

# Religion and the republican state in Africa: The need for a distanced relationship

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## Summary

*This article argues for a separation of religions from governance in the republican states. In this era of expansion of the concept of sovereignty and the generalisation of human rights, the influence of dominant religions on legislation and governance cannot be justified. Religion, if it is to be true to itself, should not allow its use for political gain and neither should it seek to usurp political power to advance its goals. To do otherwise will set the stage for the abuse of the rights of sections of citizens. The majority of African states are republican and it is argued that, having regard to the diverse nature of these states, it will be better for national cohesion if religions are excluded from the political and legal systems.*

## 1 Introduction: A secularist proposal

The republican state is inherently a democratic one in which the equality of all should constitute a fundamental tenet. A state is republican because it is the citizens that are sovereign<sup>1</sup> and each is equal in all respects, including thought and conscience. Certainly, it would be a contradiction to think of a republican state that imposes a dominant religious belief either expressly or insidiously on all its citizens.

A denial of religious liberty is perhaps the most invidious means available for those that contrive to dehumanise other fellow human

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1 Art 4(1) of the 1992 Constitution of Ghana, eg, proclaims that '[t]he sovereign state of Ghana is a unitary republic', while art 1(1) declares that '[t]he sovereignty of Ghana resides in the people of Ghana'. See also art 3 of the Constitution of the Republic of Benin.

beings, and the most devastating weapon that can be deployed for that purpose is the law operating, as it does, through the instrumentality of the state. The use of law and state for such purposes can be brazen and open, whereby the state proclaims open support for a particular religion, while others are tolerated or prohibited outright. An example can be found in the Constitution of Mauritania, which proclaims Islam not only as the state religion, but also says that a citizen can only aspire to be head of state if Muslim. Similarly, the Preamble of the Constitution of Malawi declares Christianity to be the state religion, but without expressly limiting the presidency to Christians.

Apart from outright proclamation of a state religion, there can also be the more subtle subjection of sections of a population to the obedience of laws and policies that are inherently the tenets of one religion. Minorities, in fact, become disadvantaged in conscience, because they feel inhibited from challenging the religious beliefs of the majority of the dominant group, while the latter takes it for granted that by the mere fact of their dominant position, whatever agrees with their conscience should constitute the law for all.

Conceptually, it is possible, like the human rights law theorist, Louis Henkin, following the steps of other theologians, philosophers and academics, does, to endeavour to distinguish between 'religion' and 'religions'<sup>2</sup> according to which distinction 'religion' becomes general and abstracted as compared to 'religions', which is a reference to particular 'concrete historical communities with members, practices and boundaries'.<sup>3</sup> This article is not against the right to 'religion' being guaranteed by the state. Rather, what it seeks to argue against is any open or subtle legislation in support of 'religions' in African countries. This position follows from the strong belief that the socio-economic and political circumstances of Africa do not favour a marriage between the state and religions and that any such relationship is subject to exploitation and could be dangerous for the image of the particular religions and for the cohesion and stability of the state. This is especially the case in a republican state that is built on the principles of equality.

This article calls for secularism, but not secularism as conceived as 'the disappearance of religion altogether'.<sup>4</sup> According to legal scholar Pimor, secularism is capable of having many meanings for, as she observes:<sup>5</sup>

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2 L Henkin 'Religion, religions and human rights' (1998) 26 *Journal of Religious Ethics* 229-239.

3 As above.

4 A Pimor 'A collection of states or a state of mind: The religious and spiritual dimensions of European citizenship' in N Doe & R Sandberg (eds) *Law and religion: New horizons* (2010) 212.

5 As above.

Secularism can refer to the institutional separation between state and church; to the disappearance of religion altogether; or to the displacement of religion in the public sphere. It can indicate a state of neutrality between religion and the state, and between religions within states, and it can also place itself as the rival of religion.

This idea of a separation of the state and religion has exercised the minds of great philosophers of yore. John Locke advanced a number of reasons why the civil ruler should not get involved with the spiritual aspect of the individual's life, the chief one being<sup>6</sup>

because the care of souls is not committed to the civil magistrate, any more than to other men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such authority to one man over another as to compel anyone to his religion. Nor can any such power be vested in the magistrate by the consent of the people, because no man can so far abandon the care of his own salvation as blindly to leave to the choice of any other, whether prince or subject, to prescribe to him what faith or worship he shall embrace.

Similarly, Durham and Scharffs describe the view of the modern political philosopher, John Rawls, as being based in the notion that<sup>7</sup>

in a liberal constitutional democracy, when citizens or officials seek publicity to justify their policies, they should rely only on reasoning accessible to all rational citizens, and should refrain from invoking reasons, such as religious justifications, that are not cogent to all rational people.

A state that imposes the tenets of one religion either directly or indirectly on others is nothing but bankrupt of spirituality, and that state has no common soul upon which to build its democratic essence. It is possible to give recognition to the spirituality of a group of people without requiring of them some particular religious belief. Moreover, if the relationship between religions and the political authority is left unchecked, politically-hungry individuals or groups can manipulate religion to serve their political ends. There is always the possibility that secularism itself could be viewed as 'a kind of substitute religious conviction and an ideology in the service of power politics'.<sup>8</sup> But in the circumstances of Africa, secularism would be a better political ideology than religion.

## 2 Religion and human rights

The right to religious freedom is a fundamental prerequisite for every other right, both physical and conceptual, and the worst form of abuse and discrimination that can happen to any human being is to

6 J Locke *A letter concerning toleration* trans W Popple (1796), quoted in WC Durham Jr & BG Scharffs (eds) *Law and religion: National, international and comparative perspectives* (2010) 15.

7 Durham & Scharffs (n 6 above) 551.

8 Pimor (n 4 above) 212, quoting T Halik 'The public role of religion in a united Europe: A Central-European perspective' (2006) 7 *Political Theology* 361.

be persecuted for the reason of how one conceives and practically relates to God. A person whose physical liberty is restrained is very much alive if his or her religious conviction remains strong, but that person who has been denuded of his or her faith is dead. This is the reason why the laws of the land should not impose one religious tenet on every citizen and use state infrastructure to compel conformance. It is for this reason that international human rights instruments and the constitutions of a number of African states guarantee the right to freedom of thought, conscience and belief in addition to religion.<sup>9</sup>

Admittedly, this republicanist or secular approach carries the danger of various religious groups challenging seemingly innocent legislation of the state directed at one national issue or the other. Legislation to control the use of certain drugs have become subject to religious challenge. Examples of these exist in a number of American judicial decisions, as well as African jurisdictions, in which attempts have been made to balance the secularity of the state against that of the right to religious manifestation of individuals or groups. In the Ghanaian case of *Nyameneba & Others v The State*,<sup>10</sup> for instance, the appellants were members of a religious sect charged with possessing Indian hemp, a banned herb. According to evidence that was freely given by the appellants, they had been cultivating the herb and using it as incense for invocation at their worship, making soup out of it, boiling and using it as medicine for all kinds of ailment with success. They called it the 'herb of life'. Indeed, it is not disputed that the appellants were honestly ignorant of the fact that the herbs in question were Indian hemp. The Supreme Court reversed their conviction on the principle that, although ignorance of the law is no defence, ignorance of facts is a complete defence. Without expressly stating so, the Court avoided what could have been a clash between religious inclination and a secular legislation by resort to principle of ignorance of facts as a defence. The Court thereby established a balance between the law and the genuine belief of the appellants; although it is obvious that the appellants could no longer claim ignorance of fact for any future use of the herb. Similarly, in the United States case of *Smith v Board of School Commissioners of Mobile County*,<sup>11</sup> the Court refused to accede to a request that a number of school textbooks be withdrawn from the school system because they allegedly promoted secular humanism. The Court satisfied itself that the use of the particular history and social studies books was purely secular.<sup>12</sup> From these examples alone, enough direction can be distilled to guide African states to pursue a relatively neutral path of secularism in conformity with the secularism that is required of the modern state.

9 See, eg, arts 21(1)(b) & (c) of the 1992 Constitution of Ghana.

10 [1965] GLR 723.

11 827 F.2d 684.

12 See also the Nigerian case of *Archbishop Okogie v The Attorney-General of Lagos State* [1981] 2 NCLR 337.

### 3 Relationship between religion and the state

In his paper 'Religion, the state and law in Africa',<sup>13</sup> the Ugandan jurist, Daniel Nsereko, identified three broad categorisations of the relationships between religion and the state in Africa as follows: (1) separation of church and state; (2) supremacy of religion over the state; and (3) subordination of religion to the state. A study of the various constitutions of the countries of Africa will place some in the first category and others in the second. The third phenomenon is operative in cases where we find some particular individuals utilising the influence of religion for political purposes.

In the first group are a number of states whose constitutions are categorical in the separation of church from the state. Examples are Angola, Benin and Ethiopia, among others. The Constitution of Angola provides with no ambiguity in article 8:

- (1) The Republic of Angola shall be a secular state, and there shall be separation between the state and churches.
- (2) Religions shall be respected and the state shall protect churches and places and objects of worship, provided they abide by the laws of the state.

Similarly, the Constitution of Ethiopia states clearly in article 11:

- (1) State and religion are separate.
- (2) There shall be no state religion.
- (3) The state shall not interfere in religious matters and religion shall not interfere in state affairs.

The Constitution of Benin goes even further in the direction of secularism, prohibiting in article 156 any revision of the Constitution that would undermine the republican form of government and the secularity of the state. The Constitution of Ghana in article 55(4) provides that membership of a political party 'shall not be based on ethnic, religious, regional or other sectional divisions', and in article 56 prohibits Parliament from legislating to impose a 'common programme or a set of objectives of a religious or political nature'.

Nsereko contends that absolute separation of church and state is unattainable, particularly in the circumstances of African states, because of the obvious fact that the various religions are needed to provide or supplement educational, medical and other social services.<sup>14</sup> In the strict sense, being secular should not mean a total exclusion of these religions from those areas of social service. It is possible to conceive their involvement as that of an ordinary individual's or group's involvement in the provision and management

<sup>13</sup> D Nsereko 'Religion, the state and the law in Africa' (1986) 28 *Journal Church and State* 269.

<sup>14</sup> Nsereko (n 13 above) 272.

of such services, without such individual necessarily exercising any political influence. Secularisation does not therefore necessarily exclude religions from participation in the provision of social services. In their bid to serve society, however, religions must keep within the law as set forth by the political authorities.

In the sphere of education, for instance, the right to establish educational institutions as a means of propagation of one's ideas has been upheld in various jurisdictions.<sup>15</sup> The Court of Appeal in Nigeria, for example, affirmed the claim that a private person or organisation could establish an educational institution for this purpose. In its description of the relationship between the state and the citizen, the then President of the Court of Appeal, Justice Mamman Nasir, explained:<sup>16</sup>

It is not our system that a child or any citizen, for that matter, is a mere creature of the state. In our system the state has no right to interfere with the freedom or any other constitutional right of the citizen save as allowed by the Constitution itself. In our system there is a mutual and co-existing relationship in which the state owns the citizen and the citizen also owns the state and each must protect the interest of the other.

Within that relationship there should be freedom within which the individual should operate without being unnecessarily inhibited by the state just because of the religious idiosyncrasies of some dominant groups within the state.

It should be possible to create a balance to the effect that where the religious practice of a group does not derogate essentially from the overall interest of the rest of the society, then the state should be circumspect in its compulsion of the group to adhere to what the majority may perceive as the best for the generality of society. This approach can create some difficulties when it comes to the determination of what accords to the strictly-secular interests of the society for, as noted by the American Chief Justice Warren Burger in *Wisconsin v Yoder*:<sup>17</sup>

A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.<sup>18</sup>

In that case, the Supreme Court upheld the contention of the Amish religious group that the conviction of parents who declined to send their children to school after the eighth grade was a violation of their free exercise of their right to religious freedom. There was evidence to the effect that a strict application of the law requiring compulsory school attendance of children to age 16 for Amish children 'carries with it a very real threat of undermining the Amish community and

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15 See *Archbishop Okogie* (n 12 above).

16 *Archbishop Okogie* (n 12 above) 352.

17 406 US 205 (1972).

18 See extract in *Durham & Scharffs* (n 6 above) 216.

religious practice as they exist today'.<sup>19</sup> In balancing the interest of the state and that of the Amish, Justice Byron White argued:<sup>20</sup>

Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight and since the deviation from the state's compulsory education law is relatively slight, I conclude that respondents' claim must prevail, largely because religious freedom – the freedom to believe and to practice strange and, it may be, foreign creeds – has classically been one of the highest values of our society.

The difficulty is in the determination of the degree of departure of a group's interests from that of the larger society. However 'relatively slight' that departure might be, it should not justify a complete subjugation of the interests of minority religious groups to the power of the state.

#### 4 Supremacy of religion over the state

It is when a dominant religion or religions control a state and its institutions that those social services, particularly education, become tools for proselytising, and individuals who are not adherents become compelled to subject themselves to the overwhelming influence of the dominant religious groups. That was the situation in the old monarchies that were built around some religious convictions. Those were the periods when the monarch determined the religious leaning of the subjects and other non-religionists existed at the pleasure of the monarch. Religion and law were two very essential and intertwined normative sources for the management of human societies. The monarch's religious beliefs determined the nature of the laws that govern the domain. This policy was couched in the maxim *cuius regio, eius religio* – whose realm, his religion.<sup>21</sup>

The consequence of this model for religious liberty and human rights is obvious: The monarch's commitment to respect for other religious faiths could determine the degree of respect for the rights of others. During the sixteenth century, the principle was adopted to end the religious wars in Europe, but it nevertheless failed to secure religious freedom in an increasingly pluralistic religious environment. Within our contemporary republican systems, the conception of *cuius regio, eius religio* can no longer hold.

In traditional African societies, there has been an even stronger connection between religion and legal norms. Every aspect of life in traditional African society had a religious connotation; therefore religion regulated legal norms as well. Even the planting and

19 Durham & Scharffs (n 6 above) 215.

20 Durham & Scharffs (n 6 above) 217.

21 Durham & Scharffs (n 6 above) 78. See also M Evans 'Historical analysis of freedom of religion or beliefs as a technique for resolving religious conflicts' in T Lindholm *et al* (eds) *Facilitating freedom of religion or belief: A deskbook* (2004) 4.

consumption of certain crops was often determined by religio-legal norms. Among some traditional people in Ghana, the newly-harvested yam could not be consumed until after the yam festival, which was intended as a religious programme or thanksgiving to God for a fruitful year. Nevertheless, the fact of pluralism and the growth of and transformation of many otherwise traditional enclaves into the national cosmopolis has led to a derogation from strict adherence to these religious and social imperatives.

## 5 Consequences of intermingling of state and religion

A strong linkage between religion and political orientation was introduced into Africa by both Christians and Islamic colonial powers. The temptation for the misuse of religion by dominant groups to attain political or social influence in such circumstances is great. The religions themselves might deem such collaboration as apt for the political influence that would inure to their particular group. However, when such a marriage exists between the state and a religious group, any failure by the political authorities also taints the image of the religious group. The possible consequences of the marriage of religious and political authority were well stated by Archbishop Anastasios of Albania, who has observed:<sup>22</sup>

In a pluralistic society, religious communities maintain a certain power but they must be careful to avoid the temptation to identify religion with a particular political party. This can prompt them in a dangerous direction. Political parties are mixed with many other interests, and the rules of politics are quite different from the rules of religion. Religion must promote external values and not allow political programmes and persons to use it for egotistical interests at the expenses of others. We must focus on how to make religious values instruments for a better society. Religion should promote freedom, justice, care for the creation and respect for the freedom of conscience-for all, not only for those who belong to our religious group.

The human propensity, as further captured by Archbishop Anastasios, is that<sup>23</sup>

too often we underscore human rights as long as we are minorities. But when we become majorities, we suddenly take on a different attitude – forgetting about the equal rights of people, the other faith, or life stance.

In American history, the question of the nature of the relationship that should exist between the state and religion was said to have had two broad approaches,<sup>24</sup> the first of which was associated with Roger Williams, founder of the colony of Rhode Island, who called for a 'separation of religion from state to protect the "garden" of the

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22 Archbishop Anastasios 'Developing shared values and common citizenship in a secular and pluralistic society: How religious communities can contribute' in Lindholm *et al* (n 21 above) 693.

23 Archbishop Anastasios (n 22 above) 697.

24 Durham & Scharffs (n 6 above) 18.



church from the “wilderness’ of the secular order’.<sup>25</sup> The second was Thomas Jefferson’s support for a separation approach informed by the French experience, according to which he ‘defended separation with the aim of protecting state institutions from excessive religious influence’.<sup>26</sup> These two views also apply in Africa, where the experience has been that of a political game defined by the struggle of political groups to control political power at all costs, not necessarily for the benefit of the generality of the populace, but as a step towards the control of economic power for personal gain.

Religion is ‘a source of value-, identity- and meaning-making processes’,<sup>27</sup> and the influence of the modern state on the lives of its inhabitants is quite pervasive. To allow a particular religious faith to ride on the back of the state under these circumstances could create a state in which the influence of that religion becomes tied to the political interests, and the political interests become the tools for the religious elites. The blood-chilling evidence of the genocide committed against the Bosnian Muslims in Srebrenica and Potocari in 1995 is a stark reminder of the fact that even in modern times, where one religion has the absolute support of the state, religious intolerance could easily degenerate into pogrom. A less violent example is the case of *Manoussakis & Others v Greece*,<sup>28</sup> in which the European Court of Human Rights took the view that the required process for the registration of places of worship has in its application in Greece shown ‘a clear tendency on the part of the administration and ecclesiastical authorities to use these provisions to restrict the activities of faiths outside the Orthodox Church’.<sup>29</sup> There was evidence that the Greek Orthodox Church, which is the dominant church in Greece and has a historic place in Greek society, has led to allegations of interference with and oppression of minority religions by the state and the dominant Greek Orthodox Church.<sup>30</sup>

The rather unbelievable extent to which religious faiths could be abused for political gain was evidenced in the South African apartheid system, which was proclaimed to be predicated on the biblical rights of the Afrikaners to rule over all others and therefore was justification for its policy of racial segregation and discrimination.<sup>31</sup> The ridiculousness of this assertion would have been more clearly exhibited if, as pointed out by human rights law scholar Courtney Howland, the apartheid state had been allowed to argue before the

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25 As above.

26 As above.

27 Pimor (n 4 above) 192.

28 European Court of Human Rights, Application 18748/91, Eur Ct HR (26 September 1996).

29 See Durham & Scharffs (n 6 above) 276, for extract.

30 As above.

31 Durham & Scharffs (n 6 above) 341, quoting CW Howland ‘The challenge of religious fundamentalism to the liberty and equality rights of women: An analysis under the United Nations Charter’ (1997) 35 *Columbia Journal of Transnational Law* 271 347-349.

International Court of Justice in its Advisory Opinion on Namibia<sup>32</sup> that 'that Afrikaners' freedom of religious belief would be deeply infringed if they were not able to assert their divinely-ordained supremacy over Africans'.<sup>33</sup> Yet, still, some religions believe that it is their right as the dominant religion to impose their rule on the whole country. We can see signs of this in rebel movements such as the Lord's Resistance Army of Uganda and the Boko Haram group in Nigeria. These are the extreme manifestations of the tendency to conjoin religious faith with political authority, but it can also be seen in such forms as the creation of political parties based on particular religious faiths.

From the perspective of states of Africa that have become religiously diverse and politically democratic, the question that needs to be addressed is whether the republican system will not be better served if religious conceptions are excluded from the legal system. Does not the multi-cultural and multi-religious nature of the modern state necessitate a distancing of constitutions and legal norms from the influence of religious convictions? Why should Judeo-Christian religious principles underlie the legal norms that apply in a country with mixed religious affiliations that include Christians, Muslims and Traditionalists? In the same vein, why should Islamic principles underlie the legal norms in multi-religious states? Is it not possible to have a state that supports religious freedom in principle without unwittingly or overtly imposing some particular religion? In an increasingly diverse world, where populations and people of diverse religious persuasions are becoming more and more mixed, it has become more imperative to delink religious beliefs from governance systems. To do otherwise will be to keep aglow the fire of religious intolerance and its consequences of discrimination and fanaticism, which eventually infect the state's stability and democratic enterprise, as has been experienced in African countries such as Sudan, Rwanda, Côte d'Ivoire, Egypt and Tanzania.

Unfortunately, the perception is that the parochial interests of dominant religious groups seem to be on the increase in Africa. According to a 2010 poll carried out in a number of African countries,<sup>34</sup>

in virtually all the countries surveyed, a majority or substantial minority (a third or more) of Christians favour making the Bible the official law of the land, while similarly large numbers of Muslims say they would like to enshrine Islamic law.

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32 In 1971, the International Court of Justice (ICJ) heard the case concerning the legality of the South African occupation of Namibia. The ruling of the Court is what is known as the Advisory Opinion on Namibia.

33 As above.

34 Pew Forum on Religion and Public Life *Tolerance and tension: Islam and Christianity in sub-Saharan Africa* (2010).

In Nigeria, for example, 70 per cent of Christians favour biblical support for civil laws, while 71 per cent of Muslims favour making Shari'a the official law - in Uganda the preference for law based on their own religion gets the approval of 64 per cent of Christians and 66 per cent of Muslims; in Ghana the approval of 70 per cent of Christians and 58 per cent of Muslims; in Liberia 63 per cent of Christians and 52 per cent of Muslims.<sup>35</sup> These figures confirm the deep religious nature of Africans and their desire to have their religious norms integrated into their ways of life. It is, however, my proposition that the modern African state, particularly the republican state, will better be served if religions and their respective norms are kept out of the regime of the law and governance. This proposition follows from the conviction that the infusion of religions and their tenets into the ordinary laws and their further influence in governance would increasingly generate conflicts within the body politic. It would create the opportunities for politically-ambitious individuals and groups to endeavour to utilise the powerful institutions of religion to achieve and perpetuate their interests in increasingly multi-religious societies of Africa.

The colonial experience of African countries brought in its trail the infusion of civil laws with religious injunctions. Governance systems came to reflect the influence of the colonising nation's religious inclinations. These religious influences persist even into these modern times in which various communities have become increasingly mixed. Even in relatively less religious, modern Europe, the temptation for religious majorities to want to impose their conscience on the rest is still evident. In the case of European Union in 2004, a number of states proposed that the constitutional treaty should include reference to 'Europe's Christian roots'.<sup>36</sup> Indeed, Poland's foreign minister was said to have urged support of the proposal for the reason that '[i]t is the Christian faith that has shaped European culture and is inseparably linked with its history'.<sup>37</sup>

Proponents of this approach maintain that the reason for this proposition is 'not to profess Europe to be Christian but merely to acknowledge the pivotal role played by Christianity in the history of Europe, and as the source of its values'. By way of compromise, the Preamble to the Treaty on the European Union was amended to make reference to the 'cultural, religious and humanist inheritance of Europe'. That perhaps was a better approach, for the original proposal would have been, as observed by Bruce Robinson of the Ontario Consultants on Religious Tolerance, a huge and serious mistake and created barriers to unity.<sup>38</sup>

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35 As above.

36 Pimor (n 4 above) 205.

37 Quoted in Pimor (n 4 above).

38 BA Robinson 'Do "God" and "Christianity" have a place in the European Union Constitution?' (2003), [http://www.religioustolerance.org/const\\_eu.htm](http://www.religioustolerance.org/const_eu.htm) (accessed 31 January 2014), referred to in Pimor (n 4 above) 205.

The temptation to promote one religion over and above others in the political domain is not, therefore, an issue for Africa alone; other regions of the world have tasted it and strenuous efforts have been made to contain it. Another example of confronting this tendency to promote religious dominance using political authority was replicated in the events leading to the Turkish case of *Refah Partisi (Welfare party) & Others v Turkey*,<sup>39</sup> in which the Turkish Constitutional Court dissolved the Refah Party and also suspended the political rights of some of its leaders for the reason that its leaders advocated and made proposals tending towards the abolition of secularism in Turkey, including a call by its leaders for the secular political system to be replaced by a theocratic legal system and a warning that 'blood will flow' if there was an attempt to close theological colleges. The charges against Refah also included its leaders' advocacy of the wearing of Islamic headscarves in state schools contrary to judicial decisions of the Constitutional Court. Based on these allegations, the Constitutional Court dissolved the Refah Party, confiscated its assets, and banned its leaders from holding office in other political parties. The decision of the Constitutional Court was based on the position that secularism was an indispensable condition for democracy guaranteed by the Constitution. A further consideration was that the principle of secularism was safeguarded by the Constitution in light of the country's historical experience. The Court took the view that the rules of Shari'a were incompatible with the democratic regime and further that the principle of secularism prevented the state from manifesting a preference for a particular religion or belief. Aggrieved by the decision of the Constitutional Court, leaders of the party filed an application with the Strasbourg Court which concluded that<sup>40</sup>

[t]he acts and speeches of Refah's members and leaders cited by the Constitutional Court were imputable to the whole of the party, that those acts and speeches revealed Refah's long-term policy of setting up a regime based on Shari'a within the framework of a plurality of legal systems and that Refah did not exclude recourse to force in order to implement its policy and keep the system it envisaged in place. In view of the fact that these plans were incompatible with the concept of a 'democratic society' and that the real opportunities Refah had to put them into practice made the danger to democracy more tangible and more immediate, the penalty imposed on the applicants by the Constitutional Court ... may reasonably be considered to have met a 'pressing social need'.

In this case, both the Turkish and European courts took decisive steps to nip in the bud what would otherwise have degenerated, to make an African analogy, into a Sudan-like scenario in which religious intolerance became state policy.

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39 Applications 41340/98, 41343/98 & 41344/98, Eur Ct HR (Grand Chamber Decision, 13 February 2003). See extract in Durham & Scharffs (n 6 above) 575 ff.

40 As above.

## 6 Lessons from Sudan and Rwanda

When a religion rides on the back of political authority, it runs the risk of some other political group devouring it when the tide turns. It is in the nature of political power to want to annihilate both real and perceived opponents – at least that has been the political experience in much of Africa. The catastrophe that can befall a modern state when religious people ride on the political authority inherent in the state has been clearly demonstrated in Sudan and Rwanda, in favour of Islam in Sudan and in favour of Christianity in Rwanda. Although the two examples are not strictly speaking similar in terms of their factual situations, they nevertheless provide examples of how, when we allow religions to use state authority for parochial interests, both the state and religion generally lose their values to debauchery.

The war in Sudan has been blamed principally on religious differences and described as possibly 'the worst humanitarian disaster in the world today'.<sup>41</sup> The policies since 1955 of Arabisation and Islamisation of the whole country, including the dominantly Christian south, eventually plunged the country into war. Several efforts to patch up the differences failed. The example of the Sudan shows how difficult it can be to attempt a peaceful settlement of conflicts underlined by religious differences because religious beliefs are a matter of faith that most often have no regard for reason. For the Sudanese Islamic government, the whole country was to be governed according to Islamic tenets and therefore Shari'a was imposed on the whole country, to govern even the non-Muslims. For the predominantly Christian southerners, therefore, 'Islam is not just a religion, but also Arabism as a racial, ethnic, and cultural phenomenon'.<sup>42</sup>

For these two groups, it was each side's respective position that their interests should dominate. For the Islamic north, the Sudan had to be Arabised and Islamised at all costs; for that was the only way the ideal Islamic state could be realised. For the Southerners, Islam and Arabisation were simply the continuation of the domination of their lives. These positions could not favour amicable resolutions for peaceful co-existence. The eventual split of Sudan into two different countries should therefore not surprise us. The lesson is clear that we should de-link religious interests from national interests.

The role of some religious leaders in the Rwandan genocide exists as one of the most embarrassing incidents of religious failure in Africa. A 1991 census put the number of Christians in Rwanda at just under 90 per cent of the total population.<sup>43</sup> It has, however, been recorded that '[n]ot only were the vast majority of those who participated in the killings Christians, but the church buildings themselves also served

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41 FM Deng 'Sudan – Civil war and genocide' (2001) 8 *Middle East Quarterly* 13–21.

42 As above.

43 T Longman *Christianity and genocide in Rwanda* (2010) 4.

as primary killing fields'.<sup>44</sup> Indeed, it is reported that '[m]ore Rwandese citizens died in churches and parishes than anywhere else'.<sup>45</sup> While the Roman Catholic Church has been castigated for its failure to protect hundreds of Tutsis and moderate Hutus, the Islamic leaders in Rwanda have been extolled for their endeavours to protect the persecuted.

The men of God and their followers could not have been responding to the tenets of the church. They must have been responding to some other factors, but nonetheless using the church as a facilitator of the crime of genocide. In the words of one survivor who was hidden in the sanctuary of a church, '[p]eople came to Mass each day to pray, then they went out to kill'.<sup>46</sup> Killing cannot be a part of the religious injunctions of the Catholic Church, for instance, thus the response of Pope John Paul II to the accusation of the Church's complicity in the genocide was to argue that '[t]he Church itself cannot be held responsible for the misdeeds of its members who have acted against evangelical law'.<sup>47</sup>

Without doubt, it is far-fetched to claim that the church officially sanctioned the genocidal acts in Rwanda, but the fact remains that churches were extensively used in the course of the pogrom. In the conclusion to his analysis of the complicity of the churches in the Rwandan genocide, the political scientist Timothy Longman cautioned that '[i]f religious institutions become too closely tied to state power, they have the capacity to legitimise abhorrent state actions'.

## 7 Conclusion: The African secular republic

When monarchs had absolute power, the people were subjects. Under the republican democratic systems, the people are citizens with equal rights. Some of these citizens are elected or appointed to preside over the affairs of state. Therefore, if the republican state derives its authority from the people collectively, then no particular religion could take precedence over others – each citizen must be at liberty to conceive and worship God as he or she pleases. Assignment of official roles to particular religious groups by the state, especially through the constitution, is bound to create a feeling of privileged position in the psyche of the particular religious groups, to the discomfiture of those not so specifically accorded such a position. The misapplication of religion for personal, secular gain is a phenomenon that cannot be ignored, particularly when the influence of religion is manipulated to secure the passage of legislation and policies that would serve parochial interests.

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44 As above.

45 Quoted in Longman (n 43 above).

46 Quoted in Longman (n 43 above) 7.

47 'Pope says church cannot be blamed in Rwanda' *New York Times* 21 March 1996 A3, quoted in Longman (n 43 above) 7.

Governments should have the authority and capacity to provide for the individual's material wellbeing; but the individual's spiritual wellbeing should be left to be determined between that individual and God, so long as it does not impinge on the rights of others. The whole idea of a political group vesting itself with authority to determine the faith of others is nothing but a skewed way of usurping spiritual authority for political superiority. Republicanism supports the guarantee of the right to religious freedom, but not religious control of political life, nor political control of religious life. Such will not inure to the stability of the republican states of Africa. It is the case that we should take conscious steps to de-link the religions from the state and governance, but without throwing out the idea and practice of religion from our lives. The law should endeavour to serve the interests of all – not just a section.