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Freedom of Religion or Right to Religion?

Being Muslim in Contemporary Nigeria

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Introduction

When I read the theme of this book – *Islamic Nigerians: On Being Muslim in Contemporary Nigeria* – to which my chapter contributes, my mind immediately went to a provocative article I had read a while back. That article is entitled “A Tragedy of Human Rights: Liberalism and the Loss of Belonging.”⁹⁷ The article suggests, as the name indicates, that the human rights terminology that for five decades or so has been used to articulate varied contexts of human sufferings as guarantees requiring state protection has, in fact, contributed more to the break-down of the fibre of civil society in the United States and elsewhere. In particular, the authors argue that –

[H]uman rights are as much the problem as they are the solution to the contemporary challenge of constructing civil society... We are proposing an argument based on the seemingly inherent long-term social and political consequences of close to half a century of advocating human rights to the exclusion of other components of human good and fulfilment. The idea of human rights as the primary vehicle through which we articulate our shared moral vision — ignoring even such seemingly cognate ideas as constitutional rights or natural rights — has had (perhaps) inadvertent but nevertheless serious and deleterious effects world-wide... While one can empirically point to advances tied to human rights, more often than not this binds us as well to some of their less salutary, unintended consequences which can be destructive to the very communities they purport to protect.”

While most of the arguments advanced in the piece appear reasonable, logical, and cogent for the proposition that the creation of communities based on 'belonging', 'moral credit' and 'inclusion' must necessarily 'exclude', I still find persuasive the idea that the language of rights bears too much towards excessive individualism. As Haski¹⁰ has rightly observed, individualism as a way of life is not only Western, but also just one of many worldviews. Several societies in the world, Nigeria inclusive, as with most Afro-Asian contexts, thrive on this and communitarian ways of life.¹¹ Unfortunately, Seligman and Montgomery are right in my opinion that human rights standards are currently enforced through prisons that focuses too much on the individual as against the community which negates the supposed universality of these standards.¹² Put another way, as I demonstrate below with the Nigerian context and the example of right to religion, private conceptions of 'right to confinement' as opposed to freedom which is about choices appear problematic for non-homogenous societies. What follows in the section below is an account of my thoughts on the implication of individual conceptions of 'rights' as opposed to 'freedom' in relation to the practice of religion by Nigerian Muslims.

Being Religious and Being Nigerian

According to World Bank statistics, Nigeria has a population size of 213, 087, 117 and ranks 7th in current world population size.¹³ The same statistics forecast that by 2050, Nigeria's population will grow to a rank of 3rd in the world next only to China and India. Being divided into over 500 linguistic and ethnic groups, it is the most populous African country.¹⁴ Within this great diversity, there are a few unifying factors and the most notable are - a national constitution, the English language as the legal lingua, and religion. In terms of religious demography, it has been posited that there 'are a substantial number of persons who practise traditional indigenous religions as well as a good number of non-religious persons' (that is) it is fair to conclude that Islam and Christianity are the dominant religions in Nigeria.¹⁵

That, amongst the three stated unifying factors, religion appears to be the least represented and often overlooked

factor amongst the three that is indigenous to Nigeria regarding origin and historical source.¹⁰⁵ However, religion also constitutes a divisive factor since most of the violent conflicts that have come out of the Nigerian soil have to do with religion. This perhaps accounts for why there are always attempts to push religion as far away as possible from political discussions so that the focus will be on the national rather than religious identity. The question that begs its answer is how do religious adherents strive to balance their religious identities with the national identity and what public resources are available to either aid or obstruct the process of achieving this balance?

In the first instance, even though Nigeria has striven through the Constitution,¹⁰⁶ particularly sections 10¹⁰⁷ and 38,¹⁰⁸ to maintain a distinction between religion and politics while also encouraging freedom of religion, it has not been successful. This is perhaps not surprising given the fact that even in European and North American societies that have gone through various processes of secularisation, religion and politics are not always as neatly separated as it is sometimes suggested.¹⁰⁹ More importantly, it appears that academic literature on Nigerian politics pays very little attention to religion even though historically and at present, religion has great political influence.¹¹⁰ This stance seemingly ignores the fact that religion is also an important constitutive component of the Nigerian identity. For example, in the 2006 national census, religion was deleted as one of the parameters.¹¹¹ The implication of this is that constructive strategies for mediating public discourse between religion, politics, and nationality on the one hand, and the opposing dictates of different religious beliefs, on the other hand, are ineffective.

As earlier said, available materials and resources on the position of religion in the public domain such as constitutional provisions and those in other legal instruments continue to lend themselves to variant and individual constructions. These constructions of the relationship between the individual and the state on the one hand and between citizens on the other in the absence of common value direction work against each other and result in multiple identities. These identities naturally depend on the perspective of the individual and the interests perceived to be primordial rather than a sense of collective interest. This certainly has grave consequences for an identity crisis that could and often does result in security challenges. Put another way, a perceived challenge to religious or national identity, when viewed as mutually exclusive, often leads to the

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Freedom of Religion or Right to Religion: what does the Nigerian Constitution Protect?

...with a combined reading of Sections 38, 42 and 222 of the
...In these sections lie the appreciation of
...the issue of religion can constitute a
...breakdown of law and
...not only that, but there is also protection
...even though public
...the recognition of the fact that
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George Melman

Section 10 of the Bill of Rights states that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition for a redress of grievances. The Supreme Court has interpreted this to mean that the government cannot establish a religion or interfere with the free exercise of religion. The Court has also interpreted this to mean that the government cannot abridge the freedom of speech or the press. The Court has also interpreted this to mean that the government cannot interfere with the right of the people peaceably to assemble and to petition for a redress of grievances.

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societies which can bring about private and public consequences to non-adherent minority or individuals. In particular, the subsections of Sections 38, 42 and 222 attempt to regulate these consequences to a positive end while not limiting religious freedom. Undoubtedly, this careful balance is necessary for the diversity of belief systems in Nigeria. In my view, the Nigerian constitution protects freedom of religion because it entails duty to others as limitations not right to religion.

Being Muslim, Being Nigerian and the External Others

Section 1 (1) of the Nigerian Constitution¹¹⁴ makes its provisions supreme and binding on all persons and entities within the polity. Subsection (2) of the same section declares as void any other law (including but not limited to religious laws such as Islamic law) that is inconsistent with any provision of the Constitution. Furthermore, section 17 (1) stipulates that 'the State social order is founded on ideals of Freedom, Equality and Justice.' Accordingly, it is a duty of every Nigerian to abide by the Constitution and 'respect its ideals.'¹¹⁵ What is more, section 15 (1) requires that 'loyalty to the nation shall override sectional loyalties.' The implication of these sections and the earlier stated constitutional provisions is that religious identity, which is often related to performance, may be tolerated to the extent that it does contravene any provision of the Constitution. More particularly for Nigerian Muslims, they must exhibit tolerance towards other Nigerian non-Muslims.

On the face of it, the issue appears quite simple, straightforward, and not problematic. In fact, it is an expression of cooperation amongst civilised persons, and it is on the strength of this itself that Nigerian Muslims can identify themselves as Muslims. In the same connection, it also appears that the dual identities as 'Muslim' and 'Nigerian' are rather complementary than in competition with each other. However, one Western scholar of religious tolerance, Edward Craig, has contended that 'it is not clear how far religious believers can sincerely regard other religions in so tolerant a way without in effect giving up their own.'¹¹⁶ In other words, according to this perspective, religious tolerance means no more than a partial or significant release of a part of or the whole of an individual's religious identity. In effect, the more an individual increases his or her tolerance for other religions, the more diluted his or her own religious identity would become. Another scholar, Patrice Brodeur

objected to Craig's notion of religious tolerance on the ground that truth claims by religious believers of different faiths do not always exclude each other and may converge on key religious truths.¹¹⁷ In Brodeur's words

It is not only that truth claims often imply significant differences in how the concept of truth is understood; it is also that various religious traditions have truth claims which both include and exclude religious others, depending on their degree of closeness to key religious truths. For example, most evangelical Christians hold a notion of truth which separates dichotomously between saved Christians and everyone else, in contrast, most Muslims include Jews and Christians as People of the Book worthy of their tolerance and even respect, while still excluding most other religious and non-religious worldviews... Notions of 'truth' among religious believers can coexist at once and possibly change over time, depending on the context.

To better appreciate in tangible terms how the two discussed perspectives may play out in the life of a Nigerian Muslim, a possible area of conflict between tolerance and identity is given by way of illustration. Section 15 (1) and (3c) of the Constitution provides as follows

(1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress...

(3) For the purpose of promoting national integration, it shall be the duty of the State to: ...

(c) encourage inter-marriage among persons from different places of origin, or of *different religion*, ethnic or linguistic association or ties; **{Emphasis added}**.

The issue of inter-faith marriage has clear stipulation in Sharī'ah. The Qur'ānic provision contained in Q2:221¹¹⁸ prohibits marriages between Muslims and non-Muslims generally. An exception is made for Christian and Jewish women as people of the book whose marital union with Muslim men is permissible in the light of Q5:5.¹¹⁹ It is interesting to note that three of the Sūnnī Imams of Islamic schools of law – Hanafī, Shāfi'ī and Maliki – have expressed the view that the permissibility for Muslims to marry women of the people of the book is for societies

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where Islamic dictates are predominant. Taking account of the constitutional directive and the Islamic position, supposing a Muslim officeholder is responsible for a programme of national integration through inter-faith marriages, what would be the appropriate response? Two responses are possible in this situation. On the one hand, in affirmation of the Muslim identity, the office-holder may actively, tacitly or by design work against a successful execution of the programme. Thus, an individual has contravened a constitutional duty s(he) had sworn to uphold. On the other hand, another office-holder in the same situation may believe that her or his identity as a *Nigerian* Muslim amongst other citizens requires respect for the supreme law of the land. The office-holder may faithfully work towards a realisation of the objective of national integration at the expense of her or his religious identity. A question that begs its answer at this juncture is –which of the two responses is most authoritative for the Nigerian Muslim?

The latter response, which entails subjecting the Muslim identity to the Nigerian identity where there appears to be conflict between the two appears to be the most typical response in such situations. In fact, the situation is not only particular to Nigerian Muslims, but seems to be true of reactions of Muslims in similar situations in most other constitutional contexts as well.¹²⁰ It suggests a 'particularistic kind of Islam' that has given up 'claims of making Islam a total way of life, particularly with respect to national politics'¹²¹ as well as issues of national security in the face of terrorists acts in the name of religion when the Muslim identity is under pressure as a result of judgmental refractions from non-Muslims.

Conceptualising Freedom, Rights and Religion

Freedom, as studied by the Western historian Patterson,¹²² has been described as incorporating three dimensions.¹²³ These are personal, sovereign, and civil dimensions. Patterson conceives of personal freedom as a combination of non-coercive behaviour and liberty to live as per choice limited only by the freedom of others. Sovereign freedom is regarded as the ability to act without limitation while civic freedom is all about unfettered participation in public life, that is to say governance.¹²⁴

Relating all the dimensions together, Patterson contends as follows

The sovereign free person has the power to restrict the freedom of others or to empower others with the capacity to do as they please with others beneath them. This conception of freedom is always relative. At one extreme stands the person who is absolutely free with respect to another, namely the slave-master or absolute rule of god; at the other extreme is the person who has no freedom with respect to another, namely the slave in relation to his master. Between the two are all other human beings with more or less power or freedom with respect to others.¹²⁵

To put Patterson's analysis in the perspective of contemporary national democracies such as Nigeria, it may be surmised that freedom can best be described as 'that condition which broadens the range of choices and actions available to human beings living under government' including limits on behaviour. On the other hand, right has been described as a trump capable of prevailing over political justifications.¹²⁶ It has also been defined as 'something a [hu]man can stand on, something that can be demanded or insisted upon without embarrassment or shame.'¹²⁷ In yet another consideration, it is contended that 'respect for individual rights is the key standard for assessing state action and hence the only legitimate state is a minimal state that restricts its activities to the protection of the rights of life, liberty, property, and contract.'¹²⁸ For present purposes, right may be construed as 'a claim enforceable by law.' The idea of limitation on action seemingly made the term 'freedom' less attractive to human right scholars and political scientists while the idea of a claim protected by law made the term 'right' more appealing. However, Puri is correct in his argument that one right is always in conflict with another and that no theoretical formulation and definition of right has 'been able to conclusively resolve the conflict of rights, and perhaps given the nature of rights, conflict is inevitable.'¹²⁹ Finally, religion in some conceptions and notably, Paul Tillich, 'is ultimate concern. It gives us the experience of the Holy, of something which is untouchable, awe-inspiring, an ultimate meaning, the source of ultimate courage.'¹³⁰ Compare this with the following description of religion by the philosopher Sigmund Freud thus

Religious ideas are illusions, fulfilment of the oldest, strongest and most urgent wishes of mankind. Thus, the benevolent rule of a divine Providence allays our fear of the dangers of life; the establishment of a moral world-order insures the fulfilment of the demands of justice, which have so often remained unfulfilled in human civilization; and the prolongation of earthly existence in a future life provides the local and temporal framework in which these wish-fulfilments shall take place.¹³¹

Following Freud, Karl Marx also views religion as 'the sigh of the oppressed creature, the heart of a heartless world, just as it is the spirit of a spiritless situation. It is the opium of the people. The abolition of religion as the illusory happiness of the people is required for their real happiness.'¹³² If one compares the common understanding of politics with the examples of the various contestations on the meaning of religion, one may argue that we may agree on politics but not on religion. But the situation is not always so clear cut and straight.

This is because in Nigeria at least, religion has played a unifying role to avert violent eruptions because of political divisions while at other times it has been the very cause of those eruptions. For example, in Northern Nigeria, Kukah notes how Islam is instrumentalised for political unity and success of groups that would otherwise not have aggregated around a common goal but for religion.¹³³ Conversely, the violent Kano conflicts of 1980-1985 that occasioned loss of lives and properties also instrumentalised the religion of Islam.¹³⁴ Nigeria is not alone in this experience of the twin-faced role of religion. Even in the so called secularised Western contexts, religion continue to exert so much influence on the political developments as it also constitutes an essential component of political conflicts.¹³⁵ Hence, I agree with Paul Gwynne that "for better or for worse, religion is still very much part of the human story and cannot be ignored if we hope to explain fully what makes individuals and communities think and act in the way that they do."¹³⁶

My focus of concern in this chapter has to do with the individual conception of what a sense of 'freedom' or of 'right' entails at the level of practice and action in relation to religion. Should we say I have freedom of religion or right to religion? I would suggest a sense of 'freedom' as the

guidance is clear from following Qur'ānic provision- "We sent afore-time our messengers with clear signs and sent down with them the Book and the Balance that human beings may stand forth in equity..."¹⁴³ In my opinion, equity is not only about people but also about situations, circumstances, and challenges. In as much as it is expected by the above cited provision that every person must be given her or his due, in the same way the correct response should seek every situation to achieve balance. Nigerian Muslims, therefore, have the challenge of determining ways through which their national identity will always align with their religious identity. The reverse should only be allowed in exceptional situations as a temporary resort to achieve an equitable end. Additionally, where there are challenges to religious identity because of acts of terror in the name of religion that questions their own interpretation of Islam, Nigerian Muslims would need to continually articulate and communicate the message of Islam in inspiring ways that are neither apologetic nor defensive, but benignly assertive as examined above.

Conclusion

There is the need for intellectualising the implication of the resources and provisions on the role of religion in the constitution and construction of the Nigerian identity. It has been shown that the situation of Nigerian Muslims in relation to the articulation of a religious identity under a national constitution that enshrines an identity – neutral form of religious tolerance requires careful consideration. The idea of religious tolerance ensures peaceful coexistence of persons of diverse religious faiths and ideologies, and therefore it is an important constituent of constitutional democracies such as Nigeria. However, the Islamic perspective on religious identity requires total commitment to the Islamic way of life. It is suggested that Nigerian Muslims must continually seek equitable methods of ensuring religious tolerance without running afoul of the requirements for the preservation of their Islamic identity. One of such ways is to foster a sense of "freedom" rather than "rights" that can open the floodgates of constructive dialogues and debates with other ideologies, religious or otherwise. This is expected to help better the appreciation of the underlying wisdom behind Islamic dictates and prescriptions.

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103. The Constitu
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107. Nwauche, E.
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107. This section requires that no religion shall be adopted as state religion at all levels of government.
108. This section enshrines all commonly understood components of religious freedom from belief, practice, observance and propagation to instruction of children by their parents etc.
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118. 'Do not marry unbelieving woman until they believe nor marry (your girls) to unbelievers until they believe ...unbelievers do (but) beckon you to the fire ' Translations of the meaning of provisions of the Qur'an in this paper is according to *The Holy Qur-an English Translation of the Meanings and Commentary*, Revised and edited by The Presidency of Islamic Researches, IFTA.
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130. Cited in Paul Gwynne, *World Religions in Practice: A Comparative Introduction*. (2009, US and UK: Blackwell Publishing, p. 4)
131. *Ibid.*
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133. Kukah, M. H. 1993. *Religion, Politics and Power in Northern Nigeria*. (Ibadan, etc: Spectrum Books Ltd).
134. For a non-Muslim perspective, see Adesoji A. O. 2011. "Between Maitatsine and Boko Haram: Islamic Fundamentalism and the Response of the Nigerian State" 57(4) *Africa Today*, pp. 98-119.
135. Grillo, L. S., van Klinken, A. and Ndzovu, H.J. 2019. *Religions in Contemporary Africa: An Introduction*. London and New York: Routledge. P. 17.
136. Paul Gwynne, *supra* note 33, p. 1.
137. For example, the Qur'ān provides in 76: 8-10 – "and they give food out of love for Him to the poor and the orphan and the captive: We only feed you for Allah's sake; we desire from you neither reward nor thanks: Surely we fear from our Lord a stern, distressful day." Popular Prophetic traditions also instruct on treating others as one would love to be treated and that the best of human beings is one who bring benefits to others.
138. Q 25: 63 provides- 'and the servants of the Beneficent Allah are they who walk on the earth in humility, and when the ignorant address them, they say: Peace.'
139. Global Terrorism Index, published in November 2015 by the Institute for Economics & Peace. Available at <http://economicsandpeace.org/reports/>. Last accessed 20 November 2015.
140. Also, in some cases referred to as the Islamic State of Iraq and the Levant (ISIL)
141. Global Terrorism Index, above note 12, p. 2
142. *Ibid.*
143. Q57:25