

**The Faces of Muslim/Christian Relations: Application of *Sharī'ah* and the Rights of Muslim Women in Nigeria**

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**Abstract**

This paper focuses on Muslim/Christian understanding of the position of the *Sharī'ah* in modern Nigeria. It also examines Muslim women's commitments to Islam and how they cope with the surroundings without submitting to a uniform, integral and singular Islamist theory on the application of *Sharī'ah*. The paper makes a distinction between *Fiqh* and the *Sharī'ah*. Furthermore, while most writings tend to view the application of the *Sharī'ah* in Nigeria, whether in relations to non-Muslims or to Muslim women as being political, this paper questions this view of the application of *Sharī'ah* in Nigeria and suggests that the Commonwealth of Religion and Nations political system model can help in re-directing the future relations between Muslims and Christians. These can also result in ending in ending the political pressure for *Sharī'ah* courts' convictions and other abuses of Muslim women's rights in Nigeria and create a sustainable multicultural, religious and equitable Nigeria.

**Key words:** *Sharī'ah*, Muslim/Christian relations, Human rights, Muslim Women, Commonwealth, Religions, Nigeria

**Introduction**

Today, Nigeria, a colonial creation, has a large Muslim population as the majority. Pew Forum, in a recent demographical survey, puts the Muslim population at 78,056,000, which was 50.4% of the entire population.<sup>2</sup> In a more recent survey however, the Pew Forum reports an almost equal distribution of the two religions of 42% for Muslims and 40% for Christians.<sup>3</sup> The national political system according to the Nigerian constitution is multicultural and religious in nature and it has multiple multicultural and religious constitutionally-based legal systems.<sup>4</sup> In fact, the Nigerian constitution does not only recognize the rights of the citizens to freedom of belief and worship, it also permits them the rights to propagate their religious beliefs such as the implementation of the *Sharī'ah* and the Christian Common Law. The Constitution of the Federal Republic of Nigeria succinctly highlights these rights as fundamental human rights to which all citizens, including women are entitled. It also provides that nobody shall be made subject to any religious law by force in Nigeria that is not with the person's accord.<sup>5</sup> Hence, Muslim scholars in Nigeria generally uphold that the country is constitutionally a multi-religious and not a secular society.<sup>6</sup>

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<sup>2</sup> Pew Forum on Religion and Public Life *Mapping the Global Muslim Population: A Report on the Size and Distribution of the World's Muslim Population* (Washington D. C.: Pew Research Centre, 2009), 5 and 30.

<sup>3</sup> Pew Forum on Religion and Public Life, *Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa* (Washington D. C.: Pew Research Centre, 2010), 19.

<sup>4</sup> Ibrahim Olatunde Uthman, "Roles of Arabic and Islamic Studies in a Secular Society," *Journal of for Nigerian Teachers of Arabic and Islamic Studies* (2002): 81.

<sup>5</sup> Federal Republic of Nigeria, *The Constitution of the Federal Republic of Nigeria*, (Lagos: A Daily Times Publications, 1979), Section 35, paragraph 2.

<sup>6</sup> Syed Khalid Rashid, (ed.) *Islamic law in Nigeria* (Lagos: Islamic Publications Bureau, 1986), 64.

However, the history of the implementation of the *Sharī'ah* in Nigeria has always been characterized by interreligious conflicts between Muslims and Christians and over human rights issues, especially abuses of Muslim women. While many Christians and feminists opine that the political nature of Islam is responsible for these conflicts, it could be argued as done Hegel in his historical dialecticism<sup>7</sup> that events that created the history of Muslim/Christian antagonistic relations on the implementation of the *Sharī'ah* in Nigeria, are themselves the direct outcomes of dialectics or opposing contracts and that the *Sharī'ah* imbroglio was created by the direct frictions of the mutual and contending struggles for the state power in order to garner the wealth of the country.

I will therefore proceed to explore a brief history of the early Muslim/Christian encounter in Nigeria and how the struggle for state power and the national wealth contributed mainly to the rise of socio-cultural and religious conflicts in the country and the abuses of Muslim women in the name of implementing the *Sharī'ah*.

This will then be followed by the need for Nigerians to adopt “the Commonwealth of religions and nations” model that intersects with the *Sharī'ah* principles of Muslim/non-Muslim peaceful coexistence, multiculturalism and women’s rights today and how these *Sharī'ah* principles can be useful and desirable in re-directing the future relations between Muslims and Christians in Nigeria towards a sustainable, peaceful, multicultural, religious, gender friendly and equitable united Nigerian society.

This “Commonwealth of nations and religions” model is predicated on the Madīnah polity the Madīnah polity where all the federating groups retained “religious freedom as well as internal autonomy” as Jews participated in the decision-making process and deliberated upon important matters that bounded the administration of the nascent Islamic polity.<sup>8</sup>

#### **Islam in Nigeria and the Early Muslim/Christian Encounter**

The presence of Islam in Kanem-Bornu Empire has been documented in many reports. It is reported that Muhammad Mani introduced Islam to Kanem during the reign of Mai Bulu.<sup>9</sup> Muhammad Mani and other traders from Fezzan introduced Islam to the Empire through the trade routes between Tripoli and the Lake Chad Basin.<sup>10</sup> Islam came to many other areas of what is known as Nigeria today around the fourteenth century. This is because of the very important role played by scholars from the old Mali Empire in the entrenchment of Islam in these areas. In fact, it is the “Kano Chronicle” that documents the presence of Muslims in Kano by in the middle of the 14<sup>th</sup> century.<sup>11</sup> Nonetheless, Christianity preceded Islam in many areas of what is known as today’s Southern Nigeria. For instance, the growth of Islam in the mid-western region during the colonial area was largely the result of the efforts of migrant Muslim traders from northern and western Nigeria. In 1890, it was reported that the establishment of a military base in Calabar, an important Efik town facilitated the arrival of Muslim traders and the building of a mosque. The natives were reportedly impressed by the dress and devotions of these Muslims that Goldie of the Primitive Methodist Society in

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<sup>7</sup> For detail discussion on Hegel’s historical dialecticism, see *Marx and Modern Social Theory* (London: Macmillan, 1975).

<sup>8</sup> Muhammad Hamidullah, *The First Written Constitution in the World: An Important Document of the Time of the Holy Prophet* 3d rev. ed. (Lahore: Shaikh Muhammad Ashraf, 1975), 18-21.

<sup>9</sup> S. A. Balogun, “History of Islam up to 1800” in *Groundwork of Nigerian History*, ed. Obaro Ikime (Ibadan: Heinemann Educational Books, 1980), 211.

<sup>10</sup> Christopher Steed, “The Islamic Heritage of Nigeria” in *The Triple Religious Heritage of Nigeria: The Essays*, eds. Christopher Steed and David Westerlund (Uppsala: Teologiska Institutionen-Uppsala Universitet, 1995), 67.

<sup>11</sup> H. A. R. Palmer, “Kano Chronicle” *Sudanese Memoirs* (1928): 104-105.

Calabar, concluded that in time, the natives began to imitate them.<sup>12</sup> From 1896, there were also reports of Muslim elephant hunters from Kano in Elele, Port Harcourt.<sup>13</sup> In 1903, Muslims in eastern Nigeria were also reported to have been mostly traders; some did settle there before the indigenous leaders such as Alhaji Sufiyan Agwasim, a Roman catholic converted to Islam.<sup>14</sup> Yet, despite the presence of migrant Hausa Muslims in Igboland, from that time, Islam was mostly seen as the religion of the Hausas, a belief that was deepened by the Nigerian civil war.<sup>15</sup> By 1984, therefore, Abdurrahman Doi, the Bangladeshi Islamic scholar who was based in Nigeria at the time collected the statistics of Igbo Muslims and put their figures at 3,450 persons.<sup>16</sup> In addition, in 1991, the figures were estimated to be 10, 000 persons and using a conversion rate of 1 Muslim for every 1000 Christians, Uchendu puts the figures at 16, 000 from an Igbo population of over sixteen Million.<sup>17</sup>

### **The origin of the Sharī'ah Debates in Nigeria**

The manner in which the colonial masters in Nigeria undermined the operation of the *Sharī'ah* laid the foundation for the religious conflicts in Nigeria. Though Lord Lugard promised not to undermine the practice of the *Sharī'ah* or to intrude into the lives of Muslims in Nigeria and initially through the Native Court Proclamation of 1900 established the Native Court, which adjudicated in both civil and criminal matters and was presided over by an Alkali in addition to the Judicial Council presided over by the Emir,<sup>18</sup> where each Emir according to Abdulmumuni Oba “had his own court; the colonial administration led by Lugard later “took control of the Alkali courts away from the Emirs and placed it in the hands of the Resident.”<sup>19</sup>

In 1933, the Native Courts Ordinance among other things stipulated that an Alkali Court could not pronounce judgment on a case of homicide, which should be transferred to the Emir’s Court for judgment.<sup>20</sup> It also abolished penalties considered repugnant to the notion of natural justice such as amputation, death penalty and non-inheritance of an heir that differed from the religion of the deceased.

Thus, the foundation for the prevailing conflict in Nigeria over the *Sharī'ah* judicial system was lay by the British colonialists as this legal system was not only fully entrenched in Northern Nigeria as popularly held but also in Southwestern Nigeria before the colonial era as noted by Quadri,<sup>21</sup> hence, the life of all conscious Muslims in the areas has always been patterned after the *Sharī'ah* from the moment of birth till the time of death. The *Sharī'ah*

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<sup>12</sup> Hugh Goldie, *Calabar and its Mission* (Edinburgh: Oliphant Anderson and Ferrier, 1901), 352-354.

<sup>13</sup> Abdulrazaq Kilani, *Minaret in the Delta: Islam in Port Harcourt and its Environs 1896-2007* (Lagos: Global Dawah Communications, 2008), 42-43.

<sup>14</sup> Peter B. Clarke, *West Africa and Islam: A Study of Religious Development from the 8<sup>th</sup> to the 20<sup>th</sup> Century* (London: Edward Arnold Publishers Ltd., 1982), 224-226 and 228-229.

<sup>15</sup> Onwuka Njoku, “A synoptic Overview” in *Igbo History and Society: The Essays of Adiele Afigbo*, ed. Toyin Falola (Trenton, NJ: African World Press, 2005), 37.

<sup>16</sup> Abdurrahman Doi, *Islam in Nigeria* (Zaria: Gaskiya Press, 1984), 181.

<sup>17</sup> Egodi Uchendu, *Dawn for Islam in Eastern Nigeria: A History of the Arrival of Islam in Igboland* (Berlin: Studies on Modern Orient, Klaus Schwarz Verlag, 2012), 37-38.

<sup>18</sup> A. O. Obilade, *The Nigerian Legal System* (London: Sweet and Maxwell, 1979), 27.

<sup>19</sup> Abdulmumuni Oba, “Neither Fish nor Fowl’ Area Courts in the Ilorin Emirate in Northern Nigeria,” *Journal of Legal Pluralism* (2008): 71.

<sup>20</sup> Oba, “Neither Fish nor Fowl’ Area Courts in the Ilorin,” 71.

<sup>21</sup> Yasir Anjola Quadri, *Shari’ah: The Islamic Way of Life* Revised Edition (Ijebu-Ode: Shebiotimo Publications, 1995), 2.

guides how the Muslims conduct their marriage and divorce, bury their dead, allocate property and estate rights and write their wills etc.<sup>22</sup>

It is therefore on record that Oba Momodu (d. 1906) of Iwo appointed an Alkali in his Court, who adjudicated “in cases affecting his predominantly Muslim subjects in accordance with the *Sharī‘ah* law.” Similarly, the late Oba Aliyu Oyewole (d. 1912), the 7<sup>th</sup> Akirun of Ikirun appointed an Alkali in his domain just as Oba Timi Habibu Olagunju of Ede appointed an Alkali.<sup>23</sup> In fact, as shown by Abdul Fatai Makinde, Oba Olagunju went as far as meting out the *Sharī‘ah* punishment of stoning to death on his daughter for committing adultery.<sup>24</sup>

Notwithstanding this long history of the *Sharī‘ah* judicial system in Southwestern Nigeria, the colonial government was unwilling to encourage the continuation of the *Sharī‘ah* judicial system in any form in the Southwest as it did in the North, making Muslims in the areas to agitate for its official recognition. In Ijebu-Ode, the Muslim Congress of Nigeria wrote a petition to the government in the 1940s and in the words of James Norman Dalrymple Anderson “requested the establishment of a Muslim Judiciary (Sharia) for Southern Nigeria.” Muslims in Ibadan also sent a memorandum to the Commission condemning the manner in which native courts deciding over thousands of cases of divorce with 95% involving Muslim couples separated the Muslim couples without regard to the *Sharī‘ah* and therefore prayed the Commission for a separate Muslim court.<sup>25</sup> The Muslims in Lagos also protested the non establishment of *Sharī‘ah* Courts in the colony by 1899.<sup>26</sup> Thus, while in the North, the colonial government sought to curtail the application of the *Sharī‘ah*; in the Southwest it completely denied its application.

Due to the colonial government’s 1933 Native Courts Ordinance, which made certain penalties under the *Sharī‘ah* such as the punishments of amputation, death penalty and the non-inheritance by an heir whose religion differs from that of the deceased inapplicable because they are repugnant to natural justice, the judgment of an Alkali Court in 1943 that Mary, a Christian could not inherit from her Muslim father was overturned by the Supreme Court. Similarly in 1948, another judgment of an Alkali Court which passed the death sentence on a murderer was set aside by the West African Court of Appeal because it was contrary to natural justice and the British Common Law on provocation. This would be followed by many violent demonstrations in Northern Nigeria, leaving behind, a train of killing, burning and destruction of lives, property, Mosques and Churches etc.<sup>27</sup> The colonial government thereby stifled any attempt at a negotiated settlement on the *Sharī‘ah* judicial system and as noted by Philip Ostien, “Christians missed an opportunity to settle with the Muslims the place of Islamic law in Nigeria on reasonable, honorable, and stable terms.”<sup>28</sup>

Invariably, the British government curtailment of the *Sharī‘ah* is the root of the *Sharī‘ah* constitutional crisis in Nigeria leading to what Ostien and Sati Fwatshak have described as

<sup>22</sup> Yasir Anjola Quadri, *The Sayings of the Prophet* (Ijebu-Ode: Shebiotimo Publications, 1995), 45-46.

<sup>23</sup> Quadri, *Sharī‘ah: the Islamic Way*, 12.

<sup>24</sup> Abdul Fatai K. Makinde, “The Institution of the *Sharī‘ah* in Oyo and Osun States, Nigeria: 1890-2005” Phd diss., University of Ibadan, 2005, 317.

<sup>25</sup> J. N. D. Anderson, *Islamic Law in Africa* (London: Frank Cass, 1978), pp. 222-223.

<sup>26</sup> See Muib Opeloye, “Building Bridges of Understanding between Islam and Christianity in Nigeria,” in *Lagos state University Inaugural Lecture Series* (Lagos: Lagos State University: 2001).

<sup>27</sup> David D. Latin, *Hegemony and Culture: Politics and Religious Change among the Yoruba* (Chicago: University Press, 1986), 418.

<sup>28</sup> Philip Ostien, “An opportunity missed by Nigeria’s Christians: The 1976-78 Sharia debate revisited” in B. Soares, (ed.) *Muslim-Christian Encounters in Africa* 1st edition (Leiden/Boston: Brill, 2006), 224-229 and 240-241.

“the Settlement of 1960.” At Nigeria’s independence, the *Sharī’ah* Penal codes were abrogated and replaced by new Penal codes drafted by a panel headed by the then Chief Justice of the Sudan and including Professor J. N. D. Anderson and a judge of the Pakistan Supreme Court. The settlement confined the jurisdiction of the *Sharī’ah* Courts of Appeal to Islamic family Law.<sup>29</sup> While Nigeria’s Christians opposed the settlement mainly because it gave the *Sharī’ah* Courts of Appeal the same status of a Regional High Court, in the words of Ostien and Fwatshak “the North’s Muslims, by contrast, seem to have been, let us say, reluctantly acquiescent and cautiously hopeful.”<sup>30</sup> According to Ahmadu Bello, the Sardauna of Sokoto and Premier of the Northern Region, who persuaded the Muslims to accept the concessions, it was necessary then because “it was born on us that these legal and judicial reforms would have to be carried out if the self-governing region was to fulfill its role in the federation of Nigeria and commands respect among the nations of the world.”<sup>31</sup>

Based on the above explanation, it would therefore appear that the Sardauna, in keeping the North as part of the federation of Nigeria, was willing to pressure the Muslims to accept the so-called Settlement of 1960, which was clearly a mistake in that Muslims were persuaded to make enormous and fundamental concessions “including the abrogation of Islamic criminal law.” That “it took much longer for Muslim opinion, at first acquiescent, to swing against the Settlement of 1960;” as noted by Ostien and Fwatshak above, I argue demonstrates the willingness of Muslims to make enormous and fundamental concessions “including the abrogation of Islamic criminal law” and not that they did not realize earlier that it “had been a terrible mistake which ought if possible to be corrected.”

Notwithstanding Nigeria’s Muslims’ above compromise, the constitution-making process of 1976-78, which resulted in the 1979 Constitution, where the Christians opposed the Muslims’ proposal that a Federal *Sharī’ah* Court of Appeal should be established to sit over appeals from the state *Sharī’ah* Courts confirmed the mistake of 1960. Despite their acceptance of the Northern Penal and Criminal Codes that supplanted the *Sharī’ah* for over one and half decades, since the Settlement of 1960, the unwillingness of Christians to accommodate this demand for a Federal *Sharī’ah* Court of Appeal because of the argument that it would distort the “secularity” of Nigeria according to Clarke was the last straw that broke the camel’s back. The vast majority of Muslims at the conference took to staging a walk-out<sup>32</sup> and it took special intervention of some Muslims led by the late Chief M. K. O. Abiola, before a compromise acceptable to both Muslims and Christians over the *Sharī’ah* stalemate was reached. That compromise is the provision of a special committee of the Supreme Court in place of a federal *Sharī’ah* court to sit over appeals from the state *Sharī’ah* courts.<sup>33</sup>

I note here before proceeding further that the constant agitation for and against the full implementation of the *Sharī’ah* is much about Muslim/Christian mutual and contending struggles for the state power in order to garner the wealth of the country. In fact, consider the example of the most violent crises in Nigeria over the *Sharī’ah* that were to occur in Kaduna. This happened over the re-introduction of the criminal aspects of the *Sharī’ah* following the

<sup>29</sup> Omoniyi Adewoye, *The Judicial System in Southern Nigeria, 1854-1954: Law and Justice in a Dependency* (New Jersey: Atlantic Highlands, Humanities Press, 1977), 289.

<sup>30</sup> Ostien and Sati Fwatshak, “Introduction to Chapter 1: The Settlement of 1960 and Why It Still Matters Today” in Philip Ositien, ed. *Sharia Impementation in Northern Nigeria, 1999-2006: A Sourcebook* Vol. 1 (Ibadan: Spectrum Books Ltd., 2007), 1-10.

<sup>31</sup> Ahmadu Bello, *My Life* (Cambridge: Cambridge University Press, 1960), 217.

<sup>32</sup> Clarke, *West Africa and Islam*, pp. 249-256.

<sup>33</sup> Latin, *Hegemony and Culture*, 418.

democratic dispensation that ushered in a new republic in 1999. Though the *Sharī'ah* initiative came from Zamfara state, no conflict has taken place over there until today. I therefore argue that there is a more serious factor to explain Muslim/Christian conflicts in Nigeria; especially over the *Sharī'ah* and this is the contention for economic resources. It is this factor that is responsible for “political” Islam and Christianity as would be seen in the next section where we argue that virtually all religious crises in Nigeria have economic undertones and are informed by perceived grievances of social injustice.

### **Sharī'ah Conflicts and the Socio-economic Dimensions of Religious Conflicts**

It can be argued that though Zamfara state is a predominantly Muslim state with pockets of Christians, this does not explain the Christians' support for the introduction of the *Sharī'ah* by the people. They must have supported the move because they were economically and politically well off. In fact, the state was the first in the country to approve a then new minimum wage of 5,000 naira. This amount, as noted in an article of *The Nigerian Tribune*, on January, 27, 2000 was far higher than what even the Federal government paid then. This economic dimension in religious uprising in Nigeria has been argued to have started with the emergence of a radical group known as Maitatsine in Kano led by Malam Muhammadu Marwa in 1980, which attacked and killed other Muslims who did not belong to the group. According to Lewis, this group had its primary constituency among the Northern Muslim talakawa (commoners) and it took the combined operations of both, the Police and Armed forces of Nigeria to quell the attacks of the group.<sup>34</sup>

Similarly, the Major Gideon Orkar led coup of 1990 reflected this economic dimension. Interestingly, the leader of the coup, who mentioned the excision of the five core Muslim states in the north, came from the middle belt area that might be regarded as a Bible belt region of Nigeria. Moreover, the coup came on the heels of many allegations against the Babaginda regime over Nigerian membership of the Organization of Islamic Conference (OIC). The regime was accused by the Christian Association of Nigeria (CAN) in open letter contained in an *African Concord* article on February, 5, 1990: 36-37 of being a principal agency of Islamization in Nigeria barely two months before the above coup. The open letter also shows that its grouse was mainly over perceived lopsided political appointments. Therefore I contend that there are indeed both “political” Islam and political Christianity in Nigeria which arise as a result of the fight for the so-called Nigerian ‘national cake’ as can be seen when even those who are never religious begin to acknowledge Islam or Christianity for political ends like getting the government’s sponsorship for pilgrimages either to Mecca/Medina or to Jerusalem/Rome. What is sadly very clear is that these pilgrimages are not sponsored for religious but for political motives.<sup>35</sup>

### **The Human Rights of Muslim Women under Sharī'ah Administration**

Further, the crisis of the *Sharī'ah* administration in Nigeria is about human rights of Muslims, non-Muslims as well as of women not to be put under the jurisdiction of a Law against their

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<sup>34</sup> Peter M. Lewis, “Islam, Protest and Conflicts in Nigeria,” *African Notes*. (Washington: Center for Strategic and International Studies 2002): 10.

<sup>35</sup> Ibrahim Olatunde Uthman and Lateef Oluwole Abbas, “Muslim/Christian Politics of Religion in Nigeria: the *Sharī'ah* Application and the Religious Foundations of Global Muslim Engagement with Modernity.” *International Journal of Sociology and Anthropology* (2014): 176, also available at <http://www.academicjournals.org/ijasa/PDF/pdf2014/May/Uthman.pdf>.

choice in a multicultural and pluralistic Nigeria. It is the violation of human rights of women to life and a fair adjudication that Islamic feminists in Nigeria condemn as extremely dishonorable though it is executed in the name of protecting the honor of family relations in Islam. An example of such violation is the punishment of a Muslim woman for adultery or fornication on the basis of pregnancy out of wedlock. This violation can be seen in the judicial irregularity, anomaly and discrepancy in applying the punishments to Muslim women in *Sharī'ah* Courts in Northern Nigeria.<sup>36</sup> Another abuse in this context is the Muslim women's rights to make choices in matters of marriage and divorce. Many girls are married off by their fathers when they are still minors or virgins (never-previously married daughters), which has made the divorce rate in *Sharī'ah* States in Northern Nigeria alarmingly too high.<sup>37</sup>

It is within this milieu that I will now reiterate here a call that many scholars have been making including myself that "it is necessary to distinguish the ordinances of the *Sharī'ah* as contained in the Qur'an and Sunnah" and the interpretations and opinions of Islamic scholars as contained in the *Fiqh* corpus. While the *Sharī'ah* refers to "the principal provision of the Islamic Law" that is "the totality of the laws that come from Allah as contained in the Qur'an and the Sunnah," *Fiqh* refers to "the applied subsidiary of these laws" based on "the use of human intellectual exercise to interpret the *Sharī'ah*."<sup>38</sup> This flows from the secondary source of the *Sharī'ah*, *Ijtihād* (independent reasoning and intellectual exertion). *Ijtihād* is a tool of *Fiqh* to renew the application of the *Sharī'ah* in the light of contemporary changing circumstances.<sup>39</sup> Using *Ijtihād* according to al-Qaradāwī makes it possible to apply *Thawābit* (permanent aspects of the *Sharī'ah*) to new contemporary issues in an ever changing world. This dynamism and adaptability of the *Sharī'ah* is reflected in its gradual approach to revelation and the imposition of religious obligations and prohibitions as well as its outright abrogation or at least suspension of obligations and prohibitions due to special circumstances such as necessity, human weakness, forgetfulness and mistake.<sup>40</sup>

For this reason, this classical Islamic tool will be used to recommend a better application of the *Sharī'ah* in order to achieve its basic *Maqāsid* (Ultimate objectives). Regarding these *Maqāsid*, the Andalusian Mālikī jurist, Abū Ishāq Al-Shātībī explains that the *Sharī'ah* aims to protect five basic human interests: religion, life, reproduction, property, and reason, which he observes are basic interests universally recognized by all human nations. He goes further

<sup>36</sup> Ibrahim Olatunde Uthman, "Muslim Women and the Islamic State between Political Activism and the Islamic Law: An Analysis of the *Jilbāb al-Mar'ah al-Muslimah fī al-kitāb wa al-Sunnah* of Shaykh al-Albānī," *IKIM Journal of Islam and International Affairs* (2006), 125-128. 117-145.

<sup>37</sup> Ibrahim Olatunde Uthman, "Muslim Women and Domestic Violence in Nigeria: The position of the Shari'ah," in *Beyond the Veil: Muslim Women in Sub Saharan Africa*, ed. AbdulRazaq Kilani. (Nigeria: Global Da'wah Communications 2010), 61. 50-96.

<sup>38</sup> For details on these distinctions, see among other works, Muhammad Khalid Masud, "Shātībī's Philosophy of Islamic Law: An Analytical Study of Shātībī's Concept of *Maslahah* in Relation to His Doctrine of *Maqāsid* of the *Sharī'ah* With Particular Reference to the Problem of the Adaptability of Islamic legal Theory to Social Change," Ph. D. Thesis, McGill University, 1973, Ṭahā J. al-'Alwānī, "Taqlid and Ijtihad" *The American Journal of Islamic Social Sciences* (1991), Mohammad Hashim Kamali, "Maqasid al-Shariah: The Objectives of Islamic Law," in *Islamic Studies Occasional Papers 33* (Pakistan: Islamic Research Institute, 1999), Mohammad Hashim Kamali, "Law and Society: The Interplay of Revelation and Reason in the Shariah," in *Oxford History of Islam* John L. Esposito (ed.) (Oxford: Oxford University Press, 2000), Yūsuf al-Qaradāwī, *Islamic Law in the Modern World* Al-Hadi Ahmad Kahalifah (transl.) (Riyadh: World Assembly of Muslim Youth, 2000), Muhammad Khalid Masud, "Muslim Jurist's Quests for the Normative Basis of Shariah," *ISIM Newsletter* (Leiden: ISIM, 2001), Uthman, *Feminism*, 2001 and Muhammad Al-Tahir Ibn Ashur, *Treatise on Maqāsid al-Sharī'ah* (London and Washington: International Institute of Islamic Thought, 2006).

<sup>39</sup> Al-'Alwānī, "Taqlid," 130-131.

<sup>40</sup> Al-Qaradāwī, *Islamic Law*, 40-124.

to develop a model of three levels of the *Maqāsid*.<sup>41</sup> This conception of al-Shātībī was further advanced by Muhammad Al-Tahir Ibn Ashur who freed the study of the *Maqāsid* from the *Usūl al-Fiqh* that he argued was not well formulated to reflect the hidden insights and purposes of the *Sharī'ah*.<sup>42</sup> For Kamali, the *Maqāsid* embedded in the precedents of the companions of the Prophet (SAW), who saw the the *Sharī'ah* “not only as a set of rules but also as a system of values” has the value of *Rahmah* (mercy) as “the all-pervasive” *Maqsad* (objective, singular of *Maqāsid*) of the *Sharī'ah*, which according to him is used by Islamic scholars “synonymously with *Maslahah*” or scheme of benefits.<sup>43</sup>

In other words, the *Maqāsid* embodies broad, general and immutable rules and values drawn from Qur'ān and Sunnah such as the sanctity of life, security and freedom of expression, and the inviolability of these rights. For instance, the rights of the minority in modern society, such as the freedom of religion is embedded in the Islamic concept of of *Dhimma* which means that the protection of the rights of non-Muslims who live in the Islamic state, society or nation are the responsibility of Allah, His Messenger, and all Muslims. This is covered by the general principle established by the Islamic jurist that “what is (lawful in terms of rights) to them is (lawful in terms of rights) to us and what is (incumbent of obligations) upon them is (incumbent in terms of obligations) upon us.”<sup>44</sup> It is the failure to make this distinction between the *Sharī'ah* and *Fiqh* as well as uphold the universal, fundamental, eternal and immutable principles and values of the *Maqāsid* that is responsible for the misconceptions and misperceptions about the prevailing application of the *Sharī'ah* in Nigeria and indeed many parts of the Muslim world.

In accordance with the *Maqāsid*, the *Sharī'ah* upholds the universal, fundamental, eternal and immutable sanctity and of human life (Quran, 6:151) which is so sacred in Islam that *Qatl* (killing) one life, irrespective of gender, class and status is a heinous offence equal to killing the whole of humanity (Quran, 5: 32). As part of the Islamic universal concept of “*adl*” or justice, the worth of human life is not determined by gender, family lineage, wealth, worldly status or class, but by virtue of being a human being. Furthermore, it is forbidden even to kill animals for fun or sports and a person even has no right to kill himself or herself in Islam (Quran, 81: 8-9, 6: 140, 6: 15 and 4: 29). It also guarantees Muslim women’s rights to exercise their marital choice on marriage or divorce. They have the right to stay in the marriage that make them fulfilled just as they can opt out of any marriage that has become joyless. In similar vein, they have both the right to get back together with their former husband, if they mutually agree to remarry or to marry a new man (Quran, 2: 230-235). It equally makes marriage a pure contract and not a sacrament between the contracting would-be husband and the wife.<sup>45</sup> Based on the foregoing universal, fundamental, eternal and immutable principles and values of the *Maqāsid*, I therefore hold the current political structure in Nigeria responsible for the interreligious and gender conflicts in Nigeria and propose the Commonwealth of religions and nations Islamic model as the solution to this crisis. The last part of this paper will now address this model Islamic state that differs from the “tyranny of the dominant Judeo-Christian modern secular state”, borrowing the idea of Alexis de Tocqueville as well as the “tyranny of the classical Islamic state” as is the case in Saudi

<sup>41</sup> Cited in Masud, “Muslim Jurist’s Quests,” 14.

<sup>42</sup> Muhammad Al-Tahir Ibn Ashur, *Treatise on Maqāsid al-Sharī'ah* (London and Washington: International Institute of Islamic Thought, 2006, pp. xvii-xviii.

<sup>43</sup> Kamali, “Maqasid al-Shariah,” 1-3.

<sup>44</sup> Al-Qaradāwī, *Islamic Law*, pp. 40-124.

<sup>45</sup> (Ibrahim Olatunde Uthman, “Muslim Women and Domestic Violence in Nigeria: The position of the Shari’ah,” in *Beyond the Veil: Muslim Women in Sub Saharan Africa*, ed. AbdulRazaq Kilani. (Nigeria: Global Da’wah Communications 2010), 61. 50-96.



Arabia and to a very large extent, in Iran, two competing poles in Islamic religiosity.

### **Sharī‘ah and the Commonwealth of Religions and Nations in Nigeria**

My contention here is that the alternative political model to both the modern secular and classical Islamic states is the culture of multiple religions and peaceful coexistence that can best be realized in a truly Commonwealth of religions and nations. This Commonwealth of religions and nations, I propose is based on the *Sharī‘ah* inclusive *Shūrā* (consultation guided by the *Sharī‘ah*) political system created by the Prophet (SAW) in Madīnah. While differences abound among Islamic scholars on the political significance of the *Shūrā*, they appear unanimous on the obligation of the *Shūrā* that is predicated on justice as exemplified by the Prophet (SAW) in what is known as the Madīnah model.<sup>46</sup> The term, *Shūrā* or its derivative is mentioned in the Qur’an as follows: “... if they both decide on weaning, by mutual consent, and after due consultation, there is no sin on them” (2:233), “...And consult them in the affairs. Then when you have taken a decision, put your trust in Allah, certainly, Allah loves those who put their trust (in Him).” (3:159) and “...And who (conduct) their affairs by mutual consultation, and who spend of what We have bestowed on them” (42:38).<sup>47</sup> By this, according to most classical Islamic scholars, *Shūrā* becomes binding on Muslims as a violent-free approach to decision-making “in matters not revealed.”<sup>48</sup> In the words of a contemporary Islamic thinker and a former rector of the International Islamic University, Malaysia, Abdul Hamid Abu Sulayman, the concept of *Shūrā* has provided the system “whereby Muslims sit together and deliberate upon important matters to arrive at and bound by conclusions in the light of the philosophy concept of justice.”<sup>49</sup> In articulating the importance of justice in the Islamic political system, Ahmad Ibn Taymiyyah, the fourteen century leading Islamic scholar in his famous statement in support of non-Muslims rulers declares that “the affairs of men in this world can be kept in order with justice and a certain connivance in sin than with piety and injustice because Allah supports the just state even if unbelieving than the unjust state even if it is Muslim.”<sup>50</sup>

The *Shūrā* represents a political system that provided a compulsory participation in decision-making regardless of religious, tribal and political affiliations based on what the late Indian Professor Muhammad Hamidullah has referred to as “the first written constitution of the world.” In line with this constitution, the Prophet (SAW) established a “Commonwealth of nations and religions” with all the federating groups retaining “religious freedom as well as internal autonomy.”<sup>51</sup> The constitution provided for the participation of non-Muslims-Jews-in the decision-making process of the Madīnah polity. They thereby sat together with Muslims at a roundtable and deliberated upon the important matters that bounded the administration of the nascent Islamic polity. This *Shūrā*-based constitution is even more important yet as it incorporated the Jews into “the community of Islam as equals; they had the same claim to

<sup>46</sup> Hamid Enayat, *Modern Islamic Political Thought* (London: The Macmillan Press, 1982), 2-4.

<sup>47</sup> Dr. Muhammad Taqī-ud-Din al-Hilali and Dr. Muhammad Muhsin Khan, *Translation of the Meanings of the Noble Qur’an* (Saudi Arabia: King Fahd Complex for the Printing of the Holy Qur’an, 1426 AH), 51, 97 and 660.

<sup>48</sup> Abū Abdillāh Muhammad Ibn Ahmad al-Qurṭubī, *Al-Jāmi‘ li Ahkām al-Qur’ān* Vol. 2, part 4 (Beirut: Dār Ihyā’ al-Turāth al-‘Arabī, 1958), 249.

<sup>49</sup> Abdul Hamid Abu Sulayman, “Islamization of Knowledge with Special reference to Political science,” *American Journal of Islamic Social Sciences* (1985): 285.

<sup>50</sup> Ahmad Ibn Taymiyyah, *Public Duties in Islam: The Institution of the Hisbah*, trans. Muhtar Holland (London: Islamic Foundation, 1985), 95.

<sup>51</sup> Muhammad Hamidullah, *The First Written Constitution in the World: An Important Document of the Time of the Holy Prophet* 3d rev. ed. (Lahore: Shaikh Muhammad Ashraf, 1975), 18-21.

protection by the other participants in the charter and identical obligations towards them.” The issue of equitability is so central to the Islamic polity that the second Caliph, ‘Umār once told the judge of Basra, “Do not hesitate to change a decision previously taken by you, once you realize that it was not equitable”<sup>52</sup> For this reason, the *Shūrā*-based polity is based on the two fundamental principles of freedom and equality.<sup>53</sup> It also exempted signatories to the constitution from submitting to the Prophet (SAW) “for arbitration of any conflict between them and an outside foe, as long as the Muslim community as such was not affected or involved,” which is a Qur’anic prescription (5: 47). This remarkable integration of the Jewish minority into the body politic of the Madīnah model has been rightly described by the Islamist Ilse Lichtenstadter as “a landmark in the development of Islam as a political concept which” shows “the Prophet’s outstanding ability as a political leader” expressed in legal terms different from the inspirational expression in the Qur’an.<sup>54</sup>

The above Madīnah exemplification of the *Shūrā* based political system has support today from many leading leaders and thinkers of the contemporary Islamic movements such as Ḥasan al-Ṭurābī who argues that the *Sharī’ah* encourages pluralism since *Shūrā* is a prerogative of the people and therefore calls for plurality of opinions from which the people can choose. Therefore, *Shūrā* and democracy can be used synonymously since ultimate political authority in an Islamic state resides in the people though they cannot overrule the basic provisions of the *Sharī’ah* since political sovereignty belongs to Allah. As for the question of who decides if a teaching of the *Sharī’ah* has in fact been overruled, according to al-Ṭurābī, Islam prevents tyranny because it promotes cooperation between the people as represented by the *Shūrā* and their ruler. They as a result resolve all knotty issues through consensus. Through the *Shūrā* framework, Muslims can create a democratic system free from the flaws of liberal democracies such as imposition of sectional interests and concentration of power in the hands of small elite.<sup>55</sup> Further, according to him, the observance of prayer in the mosque is the perfect example of Islamic democracy as the Imām who leads prayer cannot be imposed on the people but is rather selected by them. He sees this as the Islamic state prototype for political leadership.<sup>56</sup>

Such a Commonwealth of religions and nations as proposed in this paper is closer to John Locke’s political philosophy, which though is individualistic, does not enforce assimilation, oneness and combination in religious practices. Rather, according to him, “solemn assemblies, observations of festivals, public worship” ought to be permitted to all religions. “Neither pagan, nor Mahometan, nor Jew ought to be excluded from the civil rights of the commonwealth because of his religion.”<sup>57</sup> Nay to John Locke, “idolatry, superstition, and heresy” and “heathens” should be accommodated in the commonwealth.<sup>58</sup> Consequently, my Commonwealth of religions and religions while upholding such pillars of the modern state like human rights, empowerment of women, elections, voting, mass education and

<sup>52</sup> Khalifa Abdul Hakim, *Islamic Ideology* (Lahore: Institute of Islamic Culture, 1961), 215.

<sup>53</sup> Ahmet Davutoglu, *Alternative Paradigms: The Impact of Islamic and Western Weltanschauung on Political Theory* (Maryland: University Press of America, 1994), 132.

<sup>54</sup> Ilse Lichtenstadter, *Islam and the Modern Age: An Analysis and Appraisal* (New York: Bookman Associates, 1958), 57-58.

<sup>55</sup> See John L. Esposito, *the Oxford Encyclopedia of the Islamic World* Revised ed. London: Oxford University Press, 2009.

<sup>56</sup> Hasan al-Ṭurābī, *Al-Salāh ‘Imād al-Dīn* (Beirut: Dār al-Qalam, 1971), pp 124-158. See also Khaled Abou El Fadl, et al. *Islam and the Challenge of Democracy*. (Princeton: Princeton University Press, 2004).

<sup>57</sup> David Wootton, ed., *Political Writings of John Locke* (London: Mentor, 1993), 431.

<sup>58</sup> Wootton, 420.

urbanization, also officially brings to the Public arena its plural religious practices, traditions and values such as the application of *Sharī'ah*/Christian Cannon Law/African Customary Law, Islamic Banking/Christian Banking/African Customary Banking, and the adoption of Cultural symbols such as the Islamic dress code, especially *hijāb*/Catholic Nun's habit or veil/Yoruba *iborun*.

## Conclusion

In conclusion, I would like to address the question: how would this Commonwealth of Religions and nations be like when it is practiced in Nigeria? For this question, my answer is, this Commonwealth of Religions is already taking shape in Osun State, Southwestern Nigeria where the incumbent governor, "Ogbeni" Rauf Aregbeshola now gives his expression to the traditional religion of the people in all his official engagements as well as ensuring that it is taught in schools. This differs from what happened in the past where only Muslim and Christian prayers are observed in the public arena during official ceremonies, such as during Independence celebrations. This is just the beginning, as the Commonwealth of Religions and nations will in addition embrace all religious teachings, values and emblems; all religious practices and institutions will be officially allowed and observed, even some people might perceive them as "superstition and heresy", as long as they are not imposed on the other.

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