic of the law of succession in the patrilineal family,

i. Women, whether as wives, daughter, or sisters do not succeed to a man's estate, except in those families in which a man may appoint his daughters to succeed to his estate. In a few cases, however daughters are given a few chattels but not land.

ii. The eldest son as already noted occupies a unique and important position. He succeeds to his father's status as the head of the family - a position of respect and responsibility.

**SUCCESSION TO THE ESTATE OF A MAN WITH NO MALE ISSUE.**

Rules of succession to the estate of a man with no male issue are the same whether he is a boy, married or unmarried. Amongst the Adigo patrilineal families, the one to inherit property in default of sons is usually the father or in default, the father's brother or their descendants who inherit. There are also important classes of successors in the name of the deceased full brothers.

Amongst the Adigo the brothers of a deceased man without male issue have a right of succession which takes precedence over that of the deceased's father and full brothers have a claim prior to
that of their father. When differences occur between the father of
the deceased and his brothers, these variations mostly arise
because the father has only a life-interest which entitles him to
make use of some of his deceased son's property, but the successors
are the full brothers of the deceased.

**SUCCESION OF FULL BROTHERS, BUT FATHER HAVING A LIFE INTEREST.**

Amongst the Adigo families, when a father is said to have
'succeeded' his son's property it only means that he is able to
utilize the property for the benefit of the full brothers of the
deceased and that after his death the property passes over to the
deceased and that after his death the property passes over to the
deceased's full brothers. Under this rule the father is not denied
the right to benefit from his deceased's son's property in a way
which is detrimental to the interest of the full brothers of the
deceased. The estate is not inherited and owned by the father but
by the deceased's full brothers. Therefore, at the father's death
the property does not pass into his estate and his sons by other
wives will not inherit. Thus in such a case the order of
succession is as follows:-

i. Full brothers, father having a life interest.

ii. Father.

iii. Half brother i.e. the same father but different
mother.
iv. Nearest paternal male relative i.e father's successors other than his sons.

**SUCCESSION BY FULL BROTHERS TO THE EXCLUSION OF FATHER**

Under this rule, the Adigo can stop the father completely from succeeding his son's property if the deceased son is survived by a full brother. He may be given a few things as presents. Even if the father may be permitted to make use of some of the property in the estate, the concession may be withdrawn at any time by the full brothers. The difference between the rule which gives the father a life interest and the one we are discussing is that in the former the father may not be deprived of his life interest in the property, but in the latter he has no right whatsoever. When this happens the order of succession will be:

i. Full brother.

ii. Father.

iii. Half brother.

iv. Nearest paternal male relative.

**SUCCESSION TO THE ESTATES OF A MARRIED WOMEN.**

Women usually take most of their movable property to their husband's place. Such property is succeeded to as if it was acquired during coverture. Any movable property which a woman does not take to her husband's place belongs to her father's family.
Succession to a married woman's property acquired during coverture, in the case of land is succeeded to in the following order of priority:

i. Her sons of that marriage.

ii. Her husband.

Movable property of a woman is mostly inherited by her daughters, married or unmarried. The property they inherit includes their mother's cooking utensils, dresses and ornaments. The sons or other male issues, inherit her money, cows and any important chattels. Her daughters may be given some livestock.

In default of female issue the deceased's son's daughter succeeds to their feminine property. In default of these, the sons succeed to the property and may give some of their mother's sisters. A married woman's movable property is therefore inherited by her children. Whether the husband has a share in whatever is inherited by the sons or not, depends on the rules in that family, but the husband has no share in the feminine property inherited by daughters. In default of children, the husband or his successors inherit the estate. The proposita's son's daughter inherit her feminine movable property in default of daughters. In default of female successors, her male successors inherit all her movable property. Similarly the grandsons of a woman (her sons' son's and not her daughter's sons) succeed to her property in default of a
son. The reason is because a son's son is considered to be the nearest male descendant to his father's mother if the grandmother is not survived by a son.

**Succession To An Unmarried Woman's Estate.**

The immovable property of a woman who has never married and who die without children is inherited in the following order of priority:

1. Her full brothers and father - the latter's interest being for life. If the daughter is survived by a full brother, the father has no share.

2. Her father's male successors. These male successors are also entitled to her money and any of her important chattels.

The proposita's feminine property, such as dresses and ornaments are taken by her full sisters, or her half sisters; and in default of these the property is succeeded to by the male line successors. It should be emphasised here that though the eldest sister or brother may take the lion's share of the property he or she does not inherit the whole property to the exclusion of other members of his or her class.
THE DISTRIBUTION OF ESTATE IN THE ADIGO BILINEAL FAMILY

The bilineal families are those in which a part of a man's estate is succeeded to by his patrilineage and the other part by his matrilineage. In the case of a woman, her matrilineage succeeds to her estate to the exclusion of her father, her half brothers by different mother, and her father's successors. Here any category of property which is inherited patrinelyally always remains to be default of son's and any property which is succeeded by the matrilineage remains in that line of succession and never passes over to the patrilineage in default of the nearest class of matrilineal successors.

A growing practice amongst the Adigo bilineal families is that the matrilineage gives the deceased man's sons and daughters some of their father's chattels such as money, clothes e.t.c. This practice is so widespread nowadays amongst the Adigo families that it has become difficult to say whether the strict customary law has been altered by usage or has only relaxed its rigidity. Nevertheless it is the matrilineage who determines the property to be given to the sons. This relaxation is to placate the feelings of the modern generation of sons who resent the rules of bilineal succession. Thus in conclusion we can say that under the strict law, chattels are succeeded to by matrilineage, who in recent times give a share to the deceased children or patrilineal successors.
Men as well as women, may inherit matrilineal land. This applies to a man's as well as a woman's land. All of a woman's land passes to her matrilineage, marriage is not a barrier to a woman's rights to succession in her matrilineage and also does not affect the rights of her matrilineage over her estate. A problem may arise with the marriage of women from matrilineal into patrilineal families especially concerning the rights of such women and their children they will be succeeded to on patrilineal principles, being their newly acquired personal law and consequently their matrilineage will not be entitled to succeed their property. It is thus doubtful if the matrilineage will permit their daughter married into a patrilineal family to inherit matrilineal land which on her death, will be succeeded to by her husband's family. It is most likely that the woman and her children may be permitted to enjoy such property only during their lifetime.

The Adigo law of inheritance as we have expounded here shows significant conflicts with the Islamic law of succession. These conflicts are mostly in the areas of ideas on the nature and composition of the family, the need for and occurrence of succession, the principles used when dividing inheritance and more so when to determine inheritance, the composition of the estate and the different modes of division taking into account the nature of the family relationships. Various reasons are responsible for the impact that the Adigo customary practice have had on the practice of the Islamic law of succession and not just the conflicts, in the two systems of law. The fact that the Adigo may look back at
historical incidents concerning the property to be inherited gives perplexing views when compared to Islam's view of direct allocation of shares to heirs.

Nevertheless similarities in the two systems do occur sometimes, and these may be due to certain influences that the Adigo have undergone in their socio-cultural history. Education, both secular and religious, penetration of and adoption of new ideas on family, the influence of neighbouring communities, breaking down of indigenous traditions amongst the younger generations are factors that have influenced to certain limits the impact that customary practice has had on the practice of the Shariah on matters of inheritance among the Adigo society. How these factors have had an impact and what the future has on this impact is the subject of discussion in our next and last chapter.
FOOTNOTES


4. Interview with Mbwana Kali 3.8.91 (Ngombeni) Juma Keke 17.1.92 (Galu), Bakari Kufaa Mwandzosa 12.3.91 (Waa).


7. Though Islam recognises polygamy the Adigo practice may at times exceed the number of wives that a muslim can marry at ago.
CHAPTER SIX

TOWARDS ACCOMMODATION AND CONFLICTS BETWEEN THE
ISLAMIC AND CUSTOMARY LAWS OF INHERITANCE

THE FAMILY SYNTHESIS AND INHERITANCE

The Islamic Law of inheritance and the Adigo customary law of
succession reflect the structure of family ties and the accepted
social values and responsibilities within them. Abd Al-’Ati
comments that ...

Inheritance laws are believed to be closely
allied to and strongly indicative of the
society's normative system, social structure
and principles of family organisation.

Amongst the Adigo rights of inheritance are generally regarded
as the consideration for duties of protection and support owed to
the deceased during lifetime. So that the stronger the family
bond, the greater the right of inheritance. There had been amongst
the Adigo a special sense of ethnic cohesiveness and solidarity.
These sentiments are mirrored in their inheritance law which aimed
at keeping the estate intact as long as possible. While
inheritance laws of the Adigo have shown an index of intrafamily
relations, nevertheless the direction of social change is not
ignored.
Adigo rules of inheritance were easily applicable when Chidigo families were geared towards their ethnic ideology. The structure and ideation of the ethnic group and its social entities to enforce this law were active. Ethnic sentiments and alliances were strong and always prevailed over individualism. Emphasis was mostly on the survival and well begin of the ethnic group. Every man or woman had a duty to perform in the maintenance of the equilibrium of the group be it, social, political or economical.

As the Adigo believed themselves to have all descended ultimately from a common ancestor, the obligatory nature of the duty becomes more pronounced. In most cases it was considered 'Sacred'. The corollaries of this position must be, and are, both a general deflection of any extra ordinary powers or rights from the elders. Hence created a socio-political group maintained purely as a family unit. The entire economic, political and social system of the Adigo was most closely related to the family. Their customary laws were a very substantial entity in their native jurisprudence.

As we note, the basic unit of holding property has been the family. However the Adigo have been going through many social changes which have not spared their traditional extended family. These changes in the nature of the family have generated considerable conflicts of prescribed norms and behaviour. Noteworthy to our study are the influences in the practice of inheritance. The factors of internal group cohesion are fast
disappearing amongst contemporary Adigo. The family structure and
legal institutions (Ngambi) have been transformed and still in the
process of transformation. Thus what used to prevent men and women
from independent control of ideas as apposed to group decision
making is no longer there. Due to those changes there has been
some conflicts and accommodations between the customary law and the
Shariah, in the practice of inheritance by the Adigo people as
discussed below.

Though the Adigo may have traditional prescribed to a certain
family type, Islam does not prescribe any specific organizational
family type. There can however be little doubt that traditional
muslim family structure has actually been closer to the extended
than to the nuclear family\(^2\). The family organization in muslim
societies has assumed or rather continued the extended family form.
But there is no provision to give it a universal sanction or
disapproval. While the extendedness of the muslim family structure
was a function of historical continuity or if other social
conditions as it has happened to the Adigo family, Islam apparently
accepted this form and took no further stand on it, unlike its
position on various other aspects of the family.

While Islam was by no means totally indifferent to the social
conditions and precedents, there was no particular need to restrict
the family structure to any exclusive form be it extended, nuclear
or polygynous. However, such forms are also crucial to the Islamic
conception of family solidarity and societal cohesion. Both are of
primary concern for Islam, and that emphasis should be placed not on the form but rather on the behavioral components. Nevertheless familiar rights and obligations in Islam are independent or differentiated from the organizational forms of the family; the former being fixed and the later open and malleable.

Islam's position as regards the family was produced by or, is at least in accordance with a general outlook that seems to presume continuity of the precedents. So long as they do not violate certain principles or conflicts with the basic needs. Thus when it is born in mind that the extended family does not necessarily preclude the nuclear type, at least as a subsystem, then Islam seems to have considered the extended form acceptable though not necessary. It was apparently working and workable. It was thus endorsed, though Islam did not insist that it must or must not be so always.

Islam's accommodation of the extended family type and making no further specifications may suggest that under certain circumstances, such as those socio-econo-political conditions surrounding Muslim societies, then the extended family may be more conducive to, though not indispensable, whatever functions the family is to serve. Flexibility of the organizational form, on the one hand, and specificity of the mutual, religiously prescribed expectations of the members, on the other would seem to indicate that the Muslim family structure was or may be conceived as partly divine and fixed, partly human and variable.
Moreover, Islam may have taken a position whereby, family solidarity is crucial, it does not or should not, mean absorption of the individual members by the family collectivity. Personality is allowed a certain measure of freedom to develop alongside the collectivity. So that individualism may not be forced to submerge or subvert. Hence the idea of the Adigo that family cohesion must be held paramount than any other things does not always conform to Islam.

However to avoid apathy, estrangement, and authoritarianism, integrative mechanisms have to be devised to allow collectivity and personality to co-exist and interact to their mutual benefit. One way of doing this was ensuring that family members inspite of cognitive differences maintained some mutual expectations of rights and responsibilities. But individuals conscience cannot be totally controlled by the collectivity. To assess the full development of personality to that level at which the individual can differentiate between intermediate and ultimate ends, some inviolable principles had to be emphasized.

One such principle in Islam has been to hold the individual responsible directly to God, and not to society or personality. Hence to orient him to something beyond the immediate and the social. To show him how to reconcile private convictions with socio-religions requirements. The Adigo Muslim thus adheres to the principles of Islam, just like any other Muslims, because in the profession of the Islamic faith, the law is an ordinance of Allah,
and Allah is surely ever Knowing and Wise.

Nothing could have changed the traditional Adigo family than exogamous marriages. We have noted that, the strength of family ties were not weakened by intermarriages. In turn intermarriages encouraged the observance of the Shariah, for example where the Adigo intermarried with the Tangana. This allowed the spread and observance of Islamic practice within the nuclear family. Children born of such unions automatically became Muslims. Adigo principles of marriages which initiated the family were not in conflict with Islam's. Adigo marriages were solemnized by the consent of the brides family and was traditionally arranged between the kinsfolk of the couple. The bridegroom usually presents the family of the bride with an agreed sum of money (wealth), and ritual gifts. The custom of bride wealth which authenticated Adigo marriages has been paralleled with Islam's payment of mahr, thus an attempt is made to magnify the impact of Islam on traditional marriages system without a complete departure of tradition. Hence

...The share of the bride wealth which goes specifically to the bride, generally called Mahari....., payment of Mahari; the Digo believe, is strictly in accordance with Islamic law... There is a share which goes to the bride's mother which is commonly known as Mkaja. It is given as an expression of gratitude for the good work done in raising the daughter... there is a portion of the bride wealth which goes to the bride's maternal uncle, Kilemba. Evidently both Mkaja and Kilemba are non-Islamic yet people who... are devout muslims would not be prepared to drop them, apparently because these transactions strengthen family ties, especially the position of the bride's mother and maternal uncle among the Digo...³
Such practice as explained above shows that Islam has had an impact on the Chidigo family and almost changing the concept, from traditional to the Islamic one. Hence making it more easy for the Adigo to follow the Shariah.

POPULATION EXPLOSION AND URBANIZATION: TOWARDS AND ADAPTATION OF ISLAMIC PRINCIPLES OF INHERITANCE

As population of the Adigo increased, people began to disperse from the centralized homesteads (Kaya). New contacts developed as famines took their toll, and slavery broke down ethnic cohesion. Households became isolated from their wider family groups and obligations to their kin were much more difficult to fulfill.

In such circumstances, traditional ethic loyalties were displace. Survival was for the fittest and gradually the extended family and the once strong ethnic ideology disintegrated. The responsibilities of the extended family like those of socialization which helped to instil the ethos of the group were transfered from the community to the family. The ethnic psychology was at risk and individualism gained ground. With all this, people were forced to revalue their traditions. They either repudiated or reaffirmed them by deliberate choice, mostly in conflict with the ideal which leaders of society (Ngambi) were seeking to impose. This made it difficult for the Adigo to keep on following the traditional system of law. Instead other systems were followed and new ideas and principles of inheritance were followed.
We can as well subscribe to the idea that the inheritance laws of the Adigo registered new trends of 'human evolution'. To the Adigo the struggle which was between individualism and collectivism, between the individuals rearing and social tendencies of humanity, is revealed in the later development of the laws of inheritance. Contrary to where individualism demands equality among all recipients or eligible, the social mission of the family often demands a deviation from this equality principle, and forces one or more individuals into the background. Instead of the individuals's rights being forsaken for the groups sake it was the direct opposite. This made it easy for those who were muslims to adopt the Shariah without much cohesion.

Another factor that broke the traditional family relationship and influenced the social structure of the people was and is contemporarily in sway, urbanization. There has been a gradual disintegration of the extended family due to urbanization. There were more contacts between the Adigo and neighbouring urban societies which resulted in not only enculturation but also a form or rural - urban migration by the Adigo.

In the urban areas relationship became rather impersonal. With the urban set-up individuals could not develop intimate social relationships with so many people of their ethnic group. Not only that, social cohesion at the village was instilled by the clan elders within the traditional homestead. In the urban areas the Adigo were introduced to alien system of authority, which was
different from the 'Ngambi Council'. This in turn encourage a
practice of the Shariah.

CUSTOMARY LAND INHERITANCE AND ITS SHIFT TOWARDS ISLAMIC MODE OF
INHERITANCE

Land, probably the most important source of wealth has always
been a subject of a great many interests and derivative rights.
This is not only, to the Adigo customary practice, but also in
Islam. These have often been difficult to elucidate for the Adigo.

The land 'laws' of the Adigo are simple and effective.
Theoretically and traditionally we have seen that Adigo land
belonged to the Ngambi (Enyetsi, atsi) as the heads of the race.
However this did not mean that the land was the private property of
the 'enyetsi'. It was only theirs as representatives of the race.

Where land has been subject to customary tenure, it is always
the subject of rights and interests vested in both the individual
and the group. Such rights and interests are frequently co-
existent with each other. Such forms of family land holding
greatly restricted the freedom of many members of the family to
dispose off the property on which they ultimately had a claim.

Ancestral worship on common grounds as was practiced by the
Adigo, and many forms of social and religious ceremony held on land
'commonly held' for example, have also helped to make more obscure
an already entangle subject. However it is, of course clear on
closer analysis, that the control exercised by the community as a
group on land was mostly social or political and did not extend
beyond the limits necessary to maintain the group solidarity of the
community. Actual physical control of land was vested in the
families and, speaking in general, only in the sense that it is an
aggregate of the constituent family group could the community or
ethnic group be said to own land. Nevertheless land has always
been a 'property' which aroused sentimental inheritance rules
amongst the Adigo.

The traditional Islamic system of land tenure can be said to
be the product of classical Islamic law. Also included are those
supplementary rules issued by the jurists, often described as
administrations or qanun. The Islamic law to be sure did not have
a comprehensive theory of property law, but scattered throughout
its various parts (the Quran), particularly those parts dealing
with contracts, acquisition of property and state revenue, are many
rules which, if take together, constitute a fairly well-defined
system of land tenure.

In Islam land belonged to the state. But the concept of state
ownership may be confusing. It should not be assumed that the
state's claim to ownership of the land means a form of public
ownership analogous to that which exists in western countries. In
Islam the state does not own land as a juridical person. The legal
categories of land as based on the Shariah are:
1. Mulk land: Land held in absolute freehold ownership. It is governed by the provisions of sacred laws. Land ownership comprises two rights: the (raqaba) or right of absolute ownership and (tasarruf), or right to the usufruct of land.

2. Miri Land: Land of which the raqaba belongs to the state, but the usufruct (tasarruf) belongs to the individual. It is a form of heritable leasehold ownership in which the state leases land to the individual.


When the to systems are compared we can say that amongst the Adigo both ownership and prestige initially lay in the lineage, rather than the individual. Also no lineage established ascendency over the village. However in Islam ownership of land can be defined by saying that the owner of the 'thing' had alone, within the limits of the law, the right to use, to enjoy and to dispose of it. Further the right of ownership can mean that the owner can absolutely dispose of that which he owns, whether it be the 'thing' itself, its use of its usufruct. He can use the specific 'thing' own it's crop, fruit, and produce and dispose off its corpus by all legal dispositions. Thus we can note disparities between the two systems. While the Adigo system emphasizes communal ownership, the Islamic system portrays emphasis on individual ownership. However, the Adigo system did not last long. It was weakened by factors like families and urbanization already discussed above.
With the Adigo Socio-political organization coming under increasing pressures from famine and slavery, the social leadership of the traditional form tended to collapse. Before any new forms of political leadership had been reorganized and taken definite shape, the government mechanism of the day stipulated new codes of law. The rules of this system were either biased against customary practice and procedure or did not recognize them completely.

With the collapse of ethnic form of leadership, moral and emotional pressures on the individual to subordinate his personal interest to those of society (lineage) weakened. Uncomfortable conflicts between educated ideals and traditional loyalties arose. The individual by his note and his access to modern courts of law now stood in an immediate relationship to civic authority. Thus he was no longer protected and controlled by the laws of the ethnic group to which he belongs. The traditional concept of the ethnic family which initial had a profound influence weaned. Thus for example when land registration was introduced amongst the Adigo, it was readily accepted.

This was so since the authority recognized was the government, hence its laws were accepted, and not the Ngambi any more. With all this it was unlikely for customary practice to prevail, neither the Shariah. It is thus our submission that at a certain period the customary practice of the Adigo was weak. Emphasis has been on the law recognized on the land (common law in this case). It is unfortunate for the Adigo Muslims, that the Shariah is not
emphasized. They are thus left in a limbo, caught in between their 'triple heritage' again.

The growing scarcity of land due to population explosion, the individualistic tenets of the people, together with the needs of the authorities recognized have greatly modified the customary land tenure. Capitalist ideas on land tenure which were instilled with the introduction of land adjudication and issuing of individual title deeds to land, encouraged the breaking down of customary practice on land issues. The adoption of a market economy on land, apart from influencing a move towards parallel practice with Islamic ideas on land tenure, also alienated the individual land holder from the general conscience of the ethnic group, which was emphasized by the ownership of a common and sentimental property.

Thus land adjudication is said to have been enthusiastically accepted by the Adigo. The reasons for this being, no one could have prior claim to the land. Hence property could be improved without fear of losing it to someone else after one had fertilized or planted trees on it, something that could happen in customary practice. Also land could be left idle without fear of someone else claiming it after it was registered under their names. Under the new system, land could be bought and sold, a practice contrary to the customary practice of the Adigo. Land adjudication thus denied some people ownership of land. Children and grandchildren in the extended family many times outgrew their inheritance, in a sense that there was not any more for the community to allocate to
These were forced to buy land elsewhere. Eventually they were able to pass land according to their wishes and not those of their customary practice. Such cases could have encouraged the practice of the Islamic law of succession, since land was now inherited according to the wishes of the individual owner. Not only that individual title deeds have eradicated the traditional tenets of looking back at historical events like slavery and famines and use them to decide inheritance.

When the individual was allowed ownership to sentimental property like land he was inclined to practice the Shariah as his personal law. The customary practice and its principles were hardly applied or applicable, since the mode of acquiring that property did not any more conform with the customs. While traditional customs were weak, The Adigo could not practice the Shariah law of inheritance because emphasize was not on the Shariah rather, it was on the Secular Law.

WHEREIN PRINCIPLES ACCOMMODATE AND CONFLICT

There have already emerged different principles that are used in cases of inheritance between the Shariah and the customary practice of the Adigo. Principles that shall be discussed include 'when is inheritance due', means of acquiring land (rights of ownership) which comprise the limits of those rights and the ways
to protect them, the restrictions on the rights of ownership and joint ownership. We shall discuss how they conflict and where they can accommodate one another.

When need arises for property to be inherited, the first principles to be observed in Islam have been shown to be the deductions of the expenses of the burial, debts and the will of the deceased. Thus in Islam the estate is directly related to the deceased. However amongst the Adigo, the practice was that one was to be buried not withstanding the payment of debts. What is of concern here is whether the individual was considered separate from his property. As already shown the individual owned only the movable property amongst the Adigo. While there might be no direct relationship between this and immovable assets like land, it is found that the principles used whereby one has to provide for his own burial expenses are parallel between the Adigo customary practice and the Shariah. This is so since amongst the Adigo, though it might be a requirement that one undertakes the expenses from his own property, but the practice has been that farm produce like rice, maize and livestock may be used to feed those who have attended the funerals. Thus while Islam makes it a requirement that one should provide for himself in terms of burial expenses, the Adigo customary practice accommodates, but it is not made as a requirement.

The issue of payment of debts is also crucial. In Islam one pays his own debts from his estate. However, Adigo customary
practice is that, the living relatives of the deceased shall take the responsibility of paying the debts. Though they may take the property of the deceased e.g. livestock to pay for the debts, this does not necessarily have to be done before the burial. Thus unless the property is divided immediately after death, debts of the deceased might be cleared by the living relatives, even when it is not necessary that it has to come from the property of the deceased.

Thus if one owed less than the value of a certain property left, it would not be necessary to dispose off that property in order to pay the debts. Heirs may clear the debt, but again this is not considered anything to do with the property of the deceased. Since there is no force of coercion to implement the Shariah on these matters, the Adigo have been left to practice not even their customary practice but wishes of the individuals depending on the circumstances that they find themselves in.

Family relationships were amongst the first principles to be considered when the property of the deceased was due for inheritance. Relationships like those of matriliney and patriliney were recognised, but the Adigo place much emphasis on the deeds and actions of individuals and current family cohesion between the expected heirs and the deceased. Thus like in Islam where a murderer of one's parent will not inherit, the Adigo will go further to disinherit anyone who had bad relationships with the deceased during their lifetime. This is an influence of the Adigo
practice of revering ancestors and the thought that they still controlled the lifes of living family members.

Despite that shares of inheritance were accorded a large number of heirs depending on the importance and closeness of their relationships. The difference between this system seems to be ideological. In Islam matrilineal and patrilineal relatives are accorded shares depending on their closeness (ascendant, descendants, collateral). The Adigo ideology however portrays the matrilineal and patrilineal families to be autonomous when it came to cases of inheritance. Property that was initial from the patrilineal or matrilineal lineage had to be inherited by relatives from the same lineage.

The principles of who inherits before who as is the practice in Islam are used amongst the Adigo, though applicable only to the members of the same clan. Thus if one belonged to a matrilineal clan lets say 'Achina Ngome' this person can inherit property left by any 'Mchina Ngome'. The idea being that he belonged to that clan. However he may not inherit because other 'Achina Ngome' are close to the deceased than himself. Thus with the changing emphasis of the composition of the family, sons, daughters and grandchildren can inherit instead of nephews and nieces who are now viewed as distant relatives.

Property thus is distributed amongst many relatives but customary practice prevails because some heirs that could probably
be accorded shares according to the Shariah might not get anything because already the close relatives have exhausted the estate. The major setback here is that land is immovable and it is rarely subdivided. Individuals were only allowed usufructuary rights, hence even when nieces 'inherited' instead of son's the idea was that they were only going to plant on the land but could not alienate it. Thus even when land was adjudicated many nieces and nephews who were allowed usufruct rights to land could not register the land under their names instead they were only compensated for their plants and crops on the land, and such land registered under the son's or daughter's names.

The issue of whether property has to be inherited immediately after death or can be inherited later portrays some perplexing attitudes within the two systems of law. The Adigo customary practice is not specific on when property is to be inherited. Thus when the eldest son holds property on behalf of others, the others will not be at ease when they demand their share. Doing so may be interpreted as a wish to break away from the family. This is a disadvantage to others because many people end up surpassing their inheritance.

While Islam accords property to a large group of heirs, exactly when inheritance is due for division depends on the wishes of the apparent heirs. The verses that explain the division and portions of each heirs do not explain when property is due for inheritance. Such factors have allowed people to leave property
undivided for very long durations. This is so since joint ownership without necessarily ascertaining proportions is practices in both Islam and the customary law. Islam recognizes joint ownership out of inheritance because the estate of the deceased is said to be jointly owned by the heirs and it is often that joint ownership continues for long periods of time. Thus even when the Adigo hold property today by the use of the ideals of customary practice it is difficult to draw a line here to show that it is customary tenets or the allowances of Islam that have been used.

In the event of death it is a must for a Muslim to be buried. Burial and funeral in both Islam and Adigo practice are the responsibility of the family and if not, the community (Ummah). Adigo ethnic tenets seem to prevail in these cases. The family in Islam, in the event of burial is almost the same in composition as is amongst the Adigo. Thus when the eldest son, or the uncle takes charge of the burial when other relatives are still minors, it becomes almost difficult to say whether that is done according to customary practice or following Islam. It's more difficult contemporarily because of the influence of Islamization. Provisions for the necessities to bury a Muslim (expenses of the burial etc) are deducted from the estate of the deceased in Islam. Amongst the Adigo, the living relatives will always provide for the burial of the dead and other responsibilities because doing so establishes their right of inheritance amongst other things.
The idea of joint ownership (Shuyu) defined as:

...Where two or more persons are owners of the same thing, but their respective shares are not divided, they are co-owners and in the absence of any proof of the contrary, their shares, are deemed to be equal (as per the law)\(^5\)

can be used to accommodate the customary practice on creation of family property.

However while there is this accommodation of principles, the Adigo practice may be weakened by Islamic principles at times. This can be so when the eldest son develops the property (land) and becomes the owner through Islamic principles of appropriation. Hence the eldest son develops the land and when the Shariah is used to sub-divide the land the principles of appropriation may favour him. This is because the Shariah allows that he who revives (develops) land (mawat) acquires ownership thereof. Though uncultivated land which has no (individual) owner is the property of the state, the ownership and possession of these land cannot be acquired except by a license from the state in accordance with the law.

After stating that, however the law allows that if one cultivates or plants uncultivated land or builds thereon, he becomes forthwith owner of the part cultivated, planted or built on, even without the authority of the state. Thus the appropriation of free and empty land (mawat) by virtue of a legal
license from the state like the title deeds, entitles the appropriation to a right of preference over others for acquiring the right of possession (tasarruf) over such lands.

Acquisition by possession (hiyazah) can be used at the expense of traditional systems of land tenure. In hiyazah, ownership can be through uninterrupted possession i.e acquisitive prescription. This possession is a material situation whereby a person exercises cultural control either himself or through others over a thing which is not extra commercium. The rules pertaining to possession here includes its acquisition and transfer. This system may be preferred by Adigo families that may want to do away with extended family relatives who would want to take advantage of customary practice and claim property at the expense of the nuclear family. That can be so since transfer of possession here can be affected in two ways.

In the first, possession passes by the effect of law when the possessor is a general successor to the previous possessor, as is the case with the heir. In the second, possession passes by means of a disposal emanating from the previous possessor i.e a bequest. In this second way, the present possessor is a special successor to the previous one. The difference between the two types of possession is that the general one is considered a continuation of the previous possession, whereas the special one gives rise to a new possession, but again this kind of possession may allow traditional practice under its principles of tasarruf.
When the main ideas of the practice of inheritance of the two systems of law are compared, we can say that the aim of the Islamic law of inheritance has been to break down the concentration of wealth and spread it to individuals in the society. This has helped in that it "emphasized equality in society in terms of acquiring justified wealth. It would have been un-Islamic therefore if wealth was left in the hands of one member of the family. This would have encouraged unfairness and even rivalry.

The Adigo practice of holding property as a family venture does not seem to be far from the ideas that property has to be used equally. Though it might not be divided, the Adigo customary practice made property available to any member who was in need at that time. Differences between the two systems occur when the property is not divided (as the case for the Adigo). Even when the family decides to hold a particular property jointly, it will be advantageous for them in the Islamic sense to have a written guarantee of the shares (or interest) that every member holds in the family. This will be in conformity with the verse of the Quran which encourages Muslims to write contracts in any dealings.

Other principles that can be compared is that of respect of the property ownership of individuals, as recognised by the Shariah. This principle may not always be observed by the Adigo because the individual did not traditionally own anything personal (especially land). Individuals could have owned crops which could easily be disposed off on the land. However with factors like the
breaking down of family unit, introduction of land registration and
an aspiration of the Adigo to follow the Shariah have influenced
the individual to recognize personality in ownership of land.

There has also been varieties of property that the Adigo hold
today. These did not have an adequate explanation on how they can
be inherited according to customary practice (e.g. cars, shares and
other forms of wealth). Since the Shariah has allowances on how
these particular properties can be inherited, it has become easy
for the Adigo Muslim to apply the Shariah.

In the consolidation of the family system and its importance
as a social unit, the two systems have proved to be parallel.
Contemporarily the Adigo leave as a family unit that comprises at
most, the father, mother, children and grandparents (usually
paternal). Some extended relationships are considered, but rarely
given preference. When it comes to inheritance, therefore the
Islamic principles where full-blood relatives have preference over
half-blood, and relative lower in relation are excluded by those
higher in relation have made it easy for the Adigo family to
incorporate the current family into the Islamic scheme of
inheritance. This has also been possible since some family
relatives are heirs in both systems. Such that nephews and nieces
are liable to inherit but only when they are the only close
relatives available, or when they can take precedence over other
relative.
FOOTNOTES


2. Cf. Hammudah Abd-al'Ato op cit p. 30


7. See Quran, 2:282
CHAPTER SEVEN

CONCLUSIONS

This study has attempted to correct the skepticism on the validity of the sources of Shariah. We conclude that the Shariah is a valid system of law and its application amongst Muslim societies is mandatory. The sources of Shariah which have been disputed have been shown here to be valid. We have used the case of rules on inheritance to conclude that the sources of Shariah can be used to come up with a complete code of law and practice. Verses of the Quran have been used to show how an understanding of the meaning and message of the Quran is vital in implementing the Shariah. The descriptions of the Quran gives a clear basis to draw the conclusion that it is a source of law.

Other sources of Shariah, apart from the Quran have also been explained with collaborating evidence which shows how these sources can have confusing meanings and at times led to confuse the whole concept of the Shariah and its sources. This work has attempted to show how confusion on the meaning of Sunnah has at times led to disputed Sunnah as a source of Shariah. Thus the popular orientalistic notion of 'alleged hadith' is clarified to have been as a result of confusing the meaning and usage of the word Sunnah. With the use of the verses of the Quran we have shown how the practice of the Prophet (Sunnah) is emphasised in the Quran as a
source law.

There is no hesitation here to note that the secondary sources of Shariah make it a living system of law. The Shariah thus allows those who follow it to accommodate new precedent without going contrary to the principle of the law. It is our submission that those who were skeptic on the Shariah and its sources and modalities to accommodate reform had not grasped the intricacies of the Shariah. With our definitions of the sources of Shariah we conclude that the Shariah is a valid system of law, and thus allows us to compare and use it with other systems of law, specifically here the traditional law of inheritance.

The practice of the Islamic law of succession and its conflicts with the Adigo customary law has been discussed and this study refutes our hypotheses that matrilineal practice of the Adigo has been the factor responsible for the 'alleged' persistence of practice of the customary law as opposed to the Shariah. This has been done by exploring the influence of Islam amongst the Adigo. The long history of interactions between immigrant muslim people and the Adigo encouraged a widespread Islamization of the people. We thus conclude that, in a way Islam has been a force to reckon amongst the Adigo people today. It is therefore possible that traditional practice was weakened through the influence of Islam.

Though the Adigo had been muslims, we observe and conclude that a strict practice of the Shariah was not strong in the initial
stages of Islamization. Customary practice may have been dominant. This may be what led earlier researchers to conclude that the Adigo people had not agreed to be governed by the Shariah. Also the notion of matrilineal practice by the Adigo may have been over emphasised to prove that customary practice of inheritance was in conflict with the Islamic practice of succession.

This survey nevertheless differs with earlier works. Our study concludes that the Adigo rules of inheritance were similar with the Islamic rules. The initial practice of inheritance Kuhala Ufwa of the Adigo was patrilineally biased. We conclude that matrilineal practice amongst the Adigo was emphasised by socio-economic and political forces like famines, wars and slavery. These forces are no longer significant in the lives of the Adigo, hence they are no longer used when determining cases of inheritance. We conclude that Islam as a religion embraced by the Adigo is the predominant factor that people use when determining cases of inheritance. This is so especially with the weakening of customary ethnic social bonds.

A system of law depends on its agents of implementation to prevail over other systems of law in a society. We hereby conclude that factors that could have emphasised customary practice and allow it to prevail over the Shariah are no longer in practice. The elders councils 'Ngambi' which used to administer the customary practice have been replaced with the government machinery which emphasises the common law, an unfortunate factor for both the
traditionalists and the adherents of the Shariah.

Since the Ngambi Councils emphasized the traditional ethnic psychology, their demise also meant a demise of the ideas they emphasised. We thus conclude that the younger generation of Adigo are rarely aware of the customary practice and its morality. Because they are Muslims, the Shariah is what they aspire to follow. Thus the weakening of customary practice left a morality vacuum, one to be filled by Islamic teachings and practice. Since the law of inheritance may strongly indicate a society's normative system, its social structure and family organization we have analysed principles used in the two systems to discuss inheritance disputes and hence been able to draw conclusions on that some principles do accommodate one another amongst the two systems of law.

This survey has also noted and concluded that the political and social factors have influenced a change in the emphasis of Islamic law. We have shown that land which has some sentimental value amongst the Adigo, has been judged by a system of law which did not emphasise or even acknowledge the sentimental feelings of the people, but by the administrative power recognised. Despite the fact that some principles on the issues of land inheritance between the Islamic law and customary practice do accommodate one another, the Adigo people might have missed a chance to practice the Shariah because it was not the system of law recognise administratively.
This survey concludes that emphasis has always been on the common law and not the Shariah. The law enforcing bodies have done very little to emphasise a practice of the Shariah, even when those concerned profess the religion of Islam. While a tendency to follow a particular law depends on the individual concerned, but more certainly the law enforcing organs need always play a greater role. It is thus important that the Islamic personal law should be encouraged by the organs of the judiciary system, in order to allow those who adhere to the Shariah be judged according to the Shariah. How this has been done, how it will be done and what will be the expected results may be the concern of other researchers.
GLOSSARY

Ahl, Hadith; Followers of Hadith, Jurists who depend on the text of Hadith to make judgements.

Al-Masalih, al Mursalah; Opinions given considering public interest.

Al Mujtahidun; Scholar who practiced Ijtihad but restricted themselves to a particular school of law.

Asaba; Agnate relatives

Ashab al ray; Jurists who made independent decisions, those who followed their own opinions.

Atsi (enyetsi); Possessors of the land.

Dar al Islam; Abode of Islam

Fatwa; Legal pronouncement, or opinion of a jurists.

Fard; Precept of the divine law. The form faraid (pl of farida) is used particularly of the quota shares of inheritance prescribed in the Holy Quran.

Fiqh; Islamic jurisprudence.

Hadith; Records of the sayings, deeds, of the prophet Muhammad (p.b.u.h.).

Ijtihad; Exerting one's self in order to reach a legal decision independently.

Jahilliya; Period before the coming of Islam in Arabia, also the period of ignorance.

Kaya; Homestead, traditional fortified homes of the Adigo people.

Kubo; A title of leadership or some form of a paramount chief, introduced to the Adigo from influences of the Vumba Arabs.

Kuchetuni; Maternal family relationship.

Kulumeni; Paternal family relationship.

Kore; Bloodmoney.

Madhahib; Schools of legal thought. Usually refers to the four Sunni Schools of thought.
Muamalat; Social relationships e.g. marriage, divorce, inheritance etc.

Mujtahid; A scholar who imitated the judgements of others.

p.b.u.h.; Peace be unto him.

Qisas; Retaliation, the Islamic legal sanction in cases of homicide and wounding.

r'ay; Juristic speculation or opinion.

Rika; Age mates

Shariah; The Islamic Law.

Sunnah; The sayings and deeds of the Holy Prophet.

Succession; This will refer to the taking over of property through the prescribed rights after the death of the proprietor. It will be used synonymously with the term inheritance.

Ulama; Muslim scholars

Ummah; Muslim community

Urf; Traditional social customs and practices.
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Eisensdadt S.N.  

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**THESIS (UNPUBLISHED)**

*Achieng J.*


*Bunger R.L.*


*Gerlach, L.P.*


*Gillette C.*


*Mackay W.F.*


*Sperling D.C.*

APPENDIX I

INTERVIEW SCHEDULE I

To be used to acquire information from Muslim elites, which may include Kadhis, Madrassa Maa lims, Imams and students.

NAME: ___________________ AGE: ___________________

PLACE: ___________________ OCCUPATION: ___________________

LEVEL OF EDUCATION: ___________________

DATE: ___________________

1. Which of the following sects in Islam do you belong, Shia, Sunni, others - specify if others?
2. Which school of thought do you follow, e.g. Shafi, Malik, Hanbali, Hanafi, Imamiya?
3. What are the Quranic rules concerning inheritance?
4. Who are the people included in inheritance according to the Shariah?
5. What is the procedure in deciding inheritance amongst Muslims?
6. Who may not be excluded in inheritance?
7. Who can be excluded in inheritance?
8. Is there any differences in the practice of inheritance amongst Muslim communities that you know?
9. What can you say are the causes of the differences, if any?
10. Do you know of any traditional communities in Kenya who are Muslims?
11. Do you know of the Adigo people? What can you say about their practice of Islam, especially on inheritance?
12. Can you say that the Islamic law of succession can be practiced together with traditional customary laws of succession?
13. What areas of succession can you say can accommodate customary laws?

14. What areas of succession can you say cannot be compromised with any customary laws?

15. What difficulties can you say are faced by Kadhims who have to settle cases amongst Muslims who adhere to both the Shariah and customary laws of inheritance?

16. What can you say is the position of women in the Islamic law of succession?

17. When is it necessary for a Muslim to write a will?

18. Can a will which does not conform to the Shariah be valid for Muslims?

19. Can Muslims dis-inherit their children? Is it obligatory for every child to inherit?

20. Do you think Muslims in Kenya generally practice the Islamic law of succession?

21. What do you think are the ways which Muslims flout the laws of succession?

22. What is your opinion concerning Ijtihad?

23. Do you consider Ijtihad applicable on matters concerning inheritance amongst Muslim communities?

24. Can you say that the Holy Quran has all rules concerning the practice of inheritance today?

25. Which specific areas on inheritance does the Quran set fixed rules?

26. Why do you think some Muslim communities still practice traditional rules of inheritance?

27. Can you say the Islamic law of succession can accommodate customs and practice of traditional societies.
28. Which areas of the Islamic law of succession do you think can accommodate customs?

29. Have you decided any case where you had to deal with problems concerning customs of a people who have adopted Islam?

30. How did you go about deciding on these matter(s)?

31. What is your general overview of the situation concerning the Islamic law of succession in Kenya today?
APPENDIX II

INTERVIEW SCHEDULE II

To be used to acquire information from Adigo Sages.

NAME:__________________ DATE:__________________

LOCATION:______________ AGE:__________________

RELIGION:______________

1. What do you understand by the following Chidigo terms?:
   Mbari:______________________________
   Fuko:______________________________

2. How many Mbari groups do you know? Name them.

3. How many Fuko groups do you know? Name them.

4. How does one become a member of a particular Mbari?

5. How does one become a member of a particular Fuko?

6. Can one be a member of as many Fuko and Mbari groups as one wishes?

7. What are the restrictions (if any) that hinder one from joining a particular Mbari group?

8. What is the importance of Mbari groups in deciding marriage partners?

9. What is the importance of Fuko groups in deciding marriage partners?

10. Can members of the same Fuko groups intermarry?

11. Can members of the same Mbari groups intermarry?

12. Traditionally, can you say the Adigo had their own rules of inheritance?

13. How did the Adigo inherit property?

14. Do you consider the Adigo to be following traditional rules of inheritance today?

15. What are the Adigo traditional rules of inheritance?
16. What are the properties traditionally inherited amongst the Adigo?

17. The Adigo being Muslims, what can you say about their practice of inheritance? Do you think they still follow the traditional rules of inheritance?

18. Do you consider the Adigo to be observing fully the Islamic law on inheritance?

19. Do you think the Adigo have abandoned their traditional rules concerning inheritance? Explain your answer.

20. Do you think the Islamic law of inheritance and the Adigo rules of inheritance have differences?

21. What can you say are the differences between the Islamic law of inheritance and the Adigo rules of inheritance?

22. Do you think the Adigo rules of inheritance hinder the practice of the Islamic law of succession amongst the Adigo people?

23. Do you think there are similarities between the Adigo rules of inheritance and the Islamic law of succession? Explain your answer.

24. Can you say the Adigo practice both their traditional rules of inheritance and the Islamic laws on succession?

25. Which areas of inheritance do you think the Adigo practice their traditional rules of inheritance, only?

26. Which areas do you think the Adigo practice the Islamic law of succession only?

27. Have you been called upon to decide a case concerning inheritance? How did you do about this case(s) if any?
28. Can you say in future the Adigo will abandon their rules concerning inheritance? Please explain your answers.

29. If the Adigo practice their traditional rules of inheritance, can you consider them wrong? Explain your answer.

30. What can you say is the future of the practice of the Islamic law of succession amongst the Adigo people?
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2. MUSLIM SCHOLARS (Madrassah Teachers, Mosque Immams and Kadhi)

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