



A Critique of Nigeria Federal System of Government And Particularly its Implication in the Country As A Secular State

Eze-Michael¹, Ezedikachi. N²

^{1,2}Department of Political Science, Public Administration and International Law and Diplomacy,
Babcock University

Received; 08 October 2016 Accepted; 06 December 2016; © The author(s) 2016. Published with open access at www.questjournals.org

ABSTRACT: Nigeria is a country that has multi-ethnic groups and also multi-religious in nature. Though it is a multi-religious state, it has two major religions in the country which are Islam and Christianity. Members of these two major religions take different positions on the question of the secularity of the Nigerian state. The objective of this study was to give a critique of Nigeria federal system of government and particularly analyze its implication in the country as a secular state.

The study was historical and qualitative in nature. It also involved the use of secondary sources of data such as books, journal articles, case law, both published and unpublished materials and internet sources related to the study.

Based on the findings there were controversies in relations to the question of the secularity of Nigeria and one of such is the provision for Sharia Court of Appeal in the Constitution. Also, the Nigeria legal system which has the English Common law as its cornerstone is Christian-inspired and laden with Christian ideals and doctrines. There were spectrums of secularism and the 1999 Constitution of Nigeria did not use the expression "secular" to qualify the Nigerian state. The word cannot also be found in any section of the Constitution. However, when section 10 of the Constitution is read together with other sections of the Constitution relating to religion, especially the provisions for the supremacy of the Constitution; sovereignty of the people and the nation, freedom of thought, conscience and religion, and prohibition of discrimination on the ground of religion, as well as the provision on the supremacy of the Constitution and the sovereignty of the people, the plausible conclusion is that Nigeria is a secular state.

Finally the study concluded by recommending that future Constitution makers in Nigeria should make an express statement on the secularity of Nigeria as a state. And as a result of the divergent perspectives on the concept of secularism, it is also imperative that a thorough meaning and nature of secularism within the context of the Constitution should be given.

I. INTRODUCTION

Nigeria is a multi-ethnic and multi-religious state. The two major religions in the country are Islam and Christianity. Members of these two major religions take divergent positions on the question of the secularity of the Nigerian state. While most Christians argue for separation of the Nigerian state from religion, most Muslims advocate the merging of religion, the state and the law. To many of them, the Sharia ought to govern the totality of the life of a Muslim from cradle to grave. Many Muslims in Nigeria appear to seek to be governed by the Sharia in all their human activities. The word Sharia has been defined as the complete universal code of conduct drawn by the creator, Allah, through His Messenger, Muhammad, to mankind, detailing the religious, political, economic, social, intellectual and legal systems. It is meant for universal application, covering the entire spectrum of life, prescribing what lawful (halal) is and prohibiting what is unlawful (*haram*). Sharia is the Islamic law, which is based on the Quran, the *Hadiths*, and the works of scholars in the first two centuries of Islam.

The 1999 Constitution did not expressly proclaim Nigeria to be a secular state. However, it prohibits both states and the Federal Government from adopting any religion as state religion, and guarantees to every person the right to freedom of thought, conscience and religion as well as the right to freedom from discrimination on grounds, inter alia, of religion. On the other hand, the Constitution in chapter II under the fundamental objectives and directive principles of state policy, enjoins the state to provide facilities for, among

*Corresponding Author: *Eze-Michael

^{1,2}Department of Political Science, Public Administration and International Law and Diplomacy,
Babcock University

other things, religious life. In addition, it makes provision for the establishment of Sharia Courts of Appeal though with jurisdiction restricted to questions of Islamic personal law.

This paper will examine the concept of secularity of state in historical perspective and will consider the implication of Nigeria being a secular state. The provisions of the 1999 Constitution of Nigeria will be regarded and also consulted to know if Nigeria is recognized as a secular state.

II. HISTORICAL PERSPECTIVES OF SECULARISM

The word, 'secular', is derived from *saeculum* which in classical Latin meant "an age", "a time", "a generation" or "the people of a given time". The word was used pejoratively in the second, third, and fourth centuries by the church fathers to refer to the temporal world in contradistinction to the eternal kingdom of God. St. Augustine, conceived of man's nature as twofold: he is both a spirit and a body, and therefore at once a citizen of this world and of the heavenly city. To him, the fundamental fact of human life is the division of human interests accordingly - the worldly interests that centre about the body and the other worldly interests that belong specifically to the soul. He saw both the church and the empire to be living in evil times, the *saeculum*. Thus, to St. Augustine, the true Christian lived in two cities, namely the earthly and the heavenly societies. The distinction between secular and spiritual affairs never translated to separation of religious and political affairs. For instance, Gregory VII and his supporters never doubted that secular government is subordinate to the church in spiritual matters and indirectly in secular matters, and represented divine authority, for the power of the secular ruler was established by God and law flowed ultimately from reason and conscience and must therefore be obeyed. The modern concept of secularism seeks to separate religion from politics, so that the state's existence is not justified by theology.

A. Secularism And The Origin Of The Modern State

The origin of the modern state is traced to the Renaissance and Reformation, the split between Catholics and Protestants and the thirty years of religious wars in Europe. The Reformation, with its call for freedom of religion and conscience, resulted in the emergence of a unitary state which stood above the various religions and was able to bring the conflict to an end.

In the Treaty of Westphalia (1648) to the Vienna Congress Treaty (1815), a number of treaties concluded between European States accorded religious freedom to minority groups in various states and communities. The Treaty of Westphalia of 1648 finally marked the establishment of independent sovereign nation-states in Europe. The philosophy behind the theory of sovereignty of state was to set up the King as the head of the state, the object of loyalty of all men irrespective of religious denominations.

B. Contemporary Secularism

The contemporary meaning of secularism has evoked divergent responses and has become a matter of intense intellectual dispute. To some Islamic scholars secularism is equated with godlessness. One proponent of this view is Lateef Adegbite, former Secretary-General of the Jama'atu Nasril Islam.

He said: No Moslem will support a secular state. I want to say it with all the emphasis at my command because as far as we are concerned, secularity means "godlessness", and Moslems will never support that.

This conception of secularism tries to equate secularism with atheism, which in the broad sense, means the rejection of belief in the existence of deities or God. Secularism does not mean godlessness nor is it antagonistic to religion. A godless state may indeed prohibit religious activities. In agreement with this view, Nwemosaid: The concept of secularism is apt to give the impression that Nigeria, for instance, is anti-religion. Far be it from the true meaning. The correct meaning is that the state should not actively support or propagate any particular religion in preference to others, particularly in a multi-religious society like Nigeria.

However, the assertion that the concept of secularism gives the impression of godlessness is open to objection. A secular state is not opposed to religion but tries to keep religion outside the public realm. Another scholar, Abdulrasheed A. Muhammad, while not equating secularism with godlessness, considers a secular state as one which is not concerned with religious affairs.

He said: Secular means not to be concerned with spiritual or religious affairs. A secular state therefore is one which is established on the assumption that political authority is completely independent of religion or supernaturalism and therefore not concerned with the spiritual life of its citizens. The emphasis here is that religion is confined to private practice and individual preference. The state will not adopt any religion as official; neither will it give overt or covert recognition and assistance to any group.

It is wrong to say that a secular state will not be concerned with spiritual or religious affairs. Secularism is actually an attempt on the part of the state to create an enabling environment for freedom of religion. To that extent, a secular state is concerned with religious affairs. It is preferable to say that a secular state is not involved in religious affairs rather than saying that it is not concerned with religious affairs.

C. Spectrums Of Secularism

In the United States of America, the establishment of religion clause of the First Amendment which entrenched the secularity of the American state has been interpreted to mean that:

Neither a state nor the Federal Government can set up a church. Neither can they either force or influence a person to go or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."

However, this opinion only represents the American brand of secularism which may be stricter than what we have in some other societies. It is also debatable that the USA claims to be a secular state, otherwise why is the country been referred as "God's own country". There are different degrees and variants of secularism. It has thus been rightly observed that it is possible to draw a wide scale of separation and find different European (secular) countries at varying positions on that scale. In an egalitarian state, there is no official religion and the state is not hostile to religion. However, in this type of state, there is no total absence of the state from religious affairs as the state offers aid and protection on the basis of equality to all religions.

III. NIGERIA AS A SECULAR STATE

Having examined the concept of secularism the next question is whether Nigeria under the current 1999 Constitution is a secular state.

A. Constitutional Provisions In Relations To Religion

The provisions of the 1999 Constitution relating to religion are set out below for the purpose of their community reading.

Section 1 (1) – This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the federation.

Section 1 (3) – If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.

Section 10 - The Government of the Federation or of a state shall not adopt any religion as a state religion.

Section 17 (3) - The state shall direct its policy towards ensuring that ... (b) there are adequate facilities for leisure and for social, religious and cultural life.

Section 38 (1) - Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Section 38 (3) - No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

However, Section 262 of the Constitution empowers any state that wants it to establish a Sharia Court of Appeal but the jurisdiction of the Sharia Court of Appeal must be limited to matters touching upon Islamic personal law. In the absence of express Constitutional proclamation about the secularity of Nigeria the question that arises is whether the above Constitutional provisions entrench secularism. The *Jama'atu Nasril Islam* 61, which expressed the opinion that Nigeria is not a secular state advanced some reasons for their position which could be summarized as follows. There is no express Constitutional provision that Nigeria is a secular state and there are the following provisions of the Constitution which negate secularism: the provisions of the Constitution enjoining the state to promote religious affairs; the educational objectives under the Constitution implying moral education which must be based on religion; the creation by the Constitution and provision for their funding of courts which apply religious laws and laws inspired by religion; the Christianization of the polity means that the country cannot be considered a secular state unless de-Christianized.

C. Obligation of the State for Provisions of Facilities for Religious Life:

The *Jama'atu Nasril Islam* 62 has contended that section 17 (3) (b) of the 1979 Constitution on social objectives contradicts secularism, as the section has made it clear that the government can promote religious affairs. Contrary to this view, the Constitutional injunction that the state should provide facilities for religious life does not negate the secularity of the Nigerian state. As earlier mentioned, secularism is neither opposed nor indifferent to religion. Secularism seeks to create a conducive environment for the exercise of religious

freedom. Nigeria practices egalitarian and protective secularism under which there is no official religion but the Nigerian state is under obligation to offer protection and encouragement to all religions on the basis of equality of all religions.

Thus the model of Nigeria's secularism differs from that of the United States of America under which the state is totally separated from religion. The rigid separation of state and religion is criticized not only by Islamic scholars but by some liberal scholars.

C. Educational Objectives And Secularism

It was also contended by the *Jama'atu Nasril Islam* that one of the indicators that Nigeria is not a secular state is the inclusion of the education objectives in the Constitution. In this view, "section 18 of the Constitution on educational objectives contradicts secularism as education means intellectual and moral training, and moral training of Muslims and Christians can only be carried out through their religions".

What secularism sets out to achieve is to liberalise education so that it will not be dependent on religion. Secularism enables public education to be based on reason and science but as a matter of choice any adherent of any religion can base his education or moral on his religion as a matter of private choice.

D. Constitutional Provision for Sharia Court of Appeal

One of the controversial issues relating to the question of the secularity of Nigeria is the provision for Sharia Court of Appeal in the Constitution. Both the 1960 and 1963 Constitutions did not make provision for Sharia Court of Appeal, even though the court existed in the Northern region. However, subsequent Constitution making processes witnessed agitations by Muslims for Constitutional recognition of increased scope of application of the Sharia.

It was contended that the inclusion of the Sharia Court of Appeal in the draft Constitution torpedoed the injunction that Nigeria should be a secular state. Looking at the matter from the prism of discrimination against adherents of other religions, Ochinokwu Somolu wondered why the Sharia Court system was specially provided for in the draft Constitution and asked whether there were prospects that those who belong to other religions will be provided with court systems which will take account of their peculiar religious beliefs.

The jurisdiction of the Sharia Court of Appeal was however limited to questions of Islamic personal law. In any case, many Nigerian Muslims are not content with the limitation on the jurisdiction of the Sharia Court of Appeal to questions of Islamic personal law. They use every opportunity to seek the expansion of the jurisdiction of the Sharia Court of Appeal to all questions of Islamic law.

E. Alleged Christianization of the Country

The *Jama'atu Nasril Islam* contended that Nigeria can never be genuinely secular unless the country which is already heavily "Christianized" is first "de-Christianized".

They alluded to the political system of Nigeria as being based on western civilization which is Christian. In addition, the Nigeria legal system which has the English Common law as its cornerstone is Christian-inspired and laden with Christian ideals and doctrines.

They queried whether a country where Sunday, a Christian day of rest and worship is work-free but in which Friday, the Muslim day of special congregational prayer, is not accorded a similar treatment can be truly said to be secular. They gave many other examples of what they termed Christian manifestations in the nation's public life and institutions which include the use of the Christian cross as a symbol of Medical and Health Services in Government owned establishments to the exclusion of Islamic crescent which is a symbol of Medical and Health services to the Muslims; the adoption of the Gregorian (Christian) calendar for official use to the exclusion of the Islamic calendar; making 1st January of each year a work free day without making 1st Mubarram a work-free day, fixing long holidays to coincide with Christmas and Easter festivals without corresponding arrangements for the Muslim festivals. They concluded by saying that in spite of all these Christian manifestations in the nation's public life and institutions, some Christian leaders are calling for secularism for Nigeria not of course realizing that if secularism were to be applied all these Christian manifestations entrenched in the nation's public life must be done away with.

On the issue of Sunday as a public holiday or the fixing of dates of national events, it will be practically difficult to treat all religions equally on the matter. Fixing of date of national events may coincide or collide with the date of worship of some religious groups in a multi-religious society. Another issue is whether the conduct of an election on a day not favourable to a religious group amounts to a denial of the right to freedom of religion and conscience of the group concerned. It is held that the failure of a group to not participate in an election should not affect the outcome of election on the ground that it might be difficult to choose a date that will be suitable to all the religious groups.

It is also pertinent to note that the issues relating inter alia to the Christianization of the calendar, the application of Christian public holidays, and the observance of dates significant to Christians as public holidays

do not go to the question whether the Constitution has provided for the secularity of Nigeria as they were not imposed by the Constitution. These issues may rather raise the question of practical compliance with the secularity of the country as provided for in the Constitution.

The Constitution is supreme, and sovereignty belongs to the nation and the people of Nigeria and not to a religious order. Both the federal and state governments are prohibited from adopting any religion as state religion. The Constitution guarantees freedom of thought, conscience and religion and prohibits discrimination on ground of religion. Given these provisions, the conclusion that Nigeria is a secular state is compelling. This is notwithstanding the Constitutional provision for a Sharia Court of Appeal which could be considered an exception specially provided for by the Constitution.

IV. CONCLUSION

Secularism implies that religion is not the foundation of the state. Secularism is aimed at the protection of freedom of religion. There are spectrums of secularism and the 1999 Constitution of Nigeria did not use the expression "secular" to qualify the Nigerian state. The word cannot also be found in any section of the Constitution. Section 10 of the Constitution which prohibits both the Federal and State Government from adopting any religion as state religion is somewhat ambivalent. This ambivalence is accentuated by the Constitutional provision for a Sharia Court of Appeal and the Constitutional obligation on states to provide facilities for religious life. However, when section 10 of the Constitution is read together with other sections of the Constitution relating to religion, especially the provisions for the supremacy of the Constitution; sovereignty of the people and the nation, freedom of thought, conscience and religion, and prohibition of discrimination on the ground of religion, as well as the provision on the supremacy of the Constitution and the sovereignty of the people, the plausible conclusion is that Nigeria is a secular state. It is generally assumed that the Nigerian constitution is Christian based but, it should be noted here that the constitution did not provide for or make any clear reference(s) of the "Christianization" or "traditionalism" as to that of the Sharia which is Islam based. It is, however, recommended that future Constitution makers in Nigeria should make an express statement on the secularity of Nigeria as a state.

As a result of the divergent perspectives on the concept of secularism, it is also imperative that a detailed definition of secularism within the context of the Constitution should be given. It is also recommended that the provision for Sharia Court of Appeal should be expunged from the Constitution. Matters of Islamic personal law within the jurisdiction of the court could be transferred to a special division of the High Court. This will remove every doubt about the secularity of the country.

REFERENCES

- [1]. Abdulkadir, M. S. (2011) 'Islam in the non-Muslim Areas of Northern Nigeria: c1600-1960' *Ilorin Journal of Religious Studies*, vol.1, no1.
- [2]. Ajayi, F. 'Sharia Law and Nigeria Unity' <http://nigeriaworld.com/columnist/ajayi/sharia.html> (accessed 13th October, 2015)
- [3]. Alli, Y. "OIC: Nigeria remains a secular state, says Minister", *The Nation* on Sunday (August 26, 2012).
- [4]. Anyanwu S. O and Nwanaju I. (eds.) (2010), *Boko Haram: Religious Conflicts and Dialogue Initiatives in Nigeria*, vol. I, Owerri, Edu Edy Publications.
- [5]. APIC, 'Nigeria: Obasanjo and the Sharia Crisis' <http://www.africa.upenn.edu/UrgentAction/apic-030800.html> (accessed 13th October, 2015)
- [6]. Appleby, R. Scott, (2000) *The Ambivalence of the Sacred: Religion, Violence, and Reconciliation*, NY: Rowman & Littlefield.
- [7]. Bellow N, "CAN wants Jonathan to sanction minister over comment on religion", *The Guardian* (August 23, 2012).
- [8]. Berman, Law and Revolution, supra note 14 at 109.
- [9]. Bozinovich Miki, (2009) *Politolology of Religion*, *Politics and Religion Journal*, Vol. 3,
- [10]. No. 2, Belgrade.
- [11]. Chukwu, Cletus N.(2008), 'Religion as a Factor in the Nigerian Political Culture' in
- [12]. P. I. Gichure & D. Stinton (eds), *Religion and Politics in Africa: Theological Reflections for the 21st Century*, Nairobi: Paulines.
- [13]. Chepkwony A.K. and Hess P.M.J (eds) (2010), *Human Views on God: Variety Not Monotony – Essays in Honour of Ade P. Dopamu*, Eldoret: Moi University.
- [14]. Colson, Charles, (2002) 'Drawing the Battle Lines: We need to be informed and discerning about the Islamic Worldview' *Christianity Today*, 46.
- [15]. Commentary at a seminar held at the Nigerian Institute of Advanced Legal Studies, Lagos in 2000
- [16]. Constitution of the Federal Republic of Nigeria 1999 (as amended) [1999 Constitution], s. 10.
- [17]. Delamarter (eds.) (2007), *Dialogue: Issues in Contemporary Discussion*, Arifanla-Akute,
- [18]. Big Small Books
- [19]. Dopamu, A. Peter (2009) 'In the Service of Humanity' A Farewell Lecture, Ilorin: Unilorin Press.
- [20]. Dopamu, Abiola T. 'Religious Pluralism in Nigeria: The Example of the Yoruba' in *Dialogue: Issues in Contemporary Discussion*, A. P. Dopamu, O. Awolalu and S. G. Delamarter (eds.),
- [21]. Arifanla-Akute: Big Small Books, 2007. Ekuowusi, Sonnie 'Obasanjo and Sharia Phenomenon,
- [22]. http://www.nigerdeltacongress.com/oarticles/obasanjo_and_sharia_phenomenon.htm (accessed
- [23]. 13th October, 2015)
- [24]. Pollack and D. V. A. Olson (eds) (2008), *The Role of Religion in Modern Societies*, New York: Routledge.
- [25]. Boko Haram Reasoning and Democratic Vision in Pluralist Nigeria' *International Studies: Interdisciplinary Political and Cultural Journal*, vol.14, no. 1, 2012.
- [26].

- [27]. 'Fundamentalisms, Security Crisis and Tolerance in Global Context: The Nigerian Experience' *Politics and Religion*, vol.6, no.1, 2012.
- [28]. Isiramen, C.O, Umejesi, I.O Ottuh, P.O and Falaiye E.A (eds.) (2010), *Issues in Religious Studies and Philosophy*, Ibadan, En-Joy Books.
- [29]. Hargreaves, R. (2002) *The First Freedom: A History of Free Speech* (Phoenix Mill: Sutton Publishing Limited, 2002).
- [30]. 'Karl Max on Religion: The Perspective of Boko Haram' *Journal of Religious Culture*, no. 18, 2014.
- [31]. Ihenacho, D. A.(2007) 'Obasanjo Established Sharia in Nigeria' [nigeriaworld.com/ columnist/ihenacho/022302.html](http://nigeriaworld.com/columnist/ihenacho/022302.html) (accessed 18th September 2015)
- [32]. Jevtic, Mirosljub *Political Science and Religion, Politics and Religion Journal*, Vol. 1, No. 1, Belgrade.
- [33]. Johnson, James T. (2011), 'Tracing the Contours of the Jihad of Individual Duty' *Journal of Church and State*, Vol. 53, No.1.
- [34]. Kunhiyop, S. Waje (2008), *African Christian Ethics*, Nairobi, WordAlive Publishers.
- [35]. Marsden, Lee (2008), *For God's Sake: The Christian right and US Foreign Policy*, London, Zed Books.
- [36]. Mohammed, Kyari,(2014) "The message and methods of Boko Haram," *Boko Haram: Islamism, politics, security and the state in Nigeria*, Leiden: African StudiesCentre
- [37]. Nwebo, O.E. (2003) "The Legal Implication of the Declaration of Sharia as a State Religion in Nigeria" *JCLD*, ABSU Law Center.
- [38]. Ochonnu, M. E. (2012) 'Old Buhari versus New Buhari' <http://www.nigeriavillagesquare.com/articles/moses-ebe-ochonu/old-buhari-versus-new-buhari.html> (accessed 13th October, 2015).
- [39]. Ogbu, O. N.(2007). *Modern Nigerian Legal System*.Enugu: CIDJPA Press.
- [40]. Oraegbunam, I. K. E. (2011)'Sharia Criminal Law, Islam and Democracy in Nigeria Today' *OGISIRI: A New Journal of African Studies*, Vol. 8.
- [41]. Pabst, A (2009) "Unholy War and Just Peace: Religious Alternatives to Secular Warfare" *Politics and Religion*, Vol. 3, No. 2.
- [42]. Perouse de Montclos, Marc-Antoine, (2014). *Introduction and Overview, Boko Haram: Islamism, Politics, Security and the State in Nigeria*, Leiden: African StudiesCentre.
- [43]. Pollack, D. (2008)'Introduction: Religious Change in Modern Societies: Perspectives Offered by the Sociology of Religion' in D. Pollack and D. V. A. Olson (eds), *The Role of Religion in Modern Societies*, New York, Routledge.
- [44]. Ostien P, Nasir G.M, &Kogelmann,F(eds) (2005), *Comparative Perspectives on Shari'ah in Nigeria* (Ibadan: Spectrum Books Limited)
- [45]. Oriental Religions: A Quest for Liberation and Wisdom, Ekpoma, Pon Publishers, 2010.
- [46]. Sabine G.H. & Thorson, T.L (1973). *A History of Political Theory*, 4th ed (New Delhi: Oxford & IBHPublishing Co Pty Ltd.
- [47]. The Supreme Court of Nigeria held in *A.G. Ondo State v A.G. Federation & 35 Ors*, [2002] 9 NWLR (Pt.772) 222, that the word, "state" in the context of the fundamental objectives and directive principles of state policy includes the Federal, State and Local Governments, as the case may be.
- [48]. Vlas, Natalia (2010) "Is Religion Inherently Violent? Religion as a Threat and Promise for the Global Security" *Politics and Religion*, Vol.4, No. 2.
- [49]. Yusuf, J. and Abdulsalam, H. A. (2011) 'Time, Knowledge and the Clash of Civilizations: An Islamic Approach' *Ilorin Journal of Religious Studies*, Vol. 1, No. 1.