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# **DISESTABLISHMENT WITHOUT IMPARTIALITY: A CASE-STUDY EXAMINATION OF THE RELIGIOUS CLAUSES IN THE NIGERIAN CONSTITUTION**

SIMEON O. ILESANMI<sup>†</sup>

## INTRODUCTION

Since its existence as a territorial unit of the international community, Nigeria has wrestled with the challenge of the perceived dissonance between its avowed political and legal norms and their equitable application to the diverse and competing spheres of culture and society. With its origin as a modern nation-state in the arbitrary colonial amalgamation of socially disparate and culturally unaffiliated peoples, it has sought to define a new cultural identity through constitutional and democratic avenues, which would prevent the state from indentifying with any one of the cultural segments within it. Even during the intermittent interregna of military regimes, a semblance of constitutionalism was always maintained by promulgating edicts and co-opting judicial functionaries so as to douse, even if unsuccessful, the impression that military rule is irreconcilable with the rule of law. Notwithstanding the abysmal performance of its rulers, past and present, the belief remains strong among Nigeria's citizens that the country's political and economic renaissance lies in an unyielding commitment and genuine fidelity to democratic values anchored in constitutional practice. The Preamble to the 1999 Constitution, not unlike its predecessors, boldly declares the constitution as the supreme law

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of the land and its provisions as having “binding force on the authorities and persons throughout the Federal Republic of Nigeria.”<sup>1</sup> Moreover, contrary to popular belief, these modernist sentiments did not derive from the colonial transplantation of European Enlightenment philosophy nor are they dysfunctional imitations of Western constitutional orders; rather, they are partly rooted in the endogamous triple religious heritage of the country<sup>2</sup>—Islam, Christianity, and traditional religion—whose adherents, according to one scholar, “are hard to distinguish with regard to [the subject of] democracy.”<sup>3</sup>

Yet, the relationship between religion and the Nigerian state remains, at best, ambiguous and, at worst, ominous. Arguably the fastest growing industry in the country, religion has also “always formed a shadow over the Nigerian federation, and has, since May 1999, not only formed a darker shadow over the polity, but even threatened to eclipse it.”<sup>4</sup> Muslims, Christians, and adherents of the traditional religions are divided over the limits, if any, that should be imposed on their freedom and the scope of responsibility they should have in shaping political life, broadly construed. Their disagreement remains the single most important issue in Nigeria’s post-colonial history and is rendered more complex by other streams of pluralism that are latent in the country, including ethnicity, class, and region. In addition, the absence of common symbols of discourse—deriving from the indigenous traditions with which to think and speak as Nigerians about the meaning of political reality and responsibility—coupled with the frequent eruption of civil tumults in the country, complicate the task of articulating an account of the proper relation between religion and the state.<sup>5</sup>

The coalescence of these conflicting signals—on the one hand, a commitment to the rule of law and, on the other, the

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<sup>1</sup> CONSTITUTION OF NIGERIA (1999), §1(1), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>2</sup> See generally OLÚFÉMI TÁÍWÒ, *HOW COLONIALISM PREEMPTED MODERNITY IN AFRICA* (2010).

<sup>3</sup> Michael Bratton, *Briefing: Islam, Democracy and Public Opinion in Africa*, 102 *AFR. AFF.* 493, 495 (2003).

<sup>4</sup> J. Isawa Elaigwu & Habu Galadima, *The Shadow of Sharia Over Nigerian Federalism*, 33 *PUBLIUS: J. FEDERALISM* 123, 123 (2003).

<sup>5</sup> See Ebenezer Obadare, *In Search of a Public Sphere: The Fundamentalist Challenge to Civil Society in Nigeria*, 38 *PATTERNS OF PREJUDICE* 178, 178–97 (2004).

“divergent epistemic notions of democracy that are disputed on cultural grounds”<sup>6</sup>—creates the need to reexamine the integrity of Nigeria’s evolving experiment regarding the constitutional status of religion. It is not enough that a country declares an adherence to a constitution, written or unwritten; it is also necessary to inquire about the motivational rationale behind that commitment. As Richard Joseph rightly observes, “[m]any contemporary dictatorships have constitutions which serve more to camouflage the exercise of power than to guide and determine it.”<sup>7</sup> Ernst Troeltsch has suggested that any regulative policy of the state regarding its official position on religion must be guided by “the inner position of society vis-à-vis the religious life generally.”<sup>8</sup> David Martin specifies this principle more clearly as referring to the structural relationships between religion and society—that is, the number and variety of religious confessions in a society, on the one hand, and the degree to which that circumstance is, as a matter of degree, rigid or flexible, on the other.<sup>9</sup>

A central argument of this Article is that the motivational rationale behind the current constitutional definitions of religion in Nigeria lies in the wide acknowledgment of the normative importance of the country’s contextual plurality. To the extent that this is true, Nigeria can be said to have distinguished itself from other similarly situated post-colonial states that opted for a different constitutional direction. In order to avoid the charge of what one scholar characterized as “intra-imperial isomorphism”<sup>10</sup> in their national constitutions, which refers to the act of imitating and reproducing the putatively secular constitutional models of the former colonizing powers—countries such as Pakistan, Malaysia, Tunisia, among others, “either: (a) explicitly name a specific religion as the official state religion, (b) make

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<sup>6</sup> Rita Kiki Ediozie, *Democratization in Multi-Religious Contexts: Amina vs. The (Disunited) States of Nigeria*, in KAMARI MAXINE CLARKE, *LOCAL PRACTICES, GLOBAL CONTROVERSIES: ISLAM IN SUB-SAHARAN AFRICAN CONTEXTS* 145, 146 (2006).

<sup>7</sup> R.A. Joseph, *National Objectives and Public Accountability: An Analysis of the Draft Constitution*, in *ISSUES IN THE NIGERIAN DRAFT CONSTITUTION* 1, 1 (Suleimanu Kumo & Abubakar Aliyu eds., 1977).

<sup>8</sup> ERNST TROELTSCH, *RELIGION IN HISTORY* 109 (James Luther Adams & Walter F. Bense trans., 1991).

<sup>9</sup> DAVID MARTIN, *A GENERAL THEORY OF SECULARIZATION* 18–19, 23–25 (1978).

<sup>10</sup> Julian Go, *Modeling the State: Postcolonial Constitutions in Asia and Africa*, 39 *SE. ASIAN STUD.* 558, 559 (2002).

reference to a specific religion as providing certain legal principles, (c) have some kind of provisions that directly elevate a particular religion or (d) have some combination of these."<sup>11</sup> However, in so doing, these countries undermined the process by which a sociologically diverse society can become a democratic, pluralist polity.<sup>12</sup>

Generally speaking, "a pluralistic polity is one in which the collectivity is divisible along the axes of self and other, whether in terms of recognition of ethnic, cultural or religious differences, or of an individualism revolving around a multiplicity of values and objectives."<sup>13</sup> Of pluralism and constitutional government "in our time, it can be said that, like love and marriage in an old sweet song, 'you cannot have one without the other.'"<sup>14</sup> In the absence of some kind of pluralism, modern constitutionalism would make little, if any, sense. Their interdependence is a reflection of their common association with certain normative presuppositions from which they derive their valence and identity.

These include the idea of the legal subject, the inviolability without due process of the sovereignty of the subject, the separation of powers in the state, the presumption of innocence and the impartiality of the operators of the system, and the necessity for the judiciary to remain an arbiter between the powerless individual and the all-powerful state.<sup>15</sup>

In short, pluralism is the primary reason for embracing constitutionalism and the end which this ideal is intended to serve.

[I]n a completely homogenous society, with a commonly shared secular or religious conception of the good, constitutionalism

<sup>11</sup> *Id.* at 565.

<sup>12</sup> As explained by Abdullahi An-Na'im, "the phenomenon of diversity is a permanent feature of all human societies everywhere, manifested in different forms and dynamics among them over time. . . . [But] pluralism is an ideology and system that accepts diversity as a positive value and facilitates constant negotiations and adjustments among varieties of difference without seeking or expecting to terminate any or all of them permanently." ABDULLAHI AHMED AN-NA'IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A* 225 (2008).

<sup>13</sup> Michel Rosenfeld, *A Pluralist Critique of the Constitutional Treatment of Religion*, in *THE LAW OF RELIGIOUS IDENTITY: MODELS FOR POST-COMMUNISM* 39, 44 (András Sajó & Shlomo Avineri eds., 1999).

<sup>14</sup> Richard L Sklar, *On the Study of Constitutional Government in Africa*, in *CONSTITUTIONALISM AND SOCIETY IN AFRICA* 43, 43-54 (Okon Akiba ed., 2004).

<sup>15</sup> TAÍWÒ, *supra* note 2, at 3.

would be superfluous, as the governors would be identified with the governed, the law makers with those subject to laws, and as the organically cohesive polity would delimit a normative realm relying on duties rather than rights.<sup>16</sup>

However, the linkage between constitutionalism and pluralism is neither merely conceptual nor accidental; it arose out of historical experience and judgments about the most desirable way to handle the phenomenon of *difference* in human society. Differences of world views, religious convictions, and conceptions of the good had been used in the past—as they are still being used now—as justifications for persecution and discrimination. Constitutionalism reflects a deep political and moral orientation, construed in the West as political liberalism, that a certain set of institutional checks and balances needs to be created to mitigate the tendency of persons and groups to unleash evils against others on the basis of identity difference.<sup>17</sup> This Article shall characterize this as the negative function of constitutionalism. There is also its positive function, arising from the same orientation, which is instantiated in the two realities that liberalism fosters: “cooperation between persons and groups of diverse normative persuasions, and the freedom of the same persons and groups to pursue their normative agenda.”<sup>18</sup> Constitutionalism therefore has a dual relationship to pluralism: On the one hand, the reality and awareness of plurality or difference prompt a reflection upon how best to curb its deleterious effects; on the other hand, the response itself is designed to delimit the scope of pluralism without erasing it.

The current official status of religion in Nigeria seems to have been guided by these substantive normative and procedural perspectives on constitutional democracy and its pluralist inflection.<sup>19</sup> It is a complex and arguably ambiguous status, given the multiple references to religion in the constitution. The two prominent ones are the Non-Adoption of Religion and the

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<sup>16</sup> Rosenfeld, *supra* note 13, at 44.

<sup>17</sup> See LOUIS HENKIN, *THE RIGHTS OF MAN TODAY* 1–30 (1978).

<sup>18</sup> John Kelsay, *Plurality, Pluralism, and Comparative Ethics: A Review Essay*, 24 *J. RELIGIOUS ETHICS* 403, 418 (1996).

<sup>19</sup> Larry Diamond, *Nigeria: Pluralism, Statism, and the Struggle for Democracy*, in *POLITICS IN DEVELOPING COUNTRIES: COMPARING EXPERIENCES WITH DEMOCRACY* 351–410 (Larry Diamond, Juan J. Linz, & Seymour Martin Lipset ed., 2d ed. 1995).

Free Exercise Clauses in Sections 10 and 38(1), respectively.<sup>20</sup> In theory, Nigeria operates a federal system which presupposes a relative autonomy and interdependence of the national, state, and local government levels or “a dynamic process of co-operation and shared action”<sup>21</sup> among all three; in practice, the country actually has one national constitution.<sup>22</sup> Accordingly, these regulative principles apply to both federal and state governments, thus making unnecessary the device of the doctrine of incorporation typically used in other jurisdictions to extend the application of federal law to the states.<sup>23</sup>

Most commentators have limited their discussion of religion-state relations in Nigeria to the import of these two provisions and how they interact with each other.<sup>24</sup> A standard interpretation of the Non-Adoption Clause, for example, is that it confers a secular status on the Nigerian state and restricts religion to the private realm.<sup>25</sup> This interpretation accords lexical priority to the non-adoption norm over the free exercise principle, seeing the institutionalization of secularity as a precondition for a legitimate exercise and enjoyment of religious freedom. In his plea for what he calls the “the politics of the

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<sup>20</sup> Section 10 provides that “[t]he Government of the Federation or of a State shall not adopt any religion as State Religion,” and, according to section 38(1), “[e]very person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.” CONSTITUTION OF NIGERIA (1999), §§ 10, 38(1), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>21</sup> Ranjit Singh Sarkaria, *Foreword* to S.C. ARORA, CURRENT ISSUES AND TRENDS IN CENTRE-STATE RELATIONS: A GLOBAL VIEW, at viii (1991).

<sup>22</sup> See CONSTITUTION OF NIGERIA (1999), § 1(1), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>23</sup> In the United States, for example, the Bill of Rights, by its express terms, applies only to the federal government. However, the First Amendment and most of the remaining amendments in the Bill of Rights apply to state governments today because of the judicially created doctrine of incorporation. Essentially, the doctrine incorporates the provisions of the Bill of Rights into the Fourteenth Amendment's Due Process Clause by declaring that each of the rights was fundamental to the conception of due process of law. See the landmark case of *Gideon v. Wainwright*, 372 U.S. 335, 341–42 (1963) for the Supreme Court's explanation of the doctrine, and for subsequent clarification see *Pointer v. Texas*, 380 U.S. 400, 403 (1965).

<sup>24</sup> See generally Adigun Agbaje, *Travails of the Secular State: Religion, Politics and the Outlook on Nigeria's Third Republic*, 28 J. COMMONWEALTH & COMP. POL. 288 (1990).

<sup>25</sup> TOYIN FALOLA, VIOLENCE IN NIGERIA: THE CRISIS OF RELIGIOUS POLITICS AND SECULAR IDEOLOGIES 11 (1998).

public sphere,” which “presumes basic secularity and the relationality of religious *truths*,” Ebenezer Obadare asserts that Nigeria’s goal of becoming “an all-inclusive political community” would be undermined and its democratic aspirations frustrated if “polarized religious and ideological persuasions” are not held to “an integrative social vision.”<sup>26</sup> Similarly, Jibrin Ibrahim calls for an overlapping consensus among Nigeria’s social forces on the sanctity of “a domain of the profane that cannot be subsumed by the religious domain, irrespective of the level of religiosity in question.”<sup>27</sup> One is reminded of a similar argument made by Philip Kurland, commenting on the relationship between the Establishment Clause and the Free Exercise Clause in the First Amendment to the U.S. Constitution, that the “clauses should be read as stating a single precept: that government cannot utilize religion as a standard for action or inaction because these clauses, read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden.”<sup>28</sup>

On the opposite side are those who contend that attributing secularity to the Nigerian state, on the basis of Section 10 of the Constitution, would contravene the free exercise norm, which guarantees a zone of freedom to every citizen for maximal expression of their religious or non-religious fundamental beliefs.<sup>29</sup> The latter view contends that the logic of secularity entails certain philosophical assumptions about the relationship between the individual and the state, the private and the public, the spiritual and the temporal, which are incompatible with the orthodoxies of certain religious traditions.<sup>30</sup> The complementary aim of the Non-Adoption and the Free Exercise Clauses, it is contended, is to protect freedom of religious beliefs and actions.<sup>31</sup>

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<sup>26</sup> Obadare, *supra* note 5, at 179.

<sup>27</sup> Jibrin Ibrahim, *The State and Religion in Nigeria: Forces and Dynamics*, 5 AFRIKA ZAMANI (1997).

<sup>28</sup> Philip B. Kurland, *Of Church and State and the Supreme Court*, 29 U. CHI. L. REV. 1, 96 (1961).

<sup>29</sup> See generally IBRAHEEM SULAIMAN, *THE ISLAMIC STATE AND THE CHALLENGE OF HISTORY: IDEAS, POLICIES AND OPERATION OF THE SOKOTO CALIPHATE* (1987).

<sup>30</sup> See *id.* at 1–4.

<sup>31</sup> This argument echoes Justice Brennan, concurring in *School District of Abington Township v. Schempp*, 374 U.S. 203, 256 (1963), who argued that “the Establishment Clause [is] a coguarantor, with the Free Exercise Clause, of religious liberty. The Framers did not entrust the liberty of religious beliefs to either clause alone.”



While the secularists use the metaphor of separation,<sup>32</sup> the anti-secularists emphasize accommodation, to articulate their respective visions of the proper relationship between religion and the Nigerian state.<sup>33</sup> Each side seems entrenched in its position, and the impasse created by their mutual rigidity has unfortunately fuelled the impression that "religion is an anomaly, requiring exotic constitutional treatment different from anything else."<sup>34</sup> They both overlook the fact "that the Constitution expresses special concern for religion because and to the extent that religious difference inspires inequality in stature and reward, and accordingly, that the Constitution's fundamental religion-specific goal is that of opposing discrimination."<sup>35</sup> "Although each view contains an important partial truth that accounts for its attraction, each . . . fails to recognize the partial truth in the other view. Each view, therefore, is inadequate to the task of offering a morally defensible interpretation of the religion" provisions in the Nigerian Constitution or providing guidance on how religious beliefs, practices, and institutions should be properly related to the Nigerian State.<sup>36</sup>

This Article defends a third view, anchored in the notion of equal liberty, which it argues is what is envisioned in the non-discrimination principle found in section 42 of the Constitution, which provides:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or

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<sup>32</sup> See Agbaje, *supra* note 24, at 294.

<sup>33</sup> See SULAIMAN, *supra* note 29, at 3-4.

<sup>34</sup> CHRISTOPHER L. EISGRUBER & LAWRENCE G. SAGER, *RELIGIOUS FREEDOM AND THE CONSTITUTION* 17-18 (2007).

<sup>35</sup> *Id.* at 9.

<sup>36</sup> Amy Gutmann, *Religious Freedom and Civic Responsibility*, 56 WASH. & LEE L. REV. 907, 907 (1999).

restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.<sup>37</sup>

Rather than engage in an abstract discussion of the idea of equal liberty or a sweeping assessment of the goodness of both religion in general and its optimal role in public life, this Article focuses on one example of religion-state entanglement that raises the issue of distributional fairness and underscores the mediating role of the non-discrimination principle vis-à-vis the norms of non-adoption and free exercise. Government involvement in pilgrimage, at both federal and state levels, offers an opportunity to examine the utility of these principles as frameworks for handling Nigeria's own burden of democratic governance. To keen observers of Nigerian affairs, the pilgrimage issue seems the least likely candidate to test the practical value of constitutional prescriptions in setting the proper boundary between the secular and the sacred or to adjudicate conflicts that routinely erupt between the two spheres. For over two decades, Nigeria has been engulfed in the inferno of Shari'ah controversy in all its multiple dimensions, the most recent of which is the adoption of this religious law by ten northern Nigerian states and the push by some Muslim constituencies to extend its influence and application to the southern part of the country.<sup>38</sup> While the furor surrounding the issue seems to have subsided a bit, no one doubts its possible eruption at any opportune moment in Nigeria's kaleidoscopic political milieu.<sup>39</sup> More important, we should want to know why a characteristically volatile Nigerian political terrain has experienced minimal, if any, controversy on account of government sponsorship of pilgrimage—sponsorship that

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<sup>37</sup> CONSTITUTION OF NIGERIA (1999), § 42(1), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>38</sup> M. Ozonnia Ojielo, *Human Rights and Shari'ah Justice in Nigeria*, 9 Ann. Surv. Int'l & Comp. L. 135–62 (2003).

<sup>39</sup> See Ebenezer Obadare, *A Crisis of Trust: History, Politics, Religion and the Polio Controversy in Northern Nigeria*, 39 PATTERNS OF PREJUDICE 265, 268, 280–81, 284 (2005).

involves not only huge financial expenditure but also the use of government resources, including personnel, property, time, and the unquantifiable imprimatur of the symbolic support of the state.<sup>40</sup>

The absence of an effective legal channel through which civil disagreements can be justly resolved is one reason, among many, that Nigerians have not bothered to challenge the government for its involvement in what is ostensibly beyond its allotted responsibility. This does not mean that there are no judges and lawyers in Nigeria; in fact, the doctrine of separation of powers is writ large in the country's governmental structures.<sup>41</sup> However, the judiciary has functioned more like an extension of, and sometimes a lackey for, the executive and legislative branches than an independent coequal branch.<sup>42</sup> While the symbolisms may be similar, the actual jurisprudential impact of the Supreme Court of Nigeria has been relatively minimal, compared with the role such institutions play in other democracies, notably the United States, where the Supreme Court's decisions have "directly impacted the way people express themselves religiously on a daily basis and shaped [their] understanding of what it means to live in a democracy with substantial religious diversity."<sup>43</sup> But because of the fascist and autocratic tendencies of Nigerian governments, military and civilian, the nation's high court has been reluctant to issue authoritative pronouncements in "most of the leading cases that questioned some of the established norms of the Nigerian political system."<sup>44</sup> To have done so would have meant career suicide, if not literal death, for the judges concerned. Thus, for guidance on religion jurisprudence, whether about pilgrimage or other subjects, we will have to look elsewhere for "the 'lively sparks' that might

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<sup>40</sup> See National Hajj Commission of Nigeria (NAHCON) (Establishment) Act No. (9) (2006) 93:66 S.O.G., A330-31 (Nigeria).

<sup>41</sup> See CONSTITUTION OF NIGERIA (1999), ch. 5-7, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>42</sup> See MOJEED OLUJINMI A. ALABI, *THE SUPREME COURT IN THE NIGERIAN POLITICAL SYSTEM 1963-1997*, at 2-3, 37 (2002).

<sup>43</sup> RONALD B. FLOWERS ET AL., *RELIGIOUS FREEDOM AND THE SUPREME COURT 2* (2008).

<sup>44</sup> ALABI, *supra* note 42, at 229.

ordinarily be expected from the judiciary in a complex and highly segmented nation-state like Nigeria.”<sup>45</sup> These sparks are analyzed in Part I below.

### I. PILGRIMAGE TRADITION IN NIGERIA: AN UNEQUAL RELIGIOUS REQUIREMENT

Pilgrimage has been described as a journey undertaken by a person or group of persons to a sacred place as an act of religious devotion.<sup>46</sup> It is an integral part of the complex reality of religious life, existing at the intersection of myths, doctrines, and ritual. At one level, it resembles such mundane human activities as tourism, in that “both [pilgrimage and tourism] are born from a desire to travel, to head into an unknown, foreign place where one might experience new sights and sounds and tastes and smells, and ultimately to be corporeally inspired by some transcendent locale.”<sup>47</sup> However, journeys undertaken for religious purposes possess certain characteristics that are lacking in other kinds of peripatetic adventures, including but not limited to “the existence of [a] *sacred place* or pilgrimage center . . . [and] the hope of obtaining some *material or spiritual* benefits.”<sup>48</sup> While all three elements—the presumed supernatural power inherent in the pilgrimage site, the numinous quality of experiencing a temporary exile, and the economy of rewards<sup>49</sup>—jointly imbue pilgrimage with a compelling rationale, its main attraction lies in the construction and preservation of sacred geography and the impact this has on the pilgrim’s self-understanding and identity.<sup>50</sup> The notion of sacred space “implies a hierophany, an opening to the holy or divine, a place where communication with sacred power is made possible.”<sup>51</sup> Mircea Eliade, a historian and phenomenologist of religion, refers to such a place as “*axis mundi*,” the “center of the

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<sup>45</sup> *Id.*

<sup>46</sup> 2 THE NEW SHORTER OXFORD ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES 2210 (Lesley Brown ed., 4th ed. 1993).

<sup>47</sup> S. Brent Plate, *Introduction: The Varieties of Contemporary Pilgrimage*, 59 CROSS CURRENTS 260, 262–65 (2009).

<sup>48</sup> Edmund Emefie Ikenga-Metuh, *Pilgrimage in African Religion: A Quest for the Ultimate*, 6 DIALOGUE AND ALLIANCE 3, 4 (1992–93).

<sup>49</sup> *Id.* at 3–4.

<sup>50</sup> *Id.* at 7–9.

<sup>51</sup> JAMES C. LIVINGSTON, *ANATOMY OF THE SACRED: AN INTRODUCTION TO RELIGION* 43 (6th ed. 2009).

world.”<sup>52</sup> It is a point around which, symbolically speaking, the world rotates.<sup>53</sup> Examples of such places include the birthplace, location of life events, and tomb of a holy person, as well as natural objects like rivers, mountains, caves, islands, and strange features of the landscape that are believed to incarnate the spirit or radiate spiritual magnetism.<sup>54</sup> Moreover, because a sacred place “represents not only an ‘opening’ to heaven but also a reproduction, on the human scale, of the cosmos or of Creation itself,” that is, “an *imago mundi*, an image of the original world order,”<sup>55</sup> every encounter with it induces expectations of unparalleled divine favors or even miracles. In short, the religious quality of a pilgrimage makes it a potentially transformative journey for those who undertake it.

Every year thousands of Nigerians participate in this kind of journey. The destinations may vary, but the motivation and objectives are comparable. The tradition of making a pilgrimage predates the arrival of Islam and Christianity in Nigeria and remains an integral part of indigenous cultural life.<sup>56</sup> The shrines of Oshun in the southwestern cities of Oshogbo and Arochukwu in eastern Nigeria are examples of sacred sites which annually attract pilgrims seeking different kinds of divine favors and blessings.<sup>57</sup> The myths and symbols connected with these shrines are “expressive of the human search for the ultimate.”<sup>58</sup> Similarly, every Christmas members of the Celestial Church of Christ, an African initiated denomination, make pilgrimages to the holy city of Imeko where the Church’s founder, Prophet Oschoffa, was buried.<sup>59</sup> The church’s constitution describes the Christmas pilgrimage as “a ‘convocation’ of

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<sup>52</sup> MIRCEA ELIADE, *THE SACRED AND THE PROFANE: THE NATURE OF RELIGION* 22, 36 (Willard R. Trask trans., Harcourt, Brace & World, Inc., 2d ed. 1959) (1957) (internal quotation marks omitted).

<sup>53</sup> See *id.* at 22.

<sup>54</sup> LIVINGSTON, *supra* note 51, at 43–45.

<sup>55</sup> *Id.* at 44.

<sup>56</sup> See generally Peter Probst, *Keeping the Goddess Alive: Performing Culture and Remembering the Past in Osogbo, Nigeria*, *SOC. ANALYSIS*, Apr. 2004, at 33.

<sup>57</sup> See Jacob K. Olupona, *Orisà Òsun: Yoruba Sacred Kingship and Civil Religion in Òsogbo, Nigeria*, in *ÒSUN ACROSS THE WATERS: A YORUBA GODDESS IN AFRICA AND THE AMERICAS* 46, 46–67 (Joseph M. Murphy & Mei-Mei Sanford eds., 2001); Ikenga-Metuh, *supra* note 48, at 5–7.

<sup>58</sup> Ikenga-Metuh, *supra* note 48, at 4.

<sup>59</sup> André Mary, *Pilgrimage to Imeko (Nigeria): An African Church in the Time of the ‘Global Village’*, 26 *INT’L J. URB. & REGIONAL RES.* 106, 112–13 (2002).

members[,] . . . ordained by the Holy Spirit," obligatory for consecrated Evangelists of the church, and undertaken "in expectation of the blessing of anointment."<sup>60</sup> Prophet Oschoffa underscored the significance of the choice of this location in a message he reportedly received in a vision in 1973 and relayed to his members that "Mecca would be closed, that Jerusalem would cease to be in its accustomed place, and that God had chosen Imeko as the New Jerusalem."<sup>61</sup> This is precisely what Imeko has become, "a sort of Rome or Vatican in the heart of the African bush,"<sup>62</sup> according to one scholar. The same can be said of Oshun and Arochukwu shrines, all of which signify the attempt to affirm the possibility of encountering the divine within the geographical boundary of Nigeria and to demystify the privileged status that seems to have been ascribed to the birth places of the two so-called world religions in the country. This attempt at recognizing the legitimacy of local pilgrimage centers is in consonance with earlier efforts by theologians and others to develop and prescribe normative agendas aimed at responding to the socio-cultural and political contexts and concerns, both spiritual and material, of Nigerians.<sup>63</sup>

However, like much else about Nigeria and perhaps the whole of Africa, local interests and initiatives have never been able to completely resist the allure of outside alternatives and possibilities; in fact, in every instance of competition between the local and the foreign, it is the latter that tends to dictate the terms of the engagement, which not only assures its victory but also perpetuates the pernicious myth of the inherent inferiority of indigenous worldviews vis-à-vis outside cultural contenders. Thus, in what would undoubtedly be a disappointment for people like Prophet Oschoffa, Mecca has not been closed and Jerusalem remains in its accustomed place. Both locations continue to draw Nigerian pilgrims and are believed to bestow far greater spiritual benefits and social prestige than any other recognized local sacred sites. Constitutionally, it is within the right<sup>64</sup> of these

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<sup>60</sup> *Id.* at 113.

<sup>61</sup> *Id.* at 111.

<sup>62</sup> *Id.* at 112.

<sup>63</sup> See generally E. BOLAJI IDOWU, *TOWARDS AN INDIGENOUS CHURCH* (1965).

<sup>64</sup> The two rights implicated here are the freedom of religion and freedom of movement. On the latter, see the CONSTITUTION OF NIGERIA (1999), §§ 38, 41(1), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

Nigerians to choose any locations, foreign or local, as the places to fulfill what they understand to be the injunctions of their faith. What is at issue, then, is not that they prefer Mecca and Jerusalem or some other holy sites outside of Nigeria to local options, but that they enlist government support for their religious journeys. Whether or not such support constitutes an illicit boundary crossing or a permissible aid intended to remove a burden impeding the free exercise of religion is a question that the Nigerian state must confront.

Aside from legal and political considerations, another reason for addressing this question has to do with the ambiguous theological status of pilgrimage across the spectrum of religious traditions, especially the two that are dominant in Nigeria.<sup>65</sup> Islam and Christianity may share a common Semitic origin, but their belief systems are defined by radically different doctrinal content.<sup>66</sup> Islam is organized around five pillars of faith, one of which is the *hajj* or pilgrimage to Mecca, which every adult Muslim who is in a position to do so is required to perform at least once in his or her lifetime.<sup>67</sup> Muslim authorities generally agree on the following requirements of eligibility for the *hajj*: (1) one must be a confessing Muslim who (2) has reached the age of puberty, (3) is of rational and sound mind, (4) is a freed man or woman, and (5) has the physical strength and health to undertake the rigors of the journey.<sup>68</sup> Islamic law also provides that a pilgrim "must possess sufficient means not only to cover the expenses of the journey but also to make provision for his dependents while he is away."<sup>69</sup> This provision includes the "payment of school fees for the children and the feeding of the

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<sup>65</sup> See generally Ian Reader, *Pilgrimage Growth in the Modern World: Meanings and Implications*, 37 RELIGION 210 (2007) (discussing how the increase in number of pilgrimages is not necessarily explained by an increase in religious sentiment).

<sup>66</sup> See Li Weijian, *Cultures and the Arab-Israeli Conflict*, in CULTURAL IMPACT ON INTERNATIONAL RELATIONS 169, 178–79 (Yu Xintian ed., 3d series (2002)).

<sup>67</sup> FREDERICK MATHEWSON DENNY, AN INTRODUCTION TO ISLAM 122 (4th ed. 2011).

<sup>68</sup> See, e.g., DAVID EDWIN LONG, THE HAJJ TODAY: A SURVEY OF THE CONTEMPORARY MAKKAH PILGRIMAGE 11 (1979); F.E. PETERS, THE HAJJ: THE MUSLIM PILGRIMAGE TO MECCA AND THE HOLY PLACES, at xxi (1994).

<sup>69</sup> MUSA O. A. ABDUL, ISLĀM AS A RELIGION: (FAITH AND DUTIES), at 74 (3d ed. 1974).

family.”<sup>70</sup> In addition, one “must be sure of security of life; that is, that there is nothing on the way, such as war, epidemic, flood, that can threaten his life.”<sup>71</sup>

The duty to perform the *hajj* rests on the authority of the Qur’an and the recorded practice of the prophet Muhammad—*sunnah*—as these are interpreted by the orthodox schools of Islamic law.<sup>72</sup> Although the Islamic tradition acknowledged the Abrahamic origins of *hajj* sites and rituals,<sup>73</sup> the privileged status that Mecca has historically enjoyed is defended on the basis of Scriptural evidence found in Surah 3:90–91 declaring that:

The first House of Worship founded for mankind was in Bakka [Makkah]. Blessed and guidance to mankind. In it are evident signs, even the Standing Place of Abraham [Maqām Ibrāhīm]; and whoever enters it is safe. And the pilgrimage to the temple [Hajj] is an obligation due to God from those who are able to journey there. . . .<sup>74</sup>

Islam prescribes other spiritual journeys but when these are not made to Mecca and “fall[ ] outside the designated pilgrimage season—the last month of the Islamic calendar, Dhu al-Hijjah”—they are considered “mere ‘visits’ (*ziyaras*) that can never substitute for a *hajj* no matter how many times they are repeated.”<sup>75</sup> According to one scholar, “[n]o combination of *ziyaras* can equal a *hajj*, even if their destinations include the prophet’s mosque in Medina, the tombs of the most venerated imams in Iraq and Iran, or the final resting places of the thousands of saints and martyrs all across Asia and Africa.”<sup>76</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See LONG, *supra* note 68.

<sup>73</sup> PETERS, *supra* note 68, at 3–7.

<sup>74</sup> LONG, *supra* note 68, at 3 (alteration in original).

<sup>75</sup> ROBERT R. BIANCHI, GUESTS OF GOD: PILGRIMAGE AND POLITICS IN THE ISLAMIC WORLD 40 (2004).

<sup>76</sup> *Id.* Other scholars have offered a political explanation of Muhammad’s choice of Mecca. According to the renowned Dutch Orientalist and colonial officer whose views shaped modern pilgrimage policy, the choice was a stroke of political genius that accomplished many goals simultaneously. By centering his new state in Mecca (the city he was forced to flee and conquer) instead of Medina (the city that gave him refuge), Muhammad won over his former enemies and consolidated Islam in Arabia. He also marshaled resources to launch a united force against the greatest military powers of his day, the Byzantine and Persian empires. When Muhammad instructed Muslims to pray in the direction of Mecca rather than Jerusalem, his community could make a double claim: They could be monotheistic without being Jews or Christians, and they could be universalistic without ceasing to be Arab. See



The emergence of Mecca as the pre-eminent sacred city in Islam is further bolstered by Muhammad's farewell *hajj* performed there in 632 A.D.—an event that laid the foundation for what would subsequently be known as the *hajj* rites, a body of liturgical practices that took between one to two centuries after the prophet's death to evolve into a definitive form.<sup>77</sup>

Thus, while there are traditions of pilgrimages in other religious traditions, “the hajj [is] . . . in a class by itself.”<sup>78</sup> As already indicated, it is obligatory, not voluntary, and has to “be performed in a single location, at a specific time, and in a prescribed manner.”<sup>79</sup> It is not an exaggeration that “Muslims view the hajj as the most important of Islam's ‘five pillars’ and as the crowning spiritual achievement of their lives.”<sup>80</sup> “When Muslims undertake the hajj,” Bianchi explains, “they are reenacting decisive acts of monotheism's two greatest prophets—the very first and the very last. The drama reminds pilgrims of their bonds with Muslims around the world and with the millions of pilgrims who preceded them over fourteen centuries.”<sup>81</sup> Being firmly rooted in scripture, combined with an unswerving focus on a single city, the *hajj* enjoys, as it always did, an “exalted religious status” that is “distinguished by unparalleled cosmopolitanism and continuity.”<sup>82</sup> The Director and Head of Department of Operation, Planning, Research, and Statistics for Muslim Pilgrims Welfare Agency in Kano, Nigeria believes that the “spirit of submission to God” and nourishment of spiritual joy are among the possible reasons the *hajj* has acquired this status.<sup>83</sup>

Just as in Islam, the image of Christian life on earth as *peregrinatio*<sup>84</sup> has played an important role in Christianity; however, the meaning and importance of pilgrimage is not explicit in the Christian religion. Christian pilgrimage tradition

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generally G.W.J. Drewes, *Snouck Hurgronje and the Study of Islam*, 113 BIJDRAGEN TOT DE TAAL-, LAND- EN VOLKENKUNDE 1 (1957).

<sup>77</sup> See LONG, *supra* note 68, at 9, 11.

<sup>78</sup> BIANCHI, *supra* note 75, at 39.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 40.

<sup>83</sup> Kabiru S. Hanga, *The Hajj Exercise in Nigeria: Challenges, Constraints and Drawbacks* (Feb. 1999), [http://maisikeli.com/documents/The\\_Hajj\\_Exercise\\_in\\_Nigeria\\_Final\\_Document\\_.pdf](http://maisikeli.com/documents/The_Hajj_Exercise_in_Nigeria_Final_Document_.pdf).

<sup>84</sup> The English word “pilgrimage” was derived from this Latin term.

has its origin in the Jewish antecedents where a relatively simple practice of visiting sites linked to a marvelous event in the life of an individual Israelite or in the collective history of the community evolved into an elaborate event culminating in a sacred journey to Jerusalem.<sup>85</sup> But early Christianity was ambivalent about the Jewish conception of the land as holy, in part because of the concern that it might encourage the localization of the divine as well as the internal disagreement within the tradition on the value of pilgrimage and sacred geography for the formation of Christian identity and assurance of salvation. In fact, four different approaches to pilgrimage are discernible during the formative centuries of Christianity, namely, “rejection,” “apathy,” “vacillation,” “and adjustment of one’s stance as a result of social relationships, ecclesiastical crises, or theological controversies.”<sup>86</sup> Jerome articulates one of these positions when he claims, following Paul, that if God is present everywhere, then he cannot be restricted to the holy spaces of Palestine.<sup>87</sup> Similarly, Augustine asserts that believers were aliens in this world, always journeying regardless of their actual destination, and that their souls, rather than the physical Jerusalem, should be understood as God’s temple where genuine hierophany can truly be experienced.<sup>88</sup> Noting that *peregrinatio* and *peregrinus* do not always designate a physical journey but include a sense of spiritual exile and wandering, Augustine proposed a broader theological system that placed more emphasis on the spiritual aspects of Christian identity.<sup>89</sup>

Even theologians who attached some spiritual value to pilgrimage disagreed on the sites that should be privileged for encountering the divine. For example, Gregory of Nyssa flatly rejected the importance of Jerusalem as a pilgrimage site, promoting instead—like Prophet Oschofa of Nigeria—his own diocese of Cappadocia.<sup>90</sup> At the same time, Cyril of Jerusalem sought to elevate Jerusalem relative to Caesarea through

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<sup>85</sup> See Georgia Frank, *Pilgrimage*, in *THE OXFORD HANDBOOK OF EARLY CHRISTIAN STUDIES* 826, 826–27 (Susan Ashbrook Harvey & David G. Hunter eds., 2010).

<sup>86</sup> BROURIA BITTON-ASHKELONY, *ENCOUNTERING THE SACRED: THE DEBATE ON CHRISTIAN PILGRIMAGE IN LATE ANTIQUITY* 205 (2005).

<sup>87</sup> *Id.* at 68–69.

<sup>88</sup> *Id.* at 116.

<sup>89</sup> *Id.* at 205.

<sup>90</sup> See *id.* at 51–57.

promotion of Jerusalem's holy sites.<sup>91</sup> His appeal was to all Christendom, holding that Christian identity was tied to the sacred space of Jerusalem.<sup>92</sup> To appreciate what was at stake during this period, one has to pierce through the veil of theological rhetoric and place the disagreement in the context of a complex world of power relations between bishoprics and the efforts undertaken by bishops to control their congregations.<sup>93</sup> As Bitton-Ashkelony observes, correctly it seems, "the debate at the end of the fourth century centered not merely on the religious function of the holy places but rather on the extent to which a local leader could build on the local territory of divine grace in order to transform it into a territory of power."<sup>94</sup> The tenor of the debate may have changed since, but the substantive issue about the extent to which a contingent practice could be elevated to a binding theological principle remains unresolved.<sup>95</sup> From the beginning of Christianity and before it became a major cultural presence in Nigeria, Christianity has never spoken with one voice on pilgrimage. Local church leaders who resisted its centralization in Jerusalem were motivated not only by a genuine belief in the ubiquitous presence of God but also by the awareness of the social, economic, and political benefits that would accompany the recognition of a place as a pilgrimage location. Shrines in Lourdes, Fatima, and the Basilica of the Virgin of Guadalupe are among the Christian sites that still compete with Jerusalem for millions of pilgrims every year.<sup>96</sup>

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<sup>91</sup> See *id.* at 58–61.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 60–61.

<sup>94</sup> *Id.* at 64.

<sup>95</sup> Frank, *supra* note 85, at 830–31.

<sup>96</sup> See T. F. Casey, *Lourdes*, in 8 THE CATHOLIC UNIV. OF AM., NEW CATHOLIC ENCYCLOPEDIA 1031, 1032 (describing Lourdes as "the location of the most popular Marian shrines in the world[,] . . . [attracting] 2 million pilgrims a year"); H. M. Gillett, *Fátima*, in 5 THE CATHOLIC UNIV. OF AM., NEW CATHOLIC ENCYCLOPEDIA 855, 855–56 (1967) (describing Fátima as "one of the most famous Marian shrines in the world and the destination of numerous pilgrims"); *Shrine of Guadalupe*, Catholic Encyclopedia, Catholic Online, <http://www.catholic.org/encyclopedia/iew.php?id=5413> (last visited Nov. 19, 2011) (Pilgrimages have been made to [Shrine of Guadalupe] almost uninterruptedly since 1531–32.).

## II. GOVERNMENT AND PILGRIMAGE: A REWARD FOR GOOD BEHAVIOR

Modern Nigeria came into existence in 1914 when the colonial governor-general, Lord Lugard, amalgamated the then northern and southern protectorates.<sup>97</sup> Before then, and for much of the colonial period, pilgrimage was largely regarded a private religious affair, and those who undertook it did so as an act of piety that justified the huge personal sacrifice and financial expenditure committed to it.<sup>98</sup> Not surprisingly, pilgrimage received minimal, if any, emphasis in the doctrinal teachings of both foreign and local Christian missionaries, and it remained a dormant aspect of the Church's devotional life until the early 1980s.<sup>99</sup> Among Muslims for whom pilgrimage is a doctrinal requirement, official meddling was virtually non-existent or was mitigated by contextual constraints where it was found. In fact, until the advent of modern transportation facilities, only few Muslims were able to make the *hajj* by land routes to Mecca, and among these few were local rulers who went not as representatives of political kingdoms but in their capacities as believers.<sup>100</sup> To the extent that we can speak of official policy on pilgrimage in precolonial Nigeria, it was one of benign indifference. Religion in general, and pilgrimage in particular, enjoyed relative independence from political manipulation, even if those who managed the affairs of the various kingdoms were expected to be religiously attuned as a matter of cultural legitimacy.<sup>101</sup>

Colonialism changed the paradigm of jurisdictional autonomy that had characterized religious life and practice, though it would be an exaggeration to blame outside intrusion for all of Nigeria's contemporary ills. Yet, there is some justification in the claim that "[c]ontentious issues in the Nigerian State and Constitution are traceable to Nigeria's colonial history and

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<sup>97</sup> See MICHAEL CROWDER, *A SHORT HISTORY OF NIGERIA* 241 (rev. ed. 1966).

<sup>98</sup> See O. E. Tangban, *The Hajj and the Nigerian Economy 1960–1981*, at 21 J. RELIGION AFR. 241, 242 (1991).

<sup>99</sup> *Id.* at 242.

<sup>100</sup> Dunama, the second Muslim king of Kanem in northeastern Nigeria, was said to have performed the *hajj* three times during his reign in the twelfth century. He died in the Red Sea during his third pilgrimage. *Id.*

<sup>101</sup> See E. A. AYANDELE, *THE MISSIONARY IMPACT ON MODERN NIGERIA 1842–1914: A POLITICAL AND SOCIAL ANALYSIS* 159–60 (1967); J. F. ADE AJAYI, *CHRISTIAN MISSIONS IN NIGERIA 1841–1891: THE MAKING OF A NEW ÉLITE* 116 (1965).

promises to remain an aspect of future Nigerian politics."<sup>102</sup> Much has been written about the system of indirect rule imposed by the colonial government which involved, in some significant ways, restrictions on religious proselytizing across regional boundaries.<sup>103</sup> The government's justification for this arrangement was to allow maximum freedom for each religion in the area where it was dominant—Christianity in the south and Islam in the north—while also reducing any incidents of inter-religious conflicts and the attendant disruption of political order to the barest minimum.<sup>104</sup> But the paternalism undergirding this *cuius regio, eius religio* principle<sup>105</sup> was anything but benevolent; the public face of religion and the ordering of its internal life are now subject to government regulations, and the interests of the state, not of religion, determine what kinds of regulations to impose.<sup>106</sup>

The official policy on pilgrimage during this period illustrates the precarious position of religion.<sup>107</sup> After their conquest and reconstitution of the Sokoto Caliphate, the spiritual headquarters of Nigerian Muslims, the colonial government did not encourage pilgrimage, fearing that the contact with the wider Islamic world that pilgrimage afforded would spur resistance sentiments in the pilgrims when they returned home.<sup>108</sup> This was a period of intense reform and anti-colonial, even *jihad*, activities in many Muslim societies—notably Sudan, the pathway for many Nigerian pilgrims—so the colonial government had

<sup>102</sup> Kelechi A. Kalu, *Constitutionalism in Nigeria: A Conceptual Analysis of Ethnicity and Politics*, [http://voiceofthepeoplenigeria.com/Nigeria\\_Country\\_Profile/Nigeria\\_Constitution.php](http://voiceofthepeoplenigeria.com/Nigeria_Country_Profile/Nigeria_Constitution.php) (last visited Oct. 18, 2012).

<sup>103</sup> See, e.g., JAMES S. COLEMAN, *NIGERIA: BACKGROUND TO NATIONALISM* 51–54 (1960).

<sup>104</sup> See O. U. Kalu, *Christianity and Colonial Society*, in *THE HISTORY OF CHRISTIANITY IN WEST AFRICA* 182–86 (O. U. Kalu ed., 1980).

<sup>105</sup> This principle, which literally translates as “whose realm, his religion,” meaning the religion of the ruler dictated the religion of the ruled, was one of the resolutions in the Peace of Augsburg, which ended armed conflict between Catholic and Protestant forces in the Holy Roman Empire. See STEVEN OZMENT, *THE AGE OF REFORM 1250–1550: AN INTELLECTUAL AND RELIGIOUS HISTORY OF LATE MEDIEVAL AND REFORMATION EUROPE* 259, 338 (1980).

<sup>106</sup> See A.E. Afigbo, *Christian Missions and Secular Authorities in South-Eastern Nigeria from Colonial Times*, in *THE HISTORY OF CHRISTIANITY IN WEST AFRICA*, *supra* note 104, at 187, 188–89.

<sup>107</sup> See Tangban, *supra* note 98, at 246.

<sup>108</sup> See BIANCHI, *supra* note 75, at 213–20.

reason to be concerned.<sup>109</sup> Those who led these movements tended to have a religious re-awakening after visiting Mecca and Medina not just for the *hajj* but also to study, and “such student pilgrims sometimes carried a spirit of Islamic revivalism back to their homelands.”<sup>110</sup> “In the 1950s however, with the impending independence of Sudan (1956), the close educational links between Sudan and Northern Nigeria, and the well-established relationship with the traditional leadership class in [the region], the British [colonial government] came to regard the pilgrimage as less threatening.”<sup>111</sup> This led to a policy reversal in a way that stripped pilgrimage of its religious essence: It was now seen as a major reward for the “good behavior” of Northern Emirs.<sup>112</sup> Of course, what counts as good behavior is almost always what benefits the state. Successive governments in post-colonial Nigeria have retained this patrimonial principle, conditioning their interaction with virtually every sphere of civil society upon the surrendering of the right to critical vigilance in exchange for the largesse of the state.<sup>113</sup>

“Pilgrimage as a reward” has grown beyond the lifting of travel restrictions to an all-inclusive package of government generosity, at both federal and state levels, that has at its core the establishment in 2006 of the National Hajj Commission of Nigeria (the “NAHCON”), the Nigerian Christian Pilgrims Commission, and similar bodies in each of the thirty-six states of the federation.<sup>114</sup> The legal status and functions of the two commissions are essentially similar, so a focus on one of them would suffice for this Article’s purpose. The NAHCON is administered by a chairman and nine other members, three of

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<sup>109</sup> Nehemia Levtzion & John O. Voll, *Introduction* to *EIGHTEENTH-CENTURY RENEWAL AND REFORM IN ISLAM* 3, 8 (Nehemia Levtzion & John O. Voll eds., 1987).

<sup>110</sup> Levtzion & Voll, *supra* note 109.

<sup>111</sup> JOHN N. PADEN, AHMADU BELLO SARDAUNA OF SOKOTO: VALUES AND LEADERSHIP IN NIGERIA 280 (1986).

<sup>112</sup> *Id.*

<sup>113</sup> See Agbaje, *supra* note 24, at 299–300.

<sup>114</sup> These separate Commissions were preceded by a common Nigerian Pilgrims Board serving both Muslim and Christian constituencies, and their state equivalents were known as Pilgrims Welfare Boards. The first of such boards was established by the Western Regional Government of Chief Obafemi Awolowo in 1958. See H. O. Danmole, *The Religious Factor in Nigerian Politics: Awolowo and the Muslims, 1957–1983*, in *OBAFEMI AWOLOWO: THE END OF AN ERA?* 874, 886–87 (Olasope O. Oyelaran et al. eds., 1988).

whom are on full-time appointment and the others part-time.<sup>115</sup> The Nigerian President not only appoints the chairman, but he also designates which members “are to serve on [a] full time basis and those that are to serve on [a] part-time basis.”<sup>116</sup> The government pays the chairman and the NAHCON’s members “such remuneration and allowances as the President may from time to time determine,” and determines eligibility for participation in the government pension program.<sup>117</sup> Also serving on the NAHCON are representatives from each of the following government ministries: Aviation, Foreign Affairs, Internal Affairs (Immigration), Finance, Health, and Central Bank of Nigeria.<sup>118</sup> There are twelve enumerated functions of the NAHCON, the most pertinent of which is the oversight responsibility for “organizing and coordinating the movement of persons from Nigeria to Saudi Arabia,” “[p]roviding accommodation, transportation, and other services related to the performance of the Hajj and Umra,” “[coordinating] the provision of health, financial, security, customs, immigration and related services,” “establishment and management of pilgrims camps and related facilities, equipment and such other necessary materials,” “conduct[ing] educative and enlightenment campaigns on Hajj and Umra, in all the States of the Federation, and the Federal Capital Territory,” and “regulat[ing] and control[ing] in and outside [of] Nigeria all matters concerning the welfare of Nigerian pilgrims.”<sup>119</sup>

Although each individual pilgrim, Muslim or Christian, is expected to pay his or her way to the Holy Land, only few actually do so because of the subsidies provided by the federal and state governments.<sup>120</sup> The state governments are especially known for engaging in competition as to which of them is most generous in funding pilgrimages.<sup>121</sup> Earlier this year, the

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<sup>115</sup> National Hajj Commission of Nigeria (NAHCON) (Establishment) Act No. (9) (2006) 93:66 S.O.G., A329 § 3(1)(a)–(b).

<sup>116</sup> *Id.* § 3(2)–(3).

<sup>117</sup> *Id.* §§ 3(4), 4(2)(a)–(c), 10(1).

<sup>118</sup> *Id.* § 3(1)(c).

<sup>119</sup> *Id.* § 4(1).

<sup>120</sup> See generally Pat Williams, *Religious Groups and the Politics of National Development in Nigeria*, 7 RESEARCH REV. 32, 40–42 (1991), available at <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/Institute%20of%20African%20Studies%20Research%20Review/1991v7n1&2/asrv007001&2005.pdf>.

<sup>121</sup> See Chentu Dauda Nguvugher, *Nigerian Religious Pilgrimages: Piety or Economic Waste?*, TCNN RES. BULL., March 2011, at 4, available at

Zamfara state government in the North proudly reported that it “had approved free feeding of its pilgrims during their five days’ [sic] stay in Munna and Mountain Arafat in an effort to subsidise expenses and provide good food for the pilgrims.”<sup>122</sup> The government of Oyo State in the West gestured a similar posture at the recent inauguration ceremony of the Pilgrims Welfare Board (Christian Wing), promising that pilgrims to the holy land will not be neglected, and that “when the welfare of people on pilgrimage to Jerusalem will be mentioned nationwide, Oyo State will receive an unrivaled mention and celebration.”<sup>123</sup>

Considering that Muslims and Christians are only a part of the Nigerian population, admittedly a substantial part,<sup>124</sup> and that not all Nigerians are religious, it is necessary to ask whether these extensive involvements of the government are justified in light of the relevant religion provisions in the Nigerian Constitution.

### III. ASSESSING STATE SPONSORSHIP OF PILGRIMAGES IN NIGERIA

Of the three religion provisions already identified,<sup>125</sup> it is the non-adoption and the non-discrimination norms that offer the greatest challenge to the government policy and practice of sponsoring pilgrims to the Holy Lands. The Free Exercise Clause does not appear to be offended by the government’s supervision of and participation in the pilgrmage exercises, not only because of the inclusive conceptualization of religious freedom in the Nigerian Constitution as encompassing the freedom “to

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[http://www.tenn.org/index\\_files/rb54.chentu.htm](http://www.tenn.org/index_files/rb54.chentu.htm); see also *2010 Hajj: Zamfara Remits N1b to NHCN*, NIGERIAN TRIBUNE (July 2, 2010), <http://www.tribune.com.ng/index.php/news/7708-2010-hajj--zamfara-remits-n1b-to-nhcn> [hereinafter *2010 Hajj*] (discussing the extreme spending on religious pilgrimages by the government of the northern state of Zamfara and describing their pride in those pilgrimages).

<sup>122</sup> *2010 Hajj*, *supra* note 121.

<sup>123</sup> No Oyo Pilgrim Will Suffer Neglect—Ajimobi, DAILY INDEPENDENT (Oct. 13, 2011), <http://dailyindependentnigeria.com/2011/10/13/no-oyo-pilgrim-will-suffer-neglect-%E2%80%93-ajimobi>.

<sup>124</sup> Census is a notoriously controversial subject in Nigeria, especially when it concerns religious data; however, Christians and Muslims are estimated to make up forty percent and fifty percent, respectively, of the population. See *Nigeria: International Religious Freedom Report 2008*, U.S. DEPT. OF STATE, <http://www.state.gov/g/drl/rls/irf/2008/108385.htm> (last visited Oct. 18, 2011).

<sup>125</sup> CONSTITUTION OF NIGERIA (1999), §§ 10, 38, 41(1), 42, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.



manifest... [one's] religion or belief in worship, teaching, practice and observance,"<sup>126</sup> but also because the Constitution construes this right as an entitlement that citizens have rather than as a restraint against the government.<sup>127</sup> Unlike the language of the Free Exercise Clause in the U.S. Constitution, which imposes a restraint on the government regarding the permissible scope of its action toward religion—a negative right construction<sup>128</sup>—the construction of the right in the Nigerian context is in positive language. The difference between the two approaches is that positive rights “require other people to act positively—to ‘do something’—whereas... [negative rights] require other people merely to refrain from acting in certain ways—to do nothing that violates the rights.”<sup>129</sup> While one presumably confers benefits, the import of the other is to prevent harm. So conceived, it is no wonder that Nigerian Muslims and Christians see the involvement of their government in pilgrimage as a logical entailment of their constitutional right.<sup>130</sup> Fulfillment of the right is more than simply granting a normative space or a value zone within which people of different faiths and of no faith can carry out the dictates of their conscience. It includes the provision of what is necessary for—that is, financial and bureaucratic support—or the removal of any obstacles, such as financial handicaps, against compliance with these dictates.<sup>131</sup>

This interpretation would be unproblematic but for the other two strictures imposed by the constitution on the conduct of the government. The first bars the government from adopting any religion as state religion.<sup>132</sup> The key word here is “adopt,” ordinarily synonymous with the words “affiliate, embrace, choose, select, elect, assume, [and] appropriate” and understood to mean, *inter alia*, “to take or receive as one’s own (that which is not so naturally),” “to choose and follow.”<sup>133</sup> Thus, what has to be

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<sup>126</sup> *Id.* § 38.

<sup>127</sup> *Id.*

<sup>128</sup> CONST. amend. I.

<sup>129</sup> HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 36 (2d ed. 1996).

<sup>130</sup> See generally Yushau Sodiq, *Can Muslims and Christians Live Together Peacefully in Nigeria?*, 99 THE MUSLIM WORLD 646, 672–74 (2009).

<sup>131</sup> *Id.* at 673.

<sup>132</sup> CONSTITUTION OF NIGERIA (1999), § 10, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>133</sup> WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 26 (Deluxe 2d. 1983).

determined is whether government provision of funds and other forms of assistance toward pilgrimages constitute an adoption of religion within the meaning of the Nigerian Constitution. Since the Nigerian courts have yet to consider this question, it might be useful to seek guidance from pronouncements from other jurisdictions facing similar problems. One pervasive concern in establishment litigation in the United States is the degree of assistance governments may offer to religious organizations.<sup>134</sup> Typically, this has involved financial aid to religious groups that supply services that nonreligious organizations also provide, such as hospitals, adoption agencies, soup kitchens, and parochial schools. In each of these cases, the ultimate beneficiaries of the aid or assistance are either the clients served by the agencies or the students who attend parochial schools, and not the religious organizations themselves, although they function as intermediaries through which the objects of the aid are transmitted. The constitutionality of such aid has often hinged on this distinction between the beneficiaries and the administrators of the aid.<sup>135</sup> The defining characteristic of the former is their status as citizens whose needs are legitimated by their grammar of membership in a political society. While the aid administrators share this common identity of citizenship, it is also within their democratic right to rely upon and be public about their religious values when they seek to participate in society through various avenues of service. The only caveat is that political-participation-through-service cannot become a pretext for religious proselytization.<sup>136</sup>

This argument is at the heart of the three-pronged *Lemon* test, under which a challenged law or policy is valid only if it (1) has a secular legislative purpose, (2) does not have a primary effect that advances or inhibits religion, and (3) does not foster “an excessive government entanglement with religion.”<sup>137</sup> Despite a sustained judicial onslaught against the *Lemon* test, the Supreme Court has not explicitly renounced it, nor has it

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<sup>134</sup> 2 KENT GREENAWALT, *RELIGION AND THE CONSTITUTION: ESTABLISHMENT AND FAIRNESS* 352–53 (2008).

<sup>135</sup> *Id.* at 360–63.

<sup>136</sup> *Id.* at 385–432.

<sup>137</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 674 (1970) (internal quotation marks omitted)).

officially been replaced by any other tests.<sup>138</sup> On the contrary, its elements are routinely invoked by jurists and, as one scholar observes, "cases decided under *Lemon* are treated as authoritative."<sup>139</sup> While the Nigerian Supreme Court is not bound by the jurisprudence of the U.S. Supreme Court or its pronouncements on the First Amendment's Establishment Clause, it seems reasonable to suppose that similar considerations will bear on the Nigerian Supreme Court and its subordinate courts when dealing with the Non-Adoption Clause in Section 10 of the Constitution. More importantly, the elements of the test resonate with the prevailing sentiments in Nigeria about how to resolve the quandary of religion-state interactions.

Of the three, it is the first element of the *Lemon* test that Nigerians would find most controversial to use in assessing the constitutional propriety of government involvement in pilgrimage. The disagreement is not likely to be about "purpose," whether this denotes "the actual aims of those who perform an action, their 'subjective' purposes or aims, or . . . some more objective standard of the significance of what the actors have performed"<sup>140</sup> but rather about what the secular nature of the purpose connotes. Two standard sociological conceptualizations of secularity are worth retrieving here. The term was initially understood to mean "the retreat of religion from various public spaces: politics, science, art, [and] the market," but later expanded to include "the notion of declining religious belief and practice, often thought to be an inevitable consequence of modernity."<sup>141</sup> In a society where this marginalized status of religion has become an empirical fact,<sup>142</sup> a purpose that is secular would be one that reflects the character of that society. This hardly matches the picture of Nigeria's social and cultural reality. The country's more than 130 million inhabitants are almost equally divided between Islam and Christianity, with a tiny minority—about ten percent—claiming to be adherents of

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<sup>138</sup> GREENAWALT, *supra* note 134, at 160.

<sup>139</sup> *Id.* at 161.

<sup>140</sup> GREENAWALT, *supra* note 134, at 164.

<sup>141</sup> VARIETIES OF SECULARISM IN A SECULAR AGE 8 (Michael Warner et al. eds., 2010).

<sup>142</sup> For a view suggesting that the modern West typifies such a society, see LAMIN SANNEH, ENCOUNTERING THE WEST: CHRISTIANITY AND THE GLOBAL CULTURAL PROCESS: THE AFRICAN DIMENSION 47–57 (1993).

the traditional religion or of no religion.<sup>143</sup> It is in light of this breakdown that many Nigerians, Muslims, and Christians alike dismiss the characterization of Nigeria as a secular state on the basis of the Non-Adoption Clause in Section 10 of the Constitution.<sup>144</sup>

The obvious reason for objecting to secularity is its inadequate description of Nigeria and its people, but suspicion about the term is much deeper. A secular state or a secularly motivated purpose, it is feared, will be callously indifferent<sup>145</sup> or even blatantly hostile to religion which, if permitted, would exacerbate Nigeria's problems of moral disorientation.<sup>146</sup> A Nigerian Roman Catholic theologian deems extreme a policy of "[a]n impenetrable judicial wall of separation between church and state" and ridicules those who would support it as insane who have no interest in "the survival of the nation."<sup>147</sup> The threat to the social health of Nigeria is not religion but secularity, evident in the chronic vices of "moral depravity, corruption, oppression, infidelity and syncretism,"<sup>148</sup> which can be cured, according to a Muslim judge, "only by divine injunctions backed by those who govern."<sup>149</sup> On this reasoning, it is not enough simply to provide for the free exercise of religion; the state must also accommodate religious beliefs and practices in its legislative process and policy formulations.

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<sup>143</sup> See Frieder Ludwig, *Christian-Muslim Relations in Northern Nigeria Since the Introduction of Shari'ah in 1999*, 76 J. AM. ACAD. RELIGION 602, 603 (2008).

<sup>144</sup> See David D. Laitin, *The Sharia Debate and the Origins of Nigeria's Second Republic*, 20 J. MOD. AFR. STUD. 411, 413, 419 (1982).

<sup>145</sup> Andrew Koppelman identifies callous indifference as one of the four objections to the secular purpose doctrine. The other three are the rubber stamp objection, which "holds that nearly anything can satisfy the secular purpose requirement, because a secular rationale can be imagined for almost any law"; the evanescence objection, which claims "the 'purpose' that the rule seeks either does not exist or is not knowable by judges"; and the participation objection, which suggests that "the rule makes religious people into second-class citizens by denying them the right to participate in the legislative process." See Andrew Koppelman, *Secular Purpose*, 88 VA. L. REV. 87, 88–89 (2002).

<sup>146</sup> See Sam Amadi, *Religion and Secular Constitution: Human Rights and the Challenge of Sharia* 10–11 (Oct. 25, 2004) (unpublished research report paper on file with the Harvard Kennedy School Carr Center for Human Rights Policy), available at <http://content.hks.harvard.edu/carr/cchrp/research/reports.php>.

<sup>147</sup> IKEM B. C. B. NGWOKE, RELIGION AND RELIGIOUS LIBERTY IN NIGERIAN LAW: FROM THE COLONIAL DAYS TO 1983, at 140 (1984).

<sup>148</sup> SULAIMAN, *supra* note 29, at 3.

<sup>149</sup> Justice Bashire Sambo, *Draft Constitution Fails to Provide for Morality*, NEW NIGERIAN, Jan. 5, 1977, at 7.

What remains unclear from the argument of the opponents of a secular purpose doctrine is whether government funding of pilgrimage is a permissible accommodation of religion. Understood as "an area of allowable and, in some cases, compelled governmental deference to the religious needs of people holding a variety of beliefs,"<sup>150</sup> the concept of accommodation is a free exercise, not an establishment, doctrine. As such, it calls for "a delicate balance between [a] government's duty to promote the cohesiveness necessary for an ordered society and its responsibility to honor the religious practices of citizens by refraining from unnecessary or burdensome regulation."<sup>151</sup> Were the Nigerian government to proscribe pilgrimage, it would clearly be imposing unnecessary and burdensome regulation on its overwhelmingly religious population, thereby abridging that population's constitutional rights. However, the government's current mode of intervention in pilgrimage affairs is not proscription, but rather positive assistance, and justifying this gesture under the rubric of accommodation stretches the meaning of the term beyond its legitimate bound. Such a subversive application of accommodation offers a recipe for "heightened civil strife, corruption of religion, and oppression of religious minorities."<sup>152</sup>

It can be argued that the Nigerian government's sponsorship of pilgrimage—like other instances of its "appeasement of religion,"<sup>153</sup> such as the state funding of a national mosque and a Christian ecumenical center—is responsible for the perception that the Nigerian state "is not simply a policy-producing mechanism balancing different notions of equality against each other,"<sup>154</sup> but is "itself the greatest prize and resource, over which groups engage in a continuing struggle.... It is also a distributor of resources, which is nearly always done differentially."<sup>155</sup> As is often the case when free money is available, it does not matter that the largesse would be spent on frivolous projects or peripheral religious values. This is clearly

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<sup>150</sup> ARLIN M. ADAMS & CHARLES J. EMMERICH, *A NATION DEDICATED TO RELIGIOUS LIBERTY: THE CONSTITUTIONAL HERITAGE OF THE RELIGION CLAUSES* 58 (1990).

<sup>151</sup> *Id.* at 58–59.

<sup>152</sup> Koppelman, *supra* note 145, at 88.

<sup>153</sup> AMADI, *supra* note 146, at 13 (emphasis omitted).

<sup>154</sup> *ETHNIC GROUPS AND THE STATE* 9 (Paul Brass ed., 1985).

<sup>155</sup> *Id.* at 29.

the case with the Nigerian Christian elevation of pilgrimage to an important ritual practice. The former head of the Anglican Church in Nigeria, Archbishop Peter Akinola, admitted that “pilgrimage is unimportant in Christianity,” but he justified his push for government sponsorship because “it was a vital step toward equality with Muslims.”<sup>156</sup> Interestingly, Muslim politicians welcomed a resurgent Christian interest in pilgrimage because they hoped it would force Christians to “abandon their strict interpretations of secularism”<sup>157</sup> since they now benefit from the same sort of aid the state had provided to Islam.

For both Christian and Muslim groups, pilgrimage has become less a matter of complying with a religious injunction than an avenue for political patronage.<sup>158</sup> Their politicization of this ritual—which they wrongly believe is warranted by the principle of accommodation—also reveals their lukewarm commitment to the principle of religious disestablishment and the vision of living in a state where no religion is adopted as a state religion. Neither side seems bothered by the demand of equity imposed by the pluralistic nature of Nigeria’s religious composition.<sup>159</sup> The justification for government support of pilgrimages offered by Christians—to achieve political parity with Muslims—ignores the fact that there are also Nigerians who adhere to the traditional religion and religions other than Christianity and Islam or to no religion at all and who do not receive similar funding from the government.<sup>160</sup> Similarly, the non-strict interpretations of secularity proposed by the Muslims and some Pentecostal Christians would only strengthen the already problematic ties between religion and the state, the kind of effect that *Lemon* fears would advance religion and foster an excessive entanglement between two functionally separate institutions.<sup>161</sup>

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<sup>156</sup> BIANCHI, *supra* note 75, at 214.

<sup>157</sup> *Id.* at 213.

<sup>158</sup> *See id.*

<sup>159</sup> *See id.* at 214–16.

<sup>160</sup> *See* Idumange John, *Nigeria: Abolish State Sponsorships of Pilgrimages*, SAHARA REP. (Feb. 02, 2010, 1:00), <http://www.saharareporters.com/article/nigeria-abolish-state-sponsorship-pilgrimages>.

<sup>161</sup> *See* Lisa Newton, *Divine Sanction and Legal Authority: Religion and the Infrastructure of the Law*, in *RELIGION, MORALITY, AND THE LAW* 179–200 (J. Roland Pennock & John W. Chapman eds., 1988).

But funding is not the only way in which pilgrimages enjoy the support of the state. As already indicated, various government ministries and personnel, including state governors, are involved in their planning and operation, sometimes accompanying pilgrims to the ritual sites.<sup>162</sup> The government is also responsible for the recruitment and compensation of the Pilgrim Commissions' staff at both federal and state levels.<sup>163</sup> In addition, government buildings and web portals are used not just for disseminating logistical information about pilgrimages, but also for teaching about their spiritual benefits.<sup>164</sup> This explicit association of the accouterments of government with religious affairs raises their social significance and extends their influence beyond the ambit of spirituality. However, complaints about the misuse of public money would do a poor job of capturing what is constitutionally troublesome about this manner of government involvement in pilgrimages. To see the relevant harm here, it will be helpful to briefly review how the U.S. Supreme Court has intervened in other cases of establishment litigation involving public exhibitions of religious symbols, such as the crèches, the Ten Commandments, and so forth.

The *locus classicus* for thinking about the constitutional quagmire arising from public display or affirmation of religious symbols is the endorsement test developed by Justice O'Connor in the Court's very first holiday display case, *Lynch v.*

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<sup>162</sup> See National Hajj Commission of Nigeria (NAHCON) (Establishment) Act No. (9) (2006) 93:66 S.O.G A330 §4.

<sup>163</sup> See generally Nguvugher, *supra* note 121.

<sup>164</sup> The Edo State government advertises the following as the benefits of Christian pilgrimage:

1. To experience firsthand the land where our faith was born.
2. To connect us . . . more intimately to our Christian faith.
3. To grow in the deepest understanding of the scriptures.
4. It points us back to the miracles of Christ, e.g. at Cana of Galilee, you will remember where Jesus turned water to wine; at Bethany, you will recall the miraculous raising of Lazarus from the dead.
5. It brings spiritual renewal and revival. The sacred places you will see[,] enter[,] and pray will help to renew your encounter with God and your experience with Him will become more intense than ever.
6. Holy Living: The exercise affects lives morally and spiritually. This builds up holiness because the Christian life is a call to holy living.
7. To witness the miraculous restoration of the nation of Israel[.]

*Information on Edo State Christian Pilgrims Welfare Board, Benin City, EDO STATE*, <http://www.edostate.gov.ng/christian-pilgrims-welfare-board> (last visited Oct. 18, 2011).

*Donnelly*.<sup>165</sup> *Lynch* involved the display by the city of Pawtucket, Rhode Island, of a nativity scene or crèche in a park owned by a nonprofit organization and located in the city's shopping district.<sup>166</sup> Justice O'Connor said that the crucial question was whether the display amounted to an endorsement of religion, or of a particular religion:

The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of that prohibition . . . [by its] endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.<sup>167</sup>

There are several advantages of using this test for the discussion of the pilgrimage palaver in Nigeria over the elements furnished by the *Lemon* test. First, it avoids language that significant segments of the Nigerian population find offensive to their moral and religious sensibilities, notwithstanding that their understandings of secularity or a secular purpose are theoretically stale and jejune.<sup>168</sup> In his recent monumental book, Charles Taylor offers a more adequate account of secularity, which he claims refers not merely to the dwindling of religion or even the functional separation of religion from state, science, and aesthetics.<sup>169</sup> For Taylor, the term connotes "a move from a society where belief in God is unchallenged and indeed, unproblematic, to one in which it is understood to be one option among others, and frequently not the easiest to embrace."<sup>170</sup> Therefore, secularity is not just a net reduction in religious belief or practice, but also a change in the very conditions of belief.<sup>171</sup> "Secularity in this sense," Taylor writes, "is a matter of the whole context of understanding in which our moral, spiritual[,] or religious experience and search takes place."<sup>172</sup>

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<sup>165</sup> 465 U.S. 668, 687–94 (1984) (O'Connor, J., concurring).

<sup>166</sup> *Id.* at 671 (majority opinion).

<sup>167</sup> *Id.* at 687–88 (O'Connor, J., concurring).

<sup>168</sup> Laitin, *supra* note 144, at 425.

<sup>169</sup> CHARLES TAYLOR, *A SECULAR AGE* 3 (2007).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*



Taylor's account of secularity is compatible with the main thrust of the endorsement test, which leads to the second advantage of the test, namely, an emphasis on disparagement as the relevant injury suffered when government publicly endorses religious symbols. The injury arises because of what seems to be an utter disregard for what Taylor calls "the whole context" that shapes religious belief, experience, and practice.<sup>173</sup> In a pluralistic context like Nigeria, the injury of being disparaged as a religious outsider can have repercussions beyond this sphere, including possibly determining whether one has a materially meaningful life or not. Preventing this injury or mitigating its effects then requires a rehabilitation of the most dormant of the religion clauses in the Nigerian Constitution, the Non-Discrimination Clause and its associated norm of equal liberty. This is another advantage for using the endorsement test. The intended goal of the test is *impartiality* in the way that citizens of a religiously pluralistic society are treated such that no one would have any reasons to consider himself or herself superior or inferior to others solely on the basis of religious identity.

But why should anyone be concerned about being discriminated against or disparaged on the basis of religion? An answer to this question has to be sought in what Eisgruber and Sager call the "four structural features of religion" and their effects on "the social meaning of religious displays."<sup>174</sup> The features are: (1) the comprehensiveness of religions—"large, expansive webs of belief and conduct"; (2) the tendency of religions to classify people as insiders and outsiders and sometimes undergirding the classifications with strict enforcement rules; (3) the reinforcing role of religious rituals, for example, pilgrimage, "in signifying who is 'in' or 'out' of these comprehensive structures"; and (4) the fact that "the perceived

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<sup>173</sup> *Id.*

<sup>174</sup> EISGRUBER & SAGER, *supra* note 34, at 125.

stakes of being within or without these structures of belief and membership are often momentous.<sup>175</sup> The upshot of this analysis is that because

religion plays a major role in defining civic identity. . . . [P]ublic endorsements of religion carry a special charge or valence. Such endorsements signify who is 'in' and 'out' of competing large-scale social and ideological structures, and assign powerful and pervasive judgments of identity and stature to the status of being in or out. Religious endorsements valorize some religious beliefs and those who hold them, and thereby disparage those who do not share those beliefs.<sup>176</sup>

This is what is at stake in the unabashed involvement of the Nigerian government in pilgrimages. By lending the imprimatur of the state behind these ritual events, the government makes a preferential option for members of the two dominant religions in the country and treats as outcasts members of other religions or of no religions, as well as members of the favored religions for whom pilgrimage is a low priority requirement. Christians who return from pilgrimages acquire the title of J.P. or Jerusalem Pilgrim, which they proudly put in front of their names, and their Muslim counterparts are referred to as Alhajis, or Alhajas if they are women.<sup>177</sup> These are designations that literally and symbolically enhance the social prestige of the bearers, providing them with a unique advantage to access and manipulate Nigeria's complex networks of political and economic power.<sup>178</sup> To stem the current tide, political and legal debate may have to be moved from the domains of the Non-Adoption and Free Exercise Clauses and relocated at the heart of the Non-Discrimination Clause with its impartiality and equal liberty principles. As the Roman Catholic Archbishop of Abuja and the immediate past Chairman of the Christian Association of Nigeria

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<sup>175</sup> *Id.* For a different account and much longer list of important features of religion, see Robert Audi, *Liberal Democracy and Religion in Politics*, in ROBERT AUDI & NICHOLAS WOLTERSTORFF, *RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN POLITICAL DEBATE* 1, 5 (1997).

<sup>176</sup> EISGRUBER & SAGER, *supra* note 34, at 126.

<sup>177</sup> See Christopher Steed & David Westerlund, *Nigeria*, in *ISLAM OUTSIDE THE ARAB WORLD* 56, 73 (David Westerlund and Ingvar Svangberg eds., 1999).

<sup>178</sup> *Id.*; JEFF HAYNES, *RELIGION AND POLITICS IN AFRICA* 79–103 (1996); DONAL B. CRUISE O'BRIEN, *SYMBOLIC CONFRONTATIONS: MUSLIMS IMAGINING THE STATE IN AFRICA* 1–29 (2003).

rightly put it, "as long as there are pilgrimage commissions and for as long as government continues to support some pilgrimages, it must necessarily face the challenge of equity and fairness."<sup>179</sup>

#### CONCLUSION

This Article has argued that the tendency by scholars to focus exclusively on the Non-Adoption and Free Exercises Clauses in the Nigerian constitution as adequate mechanisms for the protection of the country's religious pluralism and the secular character of the state is mistaken. It contends that existing interpretations of both clauses have encouraged rigid ideological positions among religious and non-religious partisans and have failed to grasp the real nature of the moral hazards that are inherent in a religiously pluralistic society. The Article thus argues that a more adequate test for determining the extent to which the Nigerian Constitution takes cognizance of the country's religious pluralism is its articulation of the norms for opposing inequality and discrimination among the citizens. By examining the involvement of the Nigerian government, at both the federal and state levels, in religious pilgrimages, the Article demonstrates the precarious status of these norms and the imperative to defend their lexical priority over the other constitutional provisions on religion.

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<sup>179</sup> John Onaiyekan, *Dividends of Religion in Nigeria: Public Lecture at the University of Ilorin 23* (May 12, 2010) (unpublished manuscript), <http://www.unilorin.edu.ng/publiclectures/Unilorin%20DIVIDENDS%20OF%20RELIGION%20IN%20NIGERIA%202.doc>.