SCHOLASTIC DISCOURSES ON THE REGULATION OF RELIGIOUS PREACHING

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ABSTRACT

The right to engage in religious preaching or religious propagation is a right within the broader context of freedom of religion and belief which, is protected in the various Constitutions of democratic countries. This being the case, this review consults works related to restrictions on freedom of religion as a whole in order to review the literature on the subject matter.

Scholars have taken a variety of positions on the regulation of religious preaching generally and on religion as a whole. Therefore, to do a bump-free review of literature, the work divides the discussion into two parts. The first part examines the debates among scholars on the subject matter from four different, but related perspectives and the second part are inferences from the scholastic discourses among scholars.

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SCHOLARSTIC DISCOURSES

Scholars have approached the study of religion generally by looking at its relationship to violence. They have generally done so from two perspectives and each group, relies on various but related reasons to justify their positions. One approach faults religion as the main cause of violence in the world and the other absolves it[i]. These approaches have influenced scholars arguing for and against the regulation of freedom of religion which includes the right of a citizen in a democratic country to engage in religious propagation.

For the purpose of this review, the first category of scholars consulted are those that support government regulation of freedom of religion including the right to engage in religious preaching and second, those that do not. Third scholars consulted are those that based their arguments on balancing mechanisms; aimed at striking balance between the regulatory power of the state and the right of the citizen to engage in religious persuasion.

One thing that is common between scholars arguing for and against regulation is that, both use moral arguments to justify their supportive and unsupportive positions on the phenomenon of government regulation of religious preaching[ii]. On the other hand, what differentiates them is the extent to which they made their normative undertakings clear in their respective positions[iii].

ARGUMENTS IN SUPPORT OF REGULATION

In these category, scholars use moral arguments to support their positions. Legal philosophers have divided this type of argument into three. First is the duty-based (technically called deontological argument), which could be based on religion, and some other time, on rational answers to moral questions[iv].The scholars do this by showing that the state has a duty to regulate religious preaching in a democracy because of its inflammatory nature, which is a threat to public order[v]. This is called the perceived danger argument and according to it, the state is justified if the action it has taken or the law it enacted to control religion including the right to propagate one's religion is neutral.

Succinctly stated, government regulation of religion or freedom of religion would be justified if government's action is neutral or made in such a way that the 'maxim of such government

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action is the 'maxim' of a general action in line with the theory of moral quality of actions propounded by Immanuel Kant; a legal theorist[vi].

In their contributions to this debate, constitutional law experts Audrey Peltze[vii], William P. Marshall[viii], Kenneth Lasson[ix] and Nigerian Isaac Terwase Sampson[x] argue that the government should regulate the right to engage in religious persuasion because of its perceived incivility and incitement. In particular, Peltze opened his work with the following quotation:

> Have no mercy on the Jews, no matter where they are, in any country. Fight them, wherever you are. Wherever you meet them, kill them. Wherever you are, kill those Jews and those Americans who are like them-and those who stand by them[xi].

Tarwase, on his part, specifically blamed religious preaching as a cause of religious violence in Nigeria. He asserted that:

> Disparaging or critical preaching is one of the most common causes of religious violence in Nigeria...With little or no censorship of the critical content of these sermons; some religious fundamentalists have used these media opportunities to cause serious religious disharmony and subsequent violence. The use of audio and video preaching in public places is not less provocative. The two religious groups often use audiotaped preaching even in conflict-prone areas like Jos city, in defiance of the standing security embargo placed on them. One of the major causes of religious violence is the methods of proselytizing used by the dominant religions[xii].

According to these scholars, the state should not allow anyone to promote such a true threat under the pretense of free speech. This is because religious sermons have great influence over listeners, thus creating a sense of imminent danger[xiii]. On this ground, they argued that the state is justified if it restricts the right to religious preaching through neutral laws that support government interests while preserving citizens' free exercise rights. In summary, these scholars argue that the state has a duty to maintain law and order in the society.

The problem with his argument however is that it is not based on any empirical work which, renders it speculative.

Another scholar that argued along this line is William P. Marshall. In his contribution to the conversation, he argued that, "the nature of religion justifies its restriction its in the public

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square". According to him, authorities should impose restrictions on religion in public decision making because of the "inestimable value" of religion for "human freedom and existence". He claimed that the state should do this because religion "claims infallibility and universality and as such tends toward the dogmatic and authoritarian which might be functionally useful for religious purposes but not encouraging to democratic consideration"[xiv].

Another relevant work is the work of Scott. C. Idleman, He linked his discussion with the issue of protection of state sovereignty as part of state responsibility. His argument is that the state must "subordinate religion to preserve its sovereignty…and to maintain its hold on the allegiance of its citizens"[xv]. Arguing in the same direction with Idleman is Thomas Hobbes; a well-known legal theorist. He argued for the teaching of religious doctrines. In his work, *The Leviathan*, Hobbes argued that the Sovereign, who has tremendous rights, can control people's beliefs indirectly by determining what doctrines may be taught to the public.[xvi] This, according to him, will ensure uniformity in religious practice.[xvii] In addition, it will limit unwanted doctrines into the public domain and that, will maintain the peace and stability of the society and by extension, the sovereignty of the state. In essence, he calls for state regulation of religion to achieve this kind of peace in the society[xviii].

Just like John Locke's works, one must bear in mind the time Thomas Hobbes wrote *The Leviathan*. It was during the English civil war and this may have influenced his writing. Nevertheless, his arguments are relevant as it helps our understanding of the need for the protection of human rights and fundamental freedoms, especially the right to freedom of religion.

It is discernible from the above dialogues that deep-rooted panic about the perceived danger of religion has remained a central reason for regulation. It has led governments across the world to conclude that religion is dangerous and that the best way to control its danger is to seek to suppress it[xix].

Still on the perceived danger claim against religion, Huntington however introduced a new but relevant dimension to the debate in support of government regulation of religion with his clash of civilization theory. According to him, the coalitions that shaped the world during the Cold War kept the world in equilibrium until the collapse of the Soviet Block disturbs the balance. The unbalance reconfigured the world such that "culture and cultural identities … are shaping

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the patterns of cohesion, disintegration, and conflict in the post-Cold War world" instead of geo-political alliances. He states:

> World politics is entering a new phase, in which the great divisions among humankind and the dominating source of international conflict will be cultural. Civilizations – the highest cultural groupings of people—are differentiated from each other by religion, history, language and tradition. These divisions are deep and increasing in importance. From Yugoslavia to Middle East to Central Asia, the fault lines of civilizations are the battle lines of the future".[xx]

Grim and Pinke however, hypothesized that according to this perception, conceding to the domination of some religious 'brands' at the expense of other religious 'brands' according to geographical location is the sure way to abridge conflict in the world. In addition, these scholars asserted that although it is obvious that Huntington did not make case for the regulation of religion, nevertheless, the summary of his thesis is that authorities should respect civilization divides in order to avoid conflict.

This suggests a need for greater religious regulation (be it de factor or dejure) to keep potential combatants from clashing. In this viewpoint, religious regulation will result in less socio-religious conflict[xxi]. If the situation results in less socio-religious conflict because of regulation of religion, it will probably help authorities maintain their power among the people. Arguing in this line, Anthony Gill asserted that, when authorities enact legislation to promote religious freedom (and this work says possibly by placing restriction to protect the right of others within a country), they are not doing that because they have any duty to do it or that it is good to do that. According to him, in contrast, the action of the state is simply a result of political calculations based on the self-interest of legislators and other decision makers such as majority religions within the society to consolidate their grip to power[xxii]. Specifically, this scholar states:

> The meaning of this is that political leaders will favour policies of religious liberty when it enhances their hold on power, enriches then nation's economy and increase tax revenue to the state, and minimizes social conflict. Likewise, where policymakers see religious freedom as deleterious to any of those goals, they will not promote religious liberty and may well roll back any freedoms that various religious groups enjoy. Therefore, restriction depends of the political advantage policymakers are likely to get

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> otherwise there would not be restriction. On the political origin of religious liberty, the author states …it is a matter of government regulatory policy…[xxiii]

The implication of these arguments is that the moral quality of the action of government in this instance is determined on the inflammatory nature, incivility and incitement of such a religion or religious preaching as the case may be. If this were the case, the state would be justified if it controls the situation with neutral laws. There are two problems associated with this mode of reasoning. First, if the moral quality of actions is to depend on the maxim underlying them, then, a charitable work of the state can only be morally justified if the state performs it because it has a duty to perform, otherwise it would be immoral. The implication here is state's action would remain immoral where the state did it out of self-interest, no matter how beneficial the work is to the society[xxiv]. This means that the state cannot even act out of compassion because it is not its duty to act as such.

In addition, this type of reasoning sometimes gives results that offend people's sensitivities. For example, if people have duties to tell the truth because social life would be impossible, if the law permits them to tell lies anytime, then, it will be morally good to tell a bloodthirsty fanatic where he will find someone whom he wishes to kill if that is the truth[xxv]. Another problem here may be making the state the sole guardian of its conscience. This is because emphasis is on duty alone without providing any explanation on the determination of a religious preaching that is inflammatory nature; no information about any criteria for the determination of such preaching. The absence of this will give room for abuse.

Another problem is the argument relies on speculative consequentialism to support restriction of religious preaching and religion at large in the society. This is because it has not taken actual occurrences of events into account before arriving at conclusion. It is therefore impossible to identify all the possible consequences of the so call perceived danger of religion in the circumstance let alone knowing whether it is harmful or beneficial. It relies simply on the "perceived inflammatory nature, incitement and incivility" of religious preaching to justify the need for its control because according to the state, it is a threat to public order. In addition, it is counter-intuitive because government may use it to justify scapegoating religious minorities in favour of religious majorities.

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This is important considering that there are works that suggest that religion may not necessarily be violent to warrant its condemnation. Karren Armstrong is a relevant Author here with her famous work *Fields of Blood: Religion and the History of Violence*[xxvi]. In this work, the author debunks the claim that religion has been the cause of all major wars in history arguing that other factors have caused such violence without any contribution from religion.

The second arm of the problem is associated with the arguments of scholars in support of regulation of religion using neutrality as a validation mechanism of the state's restrictive action on religion. According to scholarships examined in this category, the regulation of citizen's right to engage in religious preaching is valid if the laws are neutral and support government interests while preserving citizen's free exercise rights. The question is what is neutrality in this instance? In a democratic order, liberal political theory is the determinant for the notion of state neutrality. Various scholars have provided different explanations on how to achieve neutrality in democratic orders.

These scholars have not provided any explanation on what they mean by neutral laws in the situation or how to achieve neutrality and according to what theory. It therefore stands to reason that any scholar justifying the restriction of free exercise rights on the basis of neutrality must go further to explain what he means by neutrality, how to achieve it and based on what worldview in the words of Brendan Sweetman or comprehensive doctrine in the words of John Rawls. Although the scholars have not openly stated the theories of neutrality they are talking about, nevertheless, it is clear from their works that they were all inclined toward Rawlsian liberal democratic theories as their validation mechanism of the state actions[xxvii]. The concluding part of this review of literature discussed this issue in detail.

ARGUMENT AGAINST REGULATION

Scholars in this category relied on different but related grounds such as religious, virtue and non-speculative consequentialism. The first group in this category are the deontologists; who generally believe that religious preachers have a religious duty to preach. Second, are those that adopt liberal democratic theories as part of their religious belief and believed that, it is undemocratic to restrict religion or religious argument in the public domain. Scholars in Islamic

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Studies in particular believe that Islamic religion imposed a duty on Islamic religious preachers to engage in religious preaching and they believe that nobody including the state has any right to put any restriction on their right and duty to preach. These scholars believed that engaging in religious preaching in the society is a religious duty imposed on them to which the state cannot restrict. Sani Midobbo; an Islamic scholar states:

> …one may conclude that *Da'wah,* in this regard, as a matter of fact, is compulsory (*wājib*) on every individual Muslim (Q.3:110).The Prophet also emphasized its obligatory nature by saying that whoever sees a wrong should correct it. *Da'wah* is a primary duty of the Prophets and the Messengers of Allah (Q.36: 14, 16, and 17. Q. 16: 64)[xxviii].

An example of those who adopted liberal democratic theory as part of their Christian belief and believed that it is undemocratic to restrict religious argument in the public domain is Brendan Sweetman. This scholar believed that it would amount to inversion of freedom of religion to restrict religious argument in the public arena based on liberalism. He argued that people must justify the principle of religious freedom from within their own worldview otherwise; liberals will continue to view traditional religions as inferior to their own secularist views. It is notorious that the principle of religious freedom grants members of religions [worldviews] other than one's own the right to practice their religion in a democracy. His argument is that whatever degree of religious freedom one believes in, he should grant the same thing to members of other worldviews and he must defend his action from within his own worldview and not from some independent, neutral standpoint. In addition, all worldviews must address this question when it comes to the political arena, including the secularist worldview[xxix].

John Locke, an English philosopher, is another scholar who applied religious argument against state regulation of religion but using a different reason. He argued for religious toleration by authorities because in his reasoning a human being is a 'mere mortal who cannot comprehend God'.[xxx] He advanced his argument in his discussion on the notion of separation of the Church and State as far back as the seventeenth century.[xxxi] He argued that the government and religion have separate ends. He believes the Church to be *'a free society of men joining their own accord for the public worship of God'*[xxxii] whereas the government exists to secure the things that can

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be enjoyed on earth such as life, liberty and property. The government achieves this through legislation to ensure conformity unlike religion, which uses persuasion.[xxxiii]

He argued further that the State has no legitimate authority over the dominion of human conscience hence authorities should keep the two separate.[xxxiv] For this reason, he argued that the State has no right to coerce religious practice on people due to its lack of understanding of God. Secondly, he pointed out that the State can control people's behaviour with punishment as is the case in criminal matters but it cannot control our inner thoughts and beliefs.[xxxv] Thirdly, John Locke expresses the view that if the State imposes religious beliefs on its subjects and these subjects blindly accept those doctrines while ignoring their own reason, the said subjects will be locked from heaven.[xxxvi] As a result, *'the function of the State and the Church must be distinguished'*.[73]

He believes that no sect can reach that extent of teaching individuals to undermine civil laws because then their peace will be endangered.[xxxvii] He therefore recommends that the Church and the State must be distinct as the Church can promote values that undermine State supremacy leading to political destabilization of that State.[xxxviii] John Locke holds that in such situations, the State should step in to ensure that the Church does not promote such values.[xxxix] There are two main challenges with religious argument in this situation. First is scholars are divided on the role of religious argument in the public domain such that no position yet has been reached although, the views of John Rawls espoused in his two works *theory of Justice* and *Political Liberalism* have influenced many authors[xl]. The section addresses this problem in detail. The second problem associated with religious argument is differences in interpretation of issues and concepts among Muslims in particular combined with sectarian differences are factors that will not allow unity in their approaches to issues against liberal positions. With these problems, it is difficult to validate or invalidate actions against religious preaching. This is because some scholars will agree on some restrictions while others will not and all will have religious explanations to their positions.

The most important thing however is that religious people are generally unanimous in their objections to liberalism's attempt towards the restriction of the role of religion in the public sphere. This is quite evident in the resistance of religious people in the enforcement of Religious Preaching Board Laws in Northern Nigeria.

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John Locke's arguments are relevant to this study because they deal with the intersection of law and religion. In addition, his view provided a balancing mechanism between the regulatory power of the state and the right of the free exercise right of the citizen. However, the context under which he proffered this view differs from what is happening in the world today. Second, his idea on the separation of religion and the state was based on his Christian background and even at that, he failed to mention how the Church can govern itself and the steps to be taken against errant religious leaders or the extent to which the government can tolerate religious preachers.

He has not addressed what happens if the religious preachers nevertheless promote values that undermine state supremacy thus threatening political stabilization. Much as he admits that measures ought to be taken against such a sect, he is unclear of the types of measures to be applied, whether the measures should be given force in law and the extent to which they should be applied.

One has to appreciate the historical context in which John Locke's article was written.[xli] He did not envision certain situations that arise due to our ever-evolving society. Under such circumstances, should not the religion be subject to regulation?

The second group are those who argue based on virtue. The argument of scholars in this group is that placing restrictions on free exercise rights including the right to preach is incompatible with democracy, arguing that the restrictions themselves are discriminatory against minority religious groups and can incite violence against them, which affect human flourishing[xlii]. In their contributions to this debate, American experts on regulation of religion, Brian J. Grim and Roger Finke,[xliii] along with experts on religion and politics, Monica Duffy Toft, Daniel Philpot and Timothy Samuel Shah,[xliv] argued that, it is unreasonable and unwise to place restrictions on citizens' freedom of religion rights in a democracy, because doing so has grave consequences. Specifically, Grim and Finke states:

> Our statistical analysis finds that social and governmental restrictions on religion are associated with more violence and conflict, not less. Specifically we found that social restrictions on religious freedom lead to governmental restrictions on religious freedom; that the two act in tandem to increase the level of violence related to religion; and that this in turn cycles back leads to even higher social and government restrictions on religion, creating the religious vicious circle[xlv]

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These scholars based their arguments on the religious economy thesis, which posits that in a free market of ideas, government should allow religious ideas to compete with one another in the available public space so that in the end the truth prevails. Grim and Finke's work particularly demonstrates that most restriction placed on right to freedom of religion in democracies are a result of collaboration between the state and dominant religious groups to suppress minority religious groups.[xlvi] In his contribution to the debate, Jonathan Fox argued that when a state supports a single religion, it is more likely to be repressive, even against members of the state-supported religion, which links religion to a general intolerance by governments beyond a stereotypical intolerance of minorities[xlvii]

Seiple and Hoover also argue alone this line. They argued that religious liberty, properly conceived and implemented, is a key tool in containing religion-based violence and thus is foundational to sustainable security. They showed how societal repression drives religious groups underground or into militant Diasporas. Such repression politicizes theology, breeds apocalyptic speculation, and infuse a cult of blood and martyrdom among the persecuted[xlviii]. Thomas F. Farr demonstrated using the works of Stephan, Grim, Finke, and others that stable democracy requires a "bundled commodity" of fundamental freedoms that cannot function properly without religious liberty. He said, absence of that right will expose societies to religious conflict, tyranny, and radicalism.[xlix]

Arguing alone this line, Ani Sarkissian argued that Governments that restrict proselytizing, preaching, and other forms of dissemination of religious ideas are in effect controlling what should be an independent voice in society. This impedes the development of alternative voices that can question and perhaps even challenge authority. Even if such societies were to allow for competitive elections, religious regulations would make it difficult for a legitimate opposition to mobilize[l].

Yang on the other hand posits that oligopolistic heavy regulation leads not to religious reduction but to complication of the religious market, resulting in a tripartite market with different dynamics. It gives rise to the formation of red, black, and gray markets in the society[li]. His three propositions are one to the extent that religious organizations are restricted in number and in operation; a black market will emerge in spite of high costs to individuals. Two, to the extent that a red market is restricted and a black market is suppressed, a gray market will

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emerge and three, the more restrictive and suppressive the regulation, the larger the gray market[lii].

John Neuhaus added his voice to this debate against regulation of freedom of religion. His main argument is that religion should play an unencumbered role in the public life people. All citizens should have equal right to express their opinions in the public square, whether such opinions are religious or secular. People should not be urged to re-formulate their opinions in secular terms[liii]. He specifically stated:

> In a democracy that is free and robust, an opinion is no more disqualified for being "religious" than for being atheistic, or psychoanalytic, or Marxist, or just plain dumb. There is no legal or constitutional question about admission of religion to the public square; there is only a question about the free and equal participation of citizens in our public business. Religion is not a reified "thing" that threatens to intrude upon our common life. Religion in public is but the public opinion of those citizens who are religious[liv].

Others in this group argued that such restrictions violate human rights norms of secularity, free religious exercise, and proportionality.[lv] Scholars call this argument the incompatibility argument. This is because liberal political theorists perceive human rights to be incompatible with religion. Louis Herkin states "The Human rights ideology is a fully secular and rational ideology whose very promise of success as a universal ideology depends on its secularity and rationality[lvi]. It is based on the belief that people have rights not to be offended by statements of religious faith made by other people and by the belief that gay and lesbian people have the right not to have the moral status of their relationships call into question explicitly or implicitly by the words of those who disapprove of them[lvii]. According to scholars in this category, such restriction lacked values, qualities and activities, which enable human beings to flourish.

A good scholarly debate on this point is the reaction of Brendan Sweetman to John Rawls liberal political theory. John Rawls' theory states that in a society where there exists a plurality of reasonable comprehensive doctrines, there is no comprehensive doctrine sufficient to provide social unity. In such a society, social unity is based on a consensus on the political conception; and stability is possible when the doctrines making up the consensus are affirmed

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by society's political active citizens and are reasonably consistent with the requirements of justice[lviii]. In essence, the theory is that for political liberalism to be possible, individuals must not insist on the enforcement of their own comprehensive doctrine, no matter how true they believe it to be, but rather should separate political values upon which all can agree from nonpolitical values upon which several groups may reasonably disagree. According to this scholar, political liberalism is possible only if political values that are sufficient to "override all other values that may come in conflict with them" can settle fundamental questions of justice and constitutional essentials[lix].

Brendan Sweetman nevertheless, identified five problems with Rawls theory[lx]. First is that it is not neutral as Rawls presented it; his own worldview [secular liberalism] influenced the theory. He quoted Rawls statement in the instruction to *Political Liberalism* to support this conclusion:

> Thus, the question should be more sharply put this way: How is it possible for those affirming a religious doctrine that is based on religious authority, for example, the Church or the Bible, also to hold a reasonable political conception that supports a just political regime?"[lxi]

According to him this suggests that the motivating force in his work is not so much how to establish a just society in a pluralist age, but how to deal with religious views within an assumed liberal framework. Another difficulty is associated with the original position. This is because, there will be tension between the values and principles of justice one agreed to behind the vail of ignorance and the world view to which one subscribes, when the vail of ignorance is lifted. This is equivalent to legitimization of pretense or hypocrisy in a society. It is impossible to dissipate this tension and it will be irrational for one to allow the political conception to override or trump one's own worldview or comprehensive conception. This suggests that at all time, one has to suspend his worldview at the public square. It is unreasonable to practice one worldview privately and another one publicly in a supposed democratic space.

Second problem according to him is if it is not based on a comprehensive view of the good, then it is not clear how it can avoid cultural relativism (the view that moral and political values are relative to and decisively shaped by one's culture). This is because it is based on ideas latent in our political structures right now, perhaps even ideas people would accept, yet the question of the truth of these ideas is postponed, even ignored. Third problem is Rawls has too superficial knowledge of religious belief[lxii].

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ARGUMENTS TO BALANCE COMPETING RIGHTS

Third category of scholarship are works on regulation designed to balance the regulatory power of the state to regulate with the right of the citizen to engage in religious persuasion. The aim of works in category is to achieve neutrality and to ensure that laws enacted for the regulation of free exercise rights are reasonable and justifiable in democratic societies. Succinctly stated, the works do not support or oppose such restrictions *per se*, but views them from the perspective of balancing mechanisms between the regulatory power of the state and the free exercise rights of the citizen. For example, International Convention on Civil and Political Rights proposes a "three-step" standard of judicial review designed to strike a balance between state regulatory power and citizens' freedom of religion in a democratic society.[lxiii] The three-step balancing mechanism requires that for any limitation on freedom of religion to be legitimate in a democratic society, it must satisfy these three standards of prescribed by law requirement, furtherance of a legitimate state interest qualification and the requirement of proportionality.

American constitutional law scholar Jeremy Gunn, however, questions the adequacy of the three-legged standard of review that is notorious in resolving conflicts between the two competing rights. His argument is that the test lacks guiding principles on the kind of evidence to admit. Secondly, it has not distinguished which of the two rights is more important and why. Thirdly, on which of the parties as between the state and the citizen the burden of proving what evidence lies and why.[lxiv] Gunn therefore recommends four standards of review instead of three. According to him, a tribunal faced with the task of interpreting derogatory clauses with respect to freedom of religion should, first, understand its role, second, properly identify the burden of proof of each of the parties, third, apply the less restrictive alternatives with correct evidentiary obligations placed on both parties, and fourthly, understand the relevant degree of scrutiny to apply.[lxv]

Gunn's argument, however, negates the role of the overall religion-state pattern, especially in a country like Nigeria, as a guiding principle in the interpretation of freedom of religion cases as evidenced elsewhere in this work. This relationship is relevant when assessing the nature of the protection of freedom of religion in a country, especially since that religion is indispensable in the maintenance of public order. Particularly in the case of Nigeria, Gunn's fourth recommendation raises the question of how to determine the relevant degree of scrutiny. And

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this is where the main problem is. What degree of scrutiny should be applied in striking a balance between state regulatory power and freedom of religion? How? Why?

There is also Barak's work[lxvi] that analyzes the concept of proportionality in relation to conflicts between state regulatory power in the form of limitations and the rights of citizens in the form of constitutional rights. It expanded the horizon of the work of Alexy[lxvii]; a leading scholar on the study of proportionality under constitutional law theory. For example, Alexy's position on conflict between a constitutional right and a public interest is that a proportionality test should apply to reduce the scope of the constitutional right. In contrast, Barak's opinion is that such proportionality test should operate only "on the sub-constitutional level" without affecting the constitutional right in issue.[lxviii] Secondly, Alexy's proportionality mechanism compares "the purpose of the limiting law to the harm inflicted on the constitutional right." Barak in contrast hold the view that although it is proper to include the proper purpose of the law for consideration, it should be "balanced against the importance of preventing the limitation of the constitutional right."[lxix]

Addressing these questions is particularly important in Nigeria. This is because the Nigerian Constitution happily protects a citizen's right to freedom of thought, conscience, 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 and observance."[lxx] The Constitution also protects "freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference" and to "assemble freely" and "associate with others."[lxxi]

As law and religion scholar W. Cole Durham Jr. has observed, freedom of religion is a "core doctrine" amongst other fundamental human rights in the world today. [lxxii] However, the Nigerian Constitution also allows the state to derogate from these rights when "reasonably justifiable in a democratic society" on the grounds of "defence, public safety, public order, public morality, public health" and for the purpose of "protecting the rights of others."[lxxiii] The Constitution, however, does not define the phrase "democratic society", the criteria for its determination, or what qualifies a law to be "reasonably justifiable" in a society such as Nigeria. The lack of definition creates a legal normative space that ought to be filled either by the court through the exercise of discretion in the event of conflict between the two competing

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rights, or by the legislature through the enactment of the law. A solution to this definitional dilemma requires the application of a suitable balancing mechanism or proportionality assessment technique to understand the meaning of the phrases, which this works, seeks to provide.

INFERENCES FROM THE DEBATES

Dominant Research questions

The pattern of conversation among scholars indicates that one-research question that scholars have debated is the why question. Succinctly stated, "Why governments engage in the regulation of freedom of religion including the right to engage in religious preaching?" It can be inferred from the arguments of scholars in support of regulation that governments regulate the right to engage in religious preaching because of its perceived danger. The argument is in the form of "the state regulates because of….." which answers the question "why". Further, from the conversations, it is inferable that governments have used different but related reasons to justify the regulation of freedom of religion. These reasons include but are not limited to perceive and real danger claims, protection of state sovereignty, state responsibility claims, prevention of conflict and consolidation of power claims.

And different countries have relied on some of these reasons to justify the regulation of freedom of religion. One thing that is glaring is that religion-state relationship and majority religious groups played role in the enactment process of especially Preaching Board Laws in Nigeria, which justifies the need for further research on the phenomenon in Nigeria with a view to appreciating the diversity in the states.

Second question is on the reasonability of government action or the laws enacted to control the right in issue. The question is usually in the form of "How reasonably Justifiable are the laws or the action as the case may be? In this review of literature, the works examined different proportionality tests aimed at striking balance between the regulatory power of the state and the citizen's right to freedom of religion. It is inferable from the discussion that different balancing mechanisms exist in different countries as the works consulted demonstrates. This work established through legal analysis that the United State of America, Canada and Germany have used different balancing mechanisms to resolve conflict between the regulatory power of

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the state and the citizen's right. The work also demonstrated that the religion-state relationship of those countries, environmental peculiarity and the liberal notion of state neutrality played role in shaping the different balancing mechanisms in those countries.

Third question is on the consequence of regulation in the society. The literature consulted indicates that this question is in the form "What is the consequence, or impact or implication of restriction of freedom of religion including the right to preach in the society?" Scholarship question indicates that scholars that have analysed this question used empirical approach to show that restriction on freedom of religion gives rise to conflict and religious persecution of religious minorities by government in collaboration with majority religious groups. Most of the works are not legal works specifically. The present work adopts a legal perspective to analyse the questions chosen using appropriate legal theories on freedom of religion and reasonability of laws in a democratic society.

Dominant method

James T. Richardson identified three ways scholars have approached works on regulation of religion[lxxiv]. First, historical analysis focusing on sequential development of legal precedents to see how they agree with constitutional provisions[lxxv]. Second, analysis of legislative and case law treatments of significant concepts such as religious freedom, to see how meaning of the concept has evolved in a given society[lxxvi]. Third, the application of legal social control approach on efforts of governments to exert social control over religious groups through court cases but also with legislative attempts to regulate religious groups[lxxvii]. The literature indicates that the dominant method in this area of work is a socio-legal approach called the legal social control. It deals with laws enacted by governments to serve as social control mechanisms in the society.

Dominant Theories

Deeply rooted religious diversity exists in different countries in the world making plurality a reality of life in any functional state. The literature indicates that scholars involved in the conversation based their arguments on some liberal theories, which include John Rawls theory of overlapping consensus; Lindholm's theory overlapping justification and Cass Sunstein's incompletely theorized agreements. These are popular liberal theories for the management of

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religion in the public sphere. Their aim is the achievement of social stability in the society while ensuring neutrality of the state.

The review of literature in this work demonstrates that apart from scholars who argued based on religion all others based their arguments on these liberal democratic theories propounded by John Rawls and other liberal scholars with the ultimate aim of achieving social stability by ensuring the neutrality of the state among other liberal requirements.

The debates however, polarized the public arena in a way that liberals are on one side and religionists on another side. As mentioned elsewhere in this work the political theory of John Rawls on the management of religious diversity has influenced many authors and governments. In his work *Political Liberalism*, this scholar argued that, in a society where there exists a plurality of reasonable comprehensive doctrines, there is no comprehensive doctrine sufficient to provide social unity. In such a society, social unity is based on a consensus on the political conception; and stability is possible when the doctrines making up the consensus are affirmed by society's political active citizens and are reasonably consistent with the requirements of justice[lxxviii].

In essence, the theory is that for political liberalism to be possible, individuals must not insist on the enforcement of their own comprehensive doctrine, no matter how true they believe it to be, but rather should separate political values upon which all can agree from nonpolitical values upon which several groups may reasonably disagree. According to this scholar, political liberalism is possible only if political values that are sufficient to "override all other values that may come in conflict with them" can settle fundamental questions of justice and constitutional essentials[lxxix]. In other words, since it is a fact that in a society that is pluralistic, people are bound to reasonably agree and disagree without compromise over issues such as religion, authorities should not enforce the nonpolitical values of one single group at the expense of other groups in the same society.

This is possible as long as political values, as distinguished from nonpolitical values, are sufficient to answer the fundamental questions "in ways that all citizens can reasonably be expected to endorse in light of their common human reason"[lxxx]. In addition, as long as there are ways for people to hold reasonable nonpolitical values in concert with the political values espoused by the citizenry as a whole.

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One problem with this theory is that it is difficult to distinguish between genuine consensus from some mere modus vevendi-a state of affairs that appears to be stable, but in reality is contingent on circumstances that make the arrangement beneficial to the interests of all involved. Once the circumstances change, the apparent stability disappears. Rawls however, countered this objection in the following words:

> First, the object of consensus, the political conception of justice, is itself a moral conception. And second, it is affirmed on moral grounds…An overlapping consensus, therefore, is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own comprehensive view and draw from on the religious, philosophical, and moral grounds it provides[lxxxi].

Generally, however, Brendan Sweetman, identified five problems with Rawls theory[lxxxii]. First according to this scholar is that it is not neutral as Rawls presented it; his own worldview [secular liberalism] influenced the theory. He quoted Rawls statement in the instruction to *Political Liberalism* to support this conclusion:

> Thus, the question should be more sharply put this way: How is it possible for those affirming a religious doctrine that is based on religious authority, for example, the Church or the Bible, also to hold a reasonable political conception that supports a just political regime?"[lxxxiii]

According to this author, this suggests that the motivating force in his work is not so much how to establish a just society in a pluralist age, but how to deal with troublesome traditional religious views within an assumed liberal framework. Another difficulty is associated with the original position. This is because, there will be tension between the values and principles of justice one agreed to behind the vail of ignorance and the world view to which one subscribes, when the vail of ignorance is lifted. This is legitimization of pretense or hypocrisy. It is impossible to dissipate this tension and it will be irrational for one to allow the political conception to override or trump one's own worldview or comprehensive conception. This suggests that at all time, one has to suspend his worldview at the public square. This impossible and even if it is not, what is the reasonability of practicing one world privately and another one publicly?

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Second problem is if it is not based on a comprehensive view of the good, then it is not clear how it can avoid cultural relativism [the view that moral and political values are relative to and decisively shaped by one's culture]. This is because it based on ideas latent in our political structures right now, perhaps even ideas people would accept, yet the question of the truth of these ideas is postponed, even ignored. Third problem is Rawls has too superficial knowledge of traditional religious belief.

Tore Lindholm contributed to the debate with his theory of overlapping Justification. This scholar grounded his theory on what freedom of religion demands in the society. Part of what freedom of religion necessitates in society is that a person has the right to believe whatever he or she wants about important questions of life. This presupposes that he or she has the right to believe in whatever justification for religious freedom he finds most convincing or most compatible with his belief. The first challenge according to this scholar is the ability of such a person to respect reasonably proponents of doctrines and practices that contradicts his own serious commitments without rejecting those commitments. The second challenge is:

> Once a comprehensive set of internally wee-grounded but particular validations of freedom of religion or belief as a universal entitlement is in place, each validation will be grounded in a religious or life-stance doctrine, which is incompatible, or at least more or less at odds with other justificatory platforms. How can the entire set of rival justificatory platforms constitute a reasonable grounding of the right to freedom of or belief and, hence, a trustworthy and stable basis for its general observance? The dilemma is this: A plurality of sets of incompatible premises, each of which may constitute internally well-grounded support for freedom of religion or belief, appears as a whole to be incoherent and hence not a reasonable public grounding. This dilemma calls attention to the stability hazards of plural societies that have failed to spell out and entrench a shared public understanding of the basis for moral solidarity across religious and life-stance divides[lxxxiv].

This scholar develops the theory of "overlapping Justification" to address these challenges. According to him, if human beings will continue to be divided by deep difference, the question is how can people in the society

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> …reasonably secure both principled solidarity based on mutual respect across religious and life-stance divides and unflinching doctrinal integrity of, and commitment to, our differing normative traditions. ..[lxxxv]

Under this theory, what is needed is not a "fully realized" version of the overlapping Justification for freedom of religion or belief, in which "competent and serious adherents of each set of rival religious or life-stance traditions reasonably hold this universally applicable human right to be well- supported by each of the separate normative "traditions" at issue[lxxxvi]. Rather, all that is needed is that "each party have knowledge and understanding of the internal grounding of his or her own belief system" and that "he or she have reasonable trust in the cogency of the other party's espousal of the right"[lxxxvii]. Where such "overlapping justification" is present mutual respect and solidarity is doctrinally secure for the following reason:

> If my faith requires me to respect and stand up for your religious freedom and I know yours requires the same from you, and you and I know we share this knowledge, then you and I stand in a relation of friendship to one another. Of course, our comprehensive religious doctrines clash, we know this well… [There may be reason for] serious interreligious argument. [But good], civil and candid polemics are off limits between people who know they are friends[lxxxviii]

Further, this scholar notes that where all members of society "have reasonable and strongly held grounds for embracing the human rights to freedom of religion or belief," and have sufficient ability to verify the beliefs of others in this regard, they will have at a minimum "reasonable trust that they share a binding normative foundation for the human right to freedom of religion or belief. Their respective grounds for this sharing are not shared, but are publicly available for all to sort out[lxxxix]. Overlapping justification is beyond mere consensus because it requires not only to adhere to but also to be knowledgeable about the foundation of the right in his or her own normative tradition[xc].

In his contribution to the debate, Cass Sunstein contributed with his incompletely theorized agreements theory that is similar to Lindholm's theory of overlapping justification. It is an agreement between people of different views that leave room for a substantial amount of disagreement while still providing some common basis for government and society. Basing religious freedom on such understandings of agreement –an overlapping justification or incompletely theorized agreements-protects both religious freedom rights in practice and the

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very important theoretical right for believers to choose that justification of religious freedom that best fits their belief. By doing so, they accomplish a difficult but all-important task: fulfilling the secular purposes of religious freedom (autonomy, social cohesion etc) while not requiring believers to subordinate their beliefs to those purposes. With such a solution, religious believers can continue to affirm their beliefs as the most important part of their lives while living and participating in society, tolerating others, and obeying the laws of the land.

Brendan Sweetman on the other hand argued that a person should able to justify the principle of religious freedom from within his own worldview otherwise, 'secularist views' will override traditional religions. It is notorious that the principle of religious freedom grants members of other religions the right to practice their religion in a democratic space. The test how much of that freedom should got to members of another religion, and vice versa on a neutral space? This of course must include secularist views. Rawls states that, in such a democratic space religious believers should not bring their beliefs into politics, which is a form of restriction. Brendan Sweetman's argument on this matter is that whatever degree of religious freedom one believes should be granted to members of other worldviews it must be defended from within one's worldview and not from some independent, neutral standpoint that all worldviews must address this question when it comes to the political arena, including the secularist worldview[xci].

ENDNOTES

[i] See R. Scott Appleby, *The Ambivalence of the Sacred: Religion, Violence, and Reconciliation* (Lanham, MD: Rowman & Littlefield, 2000).
[ii] Ian Mcleod, *Legal Theory*, 5th edition (Palgrave Macmillan, Uk, 2010) page 8-10.
[iii] Robert Brandon, *Making It Explicit: Reasoning, Contestation, and Mutual Recognition* (Harvard University Press, U.S.A, 1994).
[iv] Ian Mcleod, *Legal Theory*, 5th edition (Palgrave Macmillan, UK, 2010) page 8-10.
[v] In Nigeria for example, the Constitution of Nigeria 1999 (as amended) makes provision for the duty or obligation of the state to make laws for peace and order in the society and to derogate from free exercise rights in 4(2) (3) (7) and 45(1) respectively through laws that are reasonably justifiable in a democratic society. In Europe, this type of state responsibility is under "the doctrine of positive obligation". The ECtHR developed this doctrine based on article 1 of the European Convention, which provides as follows: 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in …this convention'. In line with this provision, High Contracting Parties are not only obliged to refrain from human rights violations through state action, they must also put laws and procedures in place that will protect the rights and freedoms of their nationals against infringement by non-state actors. For more on state responsibility to its citizens as it affects religion, see Johan D. van der Vyver, Constitutional Protections and Limits to Religious Freedom, in: Cristiana Cianitto, W.Cole Durham, Jr., Silvio Ferrari and Donlu Thayer, *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law* (Ashgate, USA 2013) page 105-122.
[vi] Ian Mcleod, *Legal Theory*, 5th edition (Palgrave Macmillan, U.K, 2010) page 8-10

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[vii] Peltze A., "A *Survey of Constitutional Challenges to Municipal Regulation of Religious Solicitation and a Suggested Legislative Compromise"*, *Fordham Urban Law Journal*, 1982, 11: 845.
[viii]William P. Marshall, The Other Side of Religion, In: Stephen M. Feldman (ed.) *Law and Religion: A Critical Anthology* (New York University Press, New York and London, 2000) page 96-114.
[ix] Lasson K. "Incitement in the Mosques: Testing the Limits of Free Speech and Religious Liberty", *Whittier Law Review*, 2005, 27:3-59.
[x] Isaac Terwase Sampson, 'Religious Violence in Nigeria: Causal Diagnosis and Strategic Recommendations to the State and Religious Communities', (2012) 12 *African Journal on Conflict Resolution* (1)
[xi] Lasson K, page 73. These were the words of shaikh Ahmad Abu Halabiya, sermon broadcasted over Palestinian Television, "The Palestinians in Their own Words, Gaza Mosque, Oct. 13, 2000] available at www.iris.org.il/quotes/quote50.html] accessed Oct.23, 2005.
[xii] Isaac Terwase Sampson, page 120
[xiii] ibid
[xiv]William P. Marshall, note 8.
[xv] Scott. C. Idleman, Why the State Must Subordinate Religion, In: Stephen M. Feldman (ed.) *Law and Religion: A Critical Anthology* (New York University Press, New York and London, 2000) page175-199. See also Eric Patterson, Religion, War, And Peace: Leavening the Levels of Analysis, In: Chris Seiple, Dennis R. Hoover and Pauletta (eds.), *The Routledge Handbook of Religion and Security* (Routledge, London and New York, 2013) page 115-124.
[xvi] Thomas Hobbes, *Leviathan, Or the Matter Form and Power of a Commonwealth, Ecclesiasticall and Civill* (Ian Shapiro ed, G.Routledge 1907).
[xvii] Ibid at 372.
[xviii] Ibid.
[xix] See *Tackling Extremism in the UK*, London: The Cabinet Office, December 2013, page 1. This report shows that the UK applied this approach to tackle extremism. The report says: "The UK deplores and will fight terrorism of every kind, whether based on Islamist, extreme right–wing or any other extremist ideology. We will not tolerate extremist activity of any sort, which creates an environment for radicalising individuals and could lead them on a pathway towards". The report goes on to say at page 54: "Extremists take advantage of institutions to share their poisonous narrative with others, particularly with individuals vulnerable to their messages. The Government must do more to address extremism in location where it can exert control, such as prisons, and increase oversight where it is needed, such as some independent and religious schools". The report did not leave universities out. It says at page 6: "The report further argues that universities need to control who they allow to speak: Extremist preachers use some higher education institutions as a platform for spreading messages. Universities must take seriously their responsibility to deny extremist speakers a platform. This is not about the government restricting freedom of speech-it is about universities taking account of the interests of all their students and their own reputations when deciding who they allow to use their institution as a platform".
[xx] Samuel Huntington…
[xxi] Grim BJ and Finke R., *The Price of Freedom Denied* (Cambridge University Press, New York, 2011).
[xxii] Anthony Gill, Religious Pluralism, Political Incentives, and the Origins of Religious Liberty, In: Allen D. Hertzke (ed), *The Future of Religious Freedom: Global Challenges* (Oxford University Press, Oxford, 2013), page 107 -127.
[xxiii] Ibid at page 108. See also Roman Lunkin, The Status of and Challenges to Religious Freedom in Russia, In: Allen D. Hertzke (ed), *The Future of Religious Freedom: Global Challenges* (Oxford University Press, Oxford, 2013), page 157-178. Writing on Russia, this author asserted thus: The work discusses among other things why states engage in the regulation of religion. According to this author writing on Russia, he stated that some time states engage in the regulation of religion because of paternalism (interventionism, control, and authoritarianism), protecting people from supposedly dangerous cults or national identity from outside influence. Often the justification is national security. This author shows in his work that overbroad interpretations of national security serve as a pretext to harass minority sects that threaten the monopoly of dominant religious groups but pose no threat to state security. Authoritarian regimes finds it convenient to invoke national security to repress independent religious civil society actors.
[xxiv] Isaac Terwase page 10
[xxv] Ibid
[xxvi] Karen Armstrong *Fields of Blood: Religion and the History of Violence* (The Bodley head, London, 2014).
[xxvii] See John Rawls, *Political Liberalism* (Columbia Univ. Press 1993); Brendan Sweetman, *Why Politics Needs Religion: The Place of Religious Arguments in the Public Square* (InterVarsity Press, USA 2006) and Tore Lindholms, Philosophical and religious Justifications of freedom of religion or belief, In: Tore Lindholm, W. Cole Durham, Jr., and Bahia Tahzib-Lie (eds), *Facilitating Freedom of Religion or Belief: A Desk Book* (Martinus Nijhoff, 2004).

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[xxviii] Muhammad Sani Adam Modibbo, *Proliferation of Islamic Da'wah (propagation) Organizations in Plateau State 1948-2008* (PhD. Dissertation, University of Jos, 2014) page 3-4.
[xxix] Brendan Sweetman note 51, page 183-185
[xxx] Above n66 at 69.
[xxxi] John Locke, *A Letter Concerning Toleration* (Oxford Clarendon Press 1968).
[xxxii] Ibid at 67.
[xxxiii] Ibid.
[xxxiv] John Locke, *Two Treatises of Government and a Letter Concerning Toleration* (Yale University Press 2003) (Despite his views on separation of religion and government, he was of the opinion that Catholics and atheists were dangerous due to their loyalty to the King.).
[xxxv] Ibid.
[xxxvi] Ibid at 71. [73]Ibid.
[xxxvii] Ibid at 74.
[xxxviii] Ibid.
[xxxix] Ibid.
[xl] See Daniel Dombrowski, *Rawls and Religion: The Case for Political Liberalism* (SUNY, New York, 2001); Kenneth Craycraft, *The American Myth of Religious Freedom* (Spence, Dallas 1999); Pierre Manent, *An Intellectual History of Liberalism* (Princeton University Press, Princeton N.J., 1994); Michael J. Perry, *Religion in Politics* (Oxford University Press, New York, 1997); Nicholas Wolterstorff, "The role of Religion in Decision and Discussion of Political Issues," in Robert Audi and Nicholas Wolterstorff (eds), *Religion in the Public Square* (Rowman & Littlefield, Lanham, MD, 1997; James Boettcher, "Public Reason and Religion," in Thom Brooks & Fabian Freyenhagen (eds), *The Legacy of John Rawls* (Thoemmes Continuum, Bristol UK, 2005) etc.
[xli] This was in the seventeenth century when the conflict between the Crown and the Parliament as well Protestants, Catholics and Anglicans was witnessed. This led to civil war in the 1640s.With the death of Charles I, the monarchy, House of Lords and the Anglican Church were abolished. The Restoration of Charles II saw the return of the monarchy, House of Lords and the Anglican Church. It was a period marked by continuous conflict between the King and Parliament over religious toleration of Protestants and Catholics. These events influenced John Locke's writings. *See generally* William Uzgalis, 'John Locke' *The Stanford Encyclopedia of Philosophy* (Spring edn, 2016) http://plato.stanford.edu/archives/spr2016/entries/locke/ accessed 6 October 2016.
[xlii] See, for example, Brian J. Grim and Roger Finke, *The Price of Freedom Denied* (Cambridge University Press 2011) and Brian J. Grim, Restriction on Religion in the World, in: in: Allen D. Hertzke (ed), *The Future of Religious Freedom: Global Challenges* (Oxford University Press, Oxford, 2013) page 86-104; See also Auwalu Anwar, *Gardawa, Ulama and the State of Northern Nigeria: The Maitatsine Phenomenon, 1962-1985* (dissertation, University of Maiduguri 1997) and Haruna Wakili, *The Phenomenon of Revolts and Riots in Kano, 1983-1995: An Historical Perspective* (dissertation, Bayero University Kano 1997).
[xliii] Brian J. Grim and Roger Finke at page 25-30.
[xliv]Monica Duffy Toft, Daniel Philpott, and Timothy Samuel Shah, *God's Century* (W.W. Norton 2011).
[xlv]Grim and Finke, *The Price of Freedom Denied* at Page 100
[xlvi] Ibid at 25-30.
[xlvii] Jonathan Fox, State Religion and State Repression, in Chris Seipe, Dennis R. Hoover and Pauletta Otis (eds), *The Routledge Handbook of Religion and Security* (Routledge, London and New York, 2013) page 182-192.
[xlviii] Chris Seiple and Dennis R. Hoover, Religious Freedom and Global Security, in: Allen D. Hertzke (ed), *The Future of Religious Freedom: Global Challenges* (Oxford University Press, Oxford, 2013) page 315-330.
[xlix] Thomas F. Farr, Religious Freedom and International Diplomacy, in: Allen D. Hertzke (ed), *The Future of Religious Freedom: Global Challenges* (Oxford University Press, Oxford, 2013) page331-352; Also see Christopher L. Eisgruber and Lawrence G. Sager, Equal Regard, in: Stephen M. Feldman (ed.) *Law and Religion: A Critical Anthology* (New York University Press, New York and London, 2000) page 200- 225.
[l] Ani Sarkissian, Religious Regulation and the Muslim Democracy Gap, Politics and Religion, 5 (2012), 501-527; See also Quintan Wiktorowicz, State Power and the Regulation of Islam in Jordan, 41 J. Church & St. 677, 1999 available at www.heinonline.org, accessed on fri. Aug. 16, 14:53, 2013 and Laurence Iannaccone., Religious Practice: A Human Capital Approach *Journal for Scientific Study of Religion 29(3)(1990) 297-314.*
[li] Fenggang Yang, Oligopoly Dynamics and the Triple Religious Markets in China, In: Allen D. Hertzke (ed), *The Future of Religious Freedom: Global Challenges* (Oxford University Press, Oxford, 2013), page 128-156.
[lii] ibid
[liii] Richard John Neuhaus, A New Order of Religious Freedom, In: Stephen M. Feldman (ed.) *Law and Religion: A Critical Anthology* (New York University Press, New York and London, 2000) page 89-114.
[liv] Ibid at page 90.

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[lv] See, for example, Sam Amadi, 'Kaduna Anti-Preaching Law: A Regulatory Misstep', *This Day Newspaper* weekly pullout, 19 April 2016, 7 and Inibehe Effiong, 'Kaduna Preaching Bill: Resolving the Constitutional Controversy', *Punch Nigeria*, published in three instalments on 1 April 2016 at 20, 4 April 2016 at 26, and 5 April 2016 at 23.
[lvi]Louis Herkin, 'Religion, Religions and Human Rights', *The Journal of Religious Ethics*, Vol. 2, No.2, Fall 1998, page 229-239.
[lvii] Martin Davie, *Religious Approaches to Human Rights* (Oxford Centre for Religion and Public Life Publications, Oxford, 2016) page 162.
[lviii] John Rawls, *Political Liberalism* (Columbia Univ. Press 1993) page 134
[lix] Ibid at 138
[lx] Brendan Sweetman, *Why Politcs Needs Religion: The Place of Religious Arguments in the Public Square* (InterVarsity Press, USA 2006) page 161-185.
[lxi] John Rawls, *Political Liberalism*, paperback ed., with a new preface (Columbia University Press, New York 1996) Page xxxix. See also Tore Lindholms, Philosophical and religious Justifications of freedom of religion or belief, In: Tore Lindholm, W. Cole Durham, Jr., and Bahia Tahzib-Lie (eds), *Facilitating Freedom of Religion or Belief: A Desk Book* (Martinus Nijhoff, 2004) page 19-23.
[lxii] Brendan Sweetman note 26
[lxiii] These three standards are provided for under Art.18 (3) the provisions of the International Convention on Civil and Political Rights (ICCPR). See also European Convention on Human Rights, Art. 9.2, which is similar the provisions of the ICCPR.
[lxiv] Gunn, TJ., "Permissible Limitations on Freedom of Religion or Belief", in Witte J (Jr) and Green MC (eds). *Religion and Human Rights: An Introduction.* Oxford University Press, Oxford, 2011 263-264.
[lxv] *Ibid*, 266.
[lxvi]See Aharon, B., *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press, U.K. 2012) at page 2-7
[lxvii] Alexy. R., *A Theory of Constitutional Rights* (J. Rivers trans., Oxford University Press, U.K, 2002)
[lxviii] Barak supra.
[lxix] Ibid
[lxx] Constitution of the Federal Republic of Nigeria, sec 38 (1).
[lxxi] Constitution of the Federal Republic of Nigeria, secs 39 and 40.
[lxxii] See: Durham WC (Jr)., "Perspectives on Religious Liberty: A Comparative Framework," in van der Vyver, J.D. and Witte J. (eds), *Religious Human Rights Global Perspective*, Martinus Nijhoff, Boston, 2011 1-44.
[lxxiii] Constitution of the Federal Republic of Nigeria, sec 45.
[lxxiv] See James T.R.., *Regulating Religion: Case Studies from Around the Globe* (ed) (Kluwer Academic/Plenum Publishers, New York, 2004) page 1. This author identified three different approaches.
[lxxv] Ibid.
[lxxvi] Ibid.
[lxxvii] Ibid.
[lxxviii] John Rawls, *Political Liberalism* (Columbia Univ. Press 1993) page 134
[lxxix] Ibid at 138
[lxxx] Ibid at 140
[lxxxi] Ibid at 147
[lxxxii] Brendan Sweetman, *Why Politcs Needs Religion: The Place of Religious Arguments in the Public Square* (InterVarsity Press, USA 2006) page 161-185.
[lxxxiii] John Rawls, *Political Liberalism*, paperback ed., with a new preface (Columbia University Press, New York 1996) Page xxxix.
[lxxxiv] Tore Lindholms, Philosophical and religious Justifications of freedom of religion or belief, In: Tore Lindholm, W. Cole Durham, Jr., and Bahia Tahzib-Lie (eds), *Facilitating Freedom of Religion or Belief: A Desk Book* (Martinus Nijhoff, 2004) page 19-23.
[lxxxv] ibid at 58
[lxxxvi] ibid
[lxxxvii] ibid
[lxxxviii] Ibid at 53.
[lxxxix] ibid
[xc] Ibid at 49-51
[xci] Brendan Sweetman note 51, page 183-185

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