

## RELIGION AND THE RULE OF LAW IN NIGERIA

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### Abstract

*The paper will attempt to investigate the degree to which there is significant relationship between religion and the rule. The problem between religion and the rule of law lies in the way they are enforced. Law is backed by a threat of socially organized physical coercion and sanctions. Considering divergence in religious beliefs, the application of certain laws seems problematic even when it is believed that all are equal before the law. In some Islamic states in the north sharia law is applied which is inconsistent with the secular nature of Nigeria. There is an argument that the validity of religious rules is based upon Divine will; but if these rules are adopted by state law, their validity derives from the (secular) legislator.*

**Keywords:** Religion, Rule of Law, Nigeria, Politics

### Introduction

Since Nigeria's independence in 1960, she has struggled fruitlessly to clearly articulate the nexus between religion and the state. The spheres of rule of law and religion have also remained problematic in view of the two major religions (Christianity and Islam) and particularly the insistence on the introduction of Sharia law in 1999 by twelve out of the nineteen states in the Islam dominated north. Their argument was based on the uniformity of laws in the northern states, particularly regarding Islamic and customary laws.

No doubt the British colonial masters ostensibly bequeathed to the nascent independent nation-state a secular regime, the internal contradictions, which, paradoxically were propagated by the colonial authority, incubated to pose a challenge to the new state soon thereafter.

On the one hand, there was the Muslim north, groomed under the English indirect rule, which accommodated the sharia legal order; on the other hand, there was the Christian/Animist south, mentored under the British-secular regime. Thus the post-independence secular state, which seemed acceptable to

the Christian/animist south, was abhorred by the Muslim north. This paradox has remained the Achilles' heel of Nigeria's corporate existence, as northern Islamists have consistently sought the establishment of an Islamic state to replace the extant secular regime. This article therefore seeks to situate the legal and constitutional frontiers of state-religion relations in Nigeria. It is intent on delineating the conceptual boundary between religion and politics, while evaluating the impact of the current relationship on national security. The article advocates for a moderate secular regime - by whatever name - that is constitutionally defined and institutionalize

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## **Religion**

Scholars and academics have made conscious efforts over the years towards offering an appropriate definition of religion even though religion does not have a definite definition.

From the Latin *religio* (respect for what is sacred) and *religare* (to bind, in the sense of an obligation), the term religion describes various systems of belief and practice that define what people consider to be sacred or spiritual (Fasching and deChant 2001). Throughout history, and in societies across the world, leaders have used religious narratives, symbols, and traditions in an attempt to give more meaning to life and understand the universe. Some form of religion is found in every known culture, and it is usually practiced in a public way by a group. The practice of religion can include feasts and festivals, intercession with God or gods, marriage and funeral services, music and art, meditation or initiation, sacrifice or service, and other aspects of culture.

While some people think of religion as something individual because religious beliefs can be highly personal, religion is also a social institution. Social scientists

recognize that religion exists as an organized and integrated set of beliefs, behaviours, and norms centred on basic social needs and values. Moreover, religion is a cultural universal found in all social groups. For instance, in every culture, funeral rites are practiced in some way, although these customs vary between cultures and within religious affiliations. Despite differences, there are common elements in a ceremony marking a person's death, such as announcement of the death, care of the deceased, disposition, and ceremony or ritual. These universals, and the differences in the way societies and individuals experience religion, provide rich material for sociological study.

Obilor (2003:133), attempts to proffer solution to the difficulties often associated with religion. Etymologically, religion is derived from the Latin noun 'religio'. The beauty of this Latin word is that, it is most closely allied to other three verbs: 'religere' - which means to 'turn to constantly' or "to observe conscientiously", 'religari' - which means "to bind oneself (back)" and 'reeligere' meaning "to choose again". He further avers that, "a closer scrutiny shows that the three verbs point to three possible religious attitudes and thus a purely etymological probe can tell us much about religion and can also help to resolve most of the difficulties often associated with religion." Furthermore, Gilbert (1980:5) describes religion as "any system of values, beliefs, norms, and related symbols and rituals, arising from attempts by individuals and social groups to effect certain ends, whether in this world or any further world, by means wholly or partly supernatural." In his analysis on Gilbert's definition of religion, Obilor (2003:134) observes that, the use of the term "supernatural' is fraught with complexities in certain contexts. It has one merit, that of not limiting his definition to a belief in a God or gods and at the same time not forgetting the 'religious' dimension of man, which opens him beyond himself and towards a superior power, a supernatural reality, or merely a transcendent being.

The term religion can be broadly interpreted from functional and substantive perspectives. The former explains the mystery of religion while the latter is a clear pointer to the necessity of religion in human socio-cultural development. My concern in this essay is mainly on the functionality of religion. In this regard, Milton Yinger explains religion as a system of beliefs and practices through which a group of people struggles with problems of human existence (Van der Leew, 1963, p. 102). Emile Durkheim claims that religion is a phenomenon that unites people into a moral community, which must adhere to its ethics (Aderibigbe, 1997, p. 3). Karl Marx, however, argues that religion is a tool in the

hand of the elite at oppressing the poor masses. For him, religion is often used to suppress the thinking of the masses and bring them to submission. He writes:

“Religion is the sigh of the oppressed creatures, the heart of a heartless world and the soul of soulless condition. It is the opium of the people.” (Marx, 1844, p. 85).

The submissions of the three scholars mentioned above suggest that religion is a social instrument with capacity to engender socio-economic development in a society, depending on its usage. For Yinger and Durkheim, religion could lead to positive interactions and social identifications through observance of and reliance on its ethical codes. On the contrary, Marx's arguments suggest that religion is only a ‘means to an end’ and which is often retrogressive as it reduces or eliminates the development of individuals and society. To the Marxists, religion is also an attempt to pacify the oppressed masses.

From a moralist point of view, Immanuel Kant explains religion as:

The belief, which sets what is essential in all adoration of God in human morality... Religion is the law in us, in so far as it obtains emphasis from lawgiver and judge over us. It is a morality directed to the recognition of God (Aderibigbe, 1997, p. 6).

The submission of Kant suggests that religion is all about the recognition of the supreme law giver (God) and obedience it engenders from those who express a belief in Him. Although Kant has been accused of equating religion with morality, the strength of his explanation lies in the interaction it implies between the moral law giver (God) and man, who is the recipient of the law. Man is expected to obey all the laws in order to be adjudged moral with some reward.

According to Black's Law Dictionary, it defines ‘Religion’ as a system of faith and worship involving belief in a supreme being and usually containing a moral or ethical code. From the clarifications stated above, we observe that religion has serious social dimensions and implications. These effects can only be felt positively or negatively depending on how man reacts and accepts the precepts, doctrines, principles and laws that form the bedrock of religion.

## Rule of law

Law is defined as the body of rules, standards and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them. Law also embodies principles of equity and good conscience, in short, the values and morals of the society. No doubt, morality plays an important role in regulating social relations that maintain social order.

The notion of 'rule of law' has two different meanings, a formal and a substantive one. Formally, every state lives under the rule of law (*Rechtsstaat*, in German). The substantive notion relates to the content of the law, its evaluation from an ethical point of view, based on (subjective) ideological and political assumptions about the requirements of justice. In the context of law and religion, the rule of law is used to establish the correct solution to the conflict between the constitutional principles of individual and collective freedom of religion, freedom from religion and public order. If religion, morality and law are to achieve their social goals and values, rule of law is an indispensable modern socio-political value.

For a clear concept of the principle of the rule of law, Akinola Aguda (1992) has given us a brief historical perspective as follows:

"Time was when the law giver, be it in Europe, Africa or elsewhere believed he was above law. The shedding of blood in England and Europe in the 17<sup>th</sup> century had the salutary effect of limiting the monarchical absolutism of that era and of directing human history towards the evolution of governments under the rule of law."

In the light of the above, we can deduce that the historical evolution of the concept of the Rule of law is intimately connected with the history of human liberty. As at the time of the Treaty of Augsburg, which temporarily ended the religious wars in Europe in 1555, the princes and sovereigns dictated the religion of their subjects. The religious clause of that Treaty- *Cuius regio, illius et religio* (the authority of each region determines its religion) indicated as much. Not even the Peace of Westphalia which ended the Thirty Years war in Europe in 1648, acknowledged the principle or the Rule of Law and human freedoms, and as was stated by Iwe (2003):

“...centuries after the Middle Ages, religious intolerance still persisted, ...and man and his inalienable religious liberties as based on his personal dignity had not fully come into their own”.

However, a critical perusal and analysis of the relevant documents would indicate that the concept of the Rule of Law as modern human value was conceived in the English Bill of Rights of 1689 and the American Declaration of Independence of 4<sup>th</sup> July, 1776 are born in the French Revolution and Declaration of the Rights of Man and the Citizen (inspired by the maxim of the Revolution: *Liberte, Egalite et Fratemite* (Liberty, Equality and Fraternity). Iwe in his work on human rights, he commented on this stupendous historical event as follows:

Under the auspices of “L” Etre supreme (God), the French have sung the glory of human dignity, equality and security. These values win never fall to glow in the hearts and on the lips of all men of good will and humanitarians, for all generations to come (Iwe, 1986)

It was however in the United Nations Universal Declaration of Human Rights, on 8<sup>th</sup> December, 1948 and in Pope John XXIII's Encyclical Letter titled: *Pacem In Terris* (Peace on Earth) of the 11<sup>th</sup> of April 1963 that the Rule of Law attained full adulthood and maturity and became universally promulgated as a critical, crucial and indispensable human value. Accordingly, the third paragraph of the Preamble to the U.N: Declaration states:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law (UN, 1948).

In its historical journey, the Rule of Law has become, in the words of Lord Hailsham: “...the enemy alike of dictatorship and anarchy, the friend by whose good offices authority and liberty can alone be reconciled” (Hailsham, 1957). It is here that Justice Oputa comes in with his pragmatic definition of and comments on the Rule of Law as follows:

If we are not ruled by Law we will have to be ruled by man and man is an extremely unpredictable animal. The Rule of Law presupposes justice according to the law and not according to the

whims or caprices of any individual, be he the most benevolent of all dictators (Oputa, 1981).

It is this historic desire, aspiration and choice of modern men and women that they be governed by the collective will and wisdom and established objective norms and customs of the people as a whole, (which the law represents) that is technically known as the Rule of law. To be governed by law or the collective wisdom and established norms of the society is perceived and acknowledged more objective more stable and less susceptible to human emotions, frailties and prejudice. It is further generally accepted that under the banner of the Rule of Law, the fundamental values and freedoms of the citizens are safer and better developed. It is therefore universally acknowledged that the Rule of Law is the badge of the free people; and many modern democracies have entrenched the Rule of Law into their legal system as its substantive and operational spirit.

According to Finnis (1988),

The rule of law is the name given to the state of affairs in which the legal system is legally in good shape.

### **The Conflict between Rule of Law and Religion**

Just societies enact laws to promote the general welfare. Some people, invariably, refuse to comply with those laws, and they face sanctions in accordance with them but that is not always the case in some countries.

The conflict between law and religion is particularly intense in states for example in United States of America and Israel. In Israel for instance, the problem is to realize the constitutional program of establishing a state that is both Jewish and democratic-liberal. The traditional Orthodox concept of a Jewish state clashes with the modern notion of a liberal, secular-national state. The solution can and must be found in adapting the religious tradition to the modern reality of a Jewish state, composed of multicultural communities, within the framework of a liberal democracy.

In the United States, however, there is an institutionalized right of noncompliance to the law, to the detriment of society as a whole. Its latest outrageous expression is the attempt by Roman Catholic businesses to avoid contraceptive coverage as part of the Affordable Care Act.

America is a religious country, no doubt, but it is also unique among democratic societies for the extent to which it grants religious believers special exemptions from complying with the laws that apply to the rest of the country. In 1990, in *Employment Division v. Smith*, the U.S. Supreme Court, in an opinion by Justice Antonin Scalia, a conservative, tried to put a stop to this legal inequity, noting that "the right of free exercise (of religion) does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." An issue was denial of unemployment benefits to Alfred Smith, an Oregon drug-rehabilitation counselor, after he was fired, but for cause: He had lost his job because he had tested positive for use of an illegal narcotic, but one required by the rituals of the Native American religion to which he subscribed. The court concluded that the state did not have to carve out exceptions to a law regulating illegal narcotics to accommodate religious believers.

The Supreme Court's decision met a massive backlash by religious believers, who, unsurprisingly, welcomed the special exemptions to general laws that applied only to them. Congress, the federal courts, and state courts and legislatures all bent over backward to make clear that those with sectarian religious beliefs did not have to comply with the laws that apply to other citizens.

According to Brian Leiter (2013), for several decades now, sectarian religious believers in the United States have sought and often received special treatment - a "free pass" for breaking laws they do not like. To be sure, the religious objectors claim a "conscientious" objection to the laws. But conscience is not proprietary to religious believers, and most conscientious objectors to laws either bite their lip and comply or face the consequences. I have no doubt that the vast majority of religious objectors to the Affordable Care Act will, if forced to do so, "bite their lip" and comply with the law that everyone else complies with. As things stand, however, religious believers recognize that our laws may give them a free pass if they can claim a religious objection to compliance and can convince a court to recognize it. They thereby have a perverse incentive to push for exemptions. The United States is not a theocracy. Everyone, even religious believers, should be required to comply with the law.

### **Religion and Rule of Law: The Nigerian Example**



As a socio-political necessity, the rule of law is something necessitated in the social contract and government in view of equality or inequality of men. The concept of the rule of law also stipulates that all are equal in the eyes of the law except certain officials like Presidents and Governors who may be acting in their official capacity. This does not in any way mean that they should flout court rulings or show disrespect to the constitution. But it means that if sued, they may not be compelled to appear in the court personally.

Although morality and law have different identities where morality conflicts with law, the law must prevail. Religious sentiments must also be distinguished from the law. In the celebrated case of *Thomas v. Olufosoye* (1986) 1 NSCC 326, the Supreme Court of Nigeria held that a mere church member had no locus to challenge the appointment by the College of Bishops. The court in appreciating the dichotomy between law and religious sentiments held as follows:

"What is very important in the case is the danger of bringing religion as such to the reasoning of jurisprudence. The reasoning in religion is one of God or Allah which supersedes all jurisprudential understanding. The more so when Christian judges have to be called upon to settle Moslem disputes or Moslem judges adjudicate upon Christian issues. The unbeliever in such cases can only apply the law of the state. Judges once they are seized of a matter, have no choice but to apply the law and not religious sentiments (Ogunwumiju, 1999).

The argument here is that law is a vital tool in safeguarding freedom of religion or freedom not to believe in any religion. Protection of religion by the law is not universal. Laws of non-secular countries protect the religion of the state from perceived apostasy and not individual right to religion.

Some of the successive military government in Nigeria condoned and encouraged the illegitimate influence of religion on state matters. This was for the purposes of political legitimacy and religious sanctity. However, since 1999 and the entrenchment of democracy and the rule of law, overt religious incursions into governance has decreased considerably. The courts have also played a notable part in the entrenchment of the rule of law by deciding controversial constitutional issues relating to law and religion in a way that left everyone in no doubt as to the separation of law and religion.

Furthermore, to ensure the entrenchment of the rule of law in Nigeria, in 2009, the Court of Appeal, Ilorin division decided that the university had the right to refuse the wearing of the full *ijab* by female students which covered their faces

and prevented examiners from seeing their faces before they entered the examination halls although a right bestowed on them by their religious belief.

### Conclusion

Although Nigeria is a multi-lingual, multi ethnic and multi religious nation state, however, the Nigerian state is determined not to allow religious conflict to divide or taunt her coexistence and will continue to maintain the cohesion and social stability of the Nigerian state. It is our fundamental right of every citizen irrespective of religious inclination to live in peace and the maintenance of these rights can only be guaranteed under the rule of law.

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