Islamism, statehood and human rights: a world of difference.

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CHAPTER 1
INTRODUCTION

1.1. RESEARCH QUESTIONS

One of the silent but salient concerns in international relations and law, as revisited in this study, is the relationship between religions and fundamental human rights.[1] It is in view of this concern that the following socio-cultural and legal issues are addressed: Is a religiously based system of government, which recognised God himself as the supreme head of the state, compatible with contemporary international human rights standards? More specifically, does an Islamic theocracy as a system of government constitute an obstacle to human rights norms? What are the factors determining adherence to human rights in the world of Islam?

For example, in relation to the question of equal justice among Muslims as well as non-Muslims, how does the 'Nigerian Shari'ah'[2] factually apply? Has its introduction since 1999 promoted the Rule of Law in the northern region and in Nigerian society at large? Some thematic overview and background to the study will introduce this inquiry on religion and human rights, which is also a contribution to the *universalist-relativist* debate in international relations and law. The introduction will consist of a detailed description of the methodology and scope of the foregoing questions on whether or how theocracies in the contemporary world (of Islam) are compatible with international human rights.

1.2. BACKGROUND OF STUDY (EMERGENCE OF THEOCRACIES IN 21ST CENTURY NIGERIA)

Religion is far from being a spent force in the 21st century public arena. Following the restoration of another *democratic* dispensation in May 1999,

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1 Throughout this study, the ethical and moral quality of human rights is described as the human rights *standard*. Human rights *norms or rules* define the political and legal qualities of human rights.

2 Shari'ah distinctively refers to the revealed law of Islam. Islamic law is used to indicate any accepted or recognised Muslim legal tenet, although the duo of Shari'ah and Islamic law are sometimes used interchangeably.

Nigeria was again embroiled in religious crisis. Some states in the north of the Federation opted for *theocracy,* thereby introducing the Islamic legal system or Shari'ah[3] to govern their states. The institutionalisation of the Islamic code for criminal cases created a third layer of the legal system of Nigeria, which was made up of 'English-style common law and traditional customary courts'.[4] Reasons advanced for the introduction of the new legal order included the perceived need to curb social vices such as bribery and corruption, restoration of traditional values, narrowing the gap between the rich and the poor, and the enthronement of a 'Godly society' that would have genuine respect for human worth and dignity.[5]

The mixed reactions that greeted the introduction of religiously based regimes in federating units in northern Nigeria since 1999 may be explained in terms of the ethno-cultural and demographic configuration of the country. With over 490 ethnic groups, the country is arguably one of the world's most culturally diverse nations.[6] It has been maintained that the ruling elite has, in the past, manipulated census figures for religious and political advantage. There are claims and counterclaims that census figures are often inflated. This makes it difficult to determine the actual number of any people group. The World Bank estimate has also shown that Nigeria is one of the most densely populated countries in Africa.[7]

Sir Fredrick Lugard amalgamated the northern and the southern protectorates in 1914 to form a single territory now known as Nigeria. From the time of the imperial creation onwards, this former British colony has tried to make sense of itself as a nation.[8] Nigeria has had about six constitutions since its independence in October 1, 1960, 'many years when none of them was in force, one two-and-a half year civil war and seven military coups'.[9]

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3 The sudden death, in 1998, of the Military ruler, Sani Abacha, and subsequent elections in 1999 brought Olusegun Obasanjo – a Christian from the south – to the presidency.

4 Visit the *Financial Times* website for Special Report on Nigeria (February 24, 2004) at www.ft.com/specialreports.

5 For a brief representation of the Nigerian Muslims' dominant belief, see Sanusi Lamido Sanusi 'Amina Lawal: Sex, Pregnancy and Muslim Law' (Lagos, August 22, 2002), available at www.gamji.com/sanusi28.htm.

6 See generally P. Johnston and J. Mandryk, *Operation World* (Paternoster Publishing, 2001). But in 2012, the World Bank recently estimated that 168.8 million people live in the country, available at www.worldbank.org/en/country/nigeria.

7 See, for example, Okoi Arikpo, *The Development of Modern Nigeria* (Penguin Books, 1967). No one actually knows! A remark by Festus Odimegwu that Nigeria never had a credible census exercise led to his being sacked as the head of the Nigerian Population Commission. See Friday Olokor, 'Odimegwu Quits as Population Commission Chairman' (Abuja, October 18, 2013), available at www.punchng.com/news/odimegwu-quits-as-population-commission-chairman/.

8 Ibid.

9 The *Financial Times*, *supra* note 4. The constitutions include: the colonial era (1914–1960); Independence Constitution (1960); and those of 1963 (First Republic); 1979 (Second Republic); 1993 (Third Republic); and 1999 (Fourth Republic).

Officially, Nigeria remains a multi-religious state with apparent freedom of religion.[10] Whereas it is widely accepted that the north is predominantly Muslim, the country has a delicate balance between Muslim and Christian populations. Besides, its three largest rival ethnic groups (namely Hausa, Igbo, and Yoruba) place Nigeria in a difficult struggle against centrifugal forces.[11]

When Shari'ah was first re-introduced in Zamfara in 1999, the human rights environment in Nigeria found itself on the brink of disaster. Advocates and opponents of the religious law arose virtually from all walks of life, significantly cutting across tribal divides within the northern region. While Shari'ah advocates now hail its introduction as promoting socio-political justice, opponents of the system regard it as a weapon of oppression. Subsequent crises in Nigeria suggest that Shari'ah could be unworkable in a pluralistic and differentiated society.[12] Reactions and counter-reactions were sometimes not limited to verbal or literary form:[13] many devotees became physically violent, resulting in the wanton destruction of life and property.[14]

1.3. PURPOSE STATEMENT OF THE STUDY

The purpose of this study is to find out whether an Islamic theocracy as a system of government is compatible with international human rights. This study examines whether there is any significant relationship between human rights violations and the implementation of an Islamic regime. How religion, politics, and law relate to each other to ensure that peace and justice reign within the human rights environment of the Muslim world will be generally explored. The extent to which the administration of the Nigerian Shari'ah in particular agrees with the object and purpose of instruments such as the International Covenant on Civil and Political Rights (ICCPR)[15] will in so doing be ascertained.

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10 For further information on freedom of religion and its expression in the country, see Chapter IV of the Constitution of the Federal Republic of Nigeria (1999), available at www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm.

11 See P. Johnston and J. Mandryk, *Operation World* (Paternoster Publishing, 2001), 486–495. See also BBC World Service, 'More details of new Nigeria Constitution', *BBC News* (May 17, 1999), available at http://news.bbc.co.uk/1/hi/world/africa/345339.stm.

12 See generally S.O. Ilesanmi, *Religious Pluralism and the Nigerian State* (Ohio University, USA: Centre for International Studies, 1997).

13 See M.A. Bidmos, *Inter Religious Dialogue: The Nigerian Experience* (University of Lagos, 1993).

14 One of the earliest religious fracases was in Kaduna where property and thousands of lives were destroyed in February 2000. For more information on the three-day war see A. Forbes, 'Muslims and Christians Clash in Nigeria', *Daily Mail* and *Guardian* (February 22, 2000).

15 This international instrument was adopted and opened for signature, ratification and accession by General Assembly resolution 2200a (XXI) of December 16, 1966 *entry into force* March 23, 1976, and in accordance with Article 49. This study, however, will concentrate on

1.4. THEMATIC OVERVIEW OF HUMAN RIGHTS (AND RELIGIOUSLY BASED SYSTEMS)

In the human rights environment of Nigeria, the Shari'ah controversy rages on fiercely.[16] This controversy gave the impetus to find out whether religiously based regimes are compatible with human rights. The investigation, in other words, concerns the human rights environments of 21st century regimes where law and religion constitute an integral whole. A conceptual discourse, it is assumed, will allow for a better appreciation of how human rights and religion might interact in such contexts. This thematic overview will thus consider: (1) the development of the notion of human rights, and (2) the problem of competing values in international human rights law.

1.4.1. THE DEVELOPMENT OF THE NOTION OF HUMAN RIGHTS

World War II was a tragic experience. As people around the globe contemplated the mayhem and the horrors of the war years, a need for reliance on 'respect for human rights as a means to preclude a repetition of such horror'[17] became clear and urgent. The United Nations, in response, took a leading role in formulating rights that had in the past been left to municipal legislations. Eventually, in 1948, the international community adopted its Universal Declaration of Human Rights (UDHR).[18]

Even though 'human rights', as shall be demonstrated in this section, is not a recent idea, the term came into global currency only after its appearance in the United Nations Charter.[19] How the notion of human rights evolved from its conception to become an international standard in modern times will be

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Articles that are significant to freedom of religion vis-à-vis equal justice. For details visit www.ohchr.org/english/law/ccpr.htm.

16 Up to 3,000 people, according to official observers, died in September 2001 during another religion-related bloodbath in Jos, which is one of the few dominant Christian state headquarters in northern Nigeria. The *Financial Times*, in its report on the crisis, suggest: 'Eclipsed at the time by the terrorist attacks in the US, the riots and the ensuing crackdown by security forces may have caused as many victims as 9/11'. The seeming supremacist and religio-cultural campaign which the political elite in the north launched by introducing Shari'ah is now being sustained by a more puritan but violent sect known as the Boko Haram. See for example P. Rogers, 'Nigeria: the Generic Context of the Boko Haram Violence' in *Oxford Research Group* (London, April 1, 2012), available at www.oxfordresearchgroup.org.uk/publications/middle_east/nigeria_generic_context_boko_haram_violence.

17 A.E. Mayer, *Islam and Human Rights* (Westview Press, 1999), 41.

18 For this historic proclamation of human rights and fundamental freedoms, visit the United Nations official website at www.un.org/Overview/rights.html.

19 Signed on June 26, 1945. Came into force in October 24, 1945. For details visit www.un.org/aboutun/charter/.

explored. This will necessarily show how the term has changed over time both in its meaning and its usage. Issues to be briefly mentioned relate to semantics, history, theoretical assumptions, and legislation of human rights.

Firstly, failure to define words can bring about a sense of disquiet. That the importance of semantics to any theoretical assumptions cannot be downplayed is particularly demonstrated in *The Dilemma of Islamic Human Rights Schemes*.[20] Ebrahim Moosa explains the difference between 'right' as a moral concept – '*being right*' – and as a political concept – '*having a right*'. His differentiation of the meanings of 'right' enables a better grasp of its distinctiveness: 'In the first instance, "right" refers to moral righteousness and in the second, it may refer to political entitlement'.[21]

While the concern or formulation of secular and religiously based human rights schemes 'may sound the same', Moosa cautioned, they have 'very different theoretical assumptions and practical implications'.[22] The significance of the meaning or usage of 'right' to human rights discourse therefore warrants examination. This is especially because secularly based human rights tend to lay more emphasis on the political significance of having a right.

The violation of an entitled right could be tantamount to the violation of a victim's humanity. This idea is arguably conveyed in the United States Declaration of Independence (1776): 'all men are created equal and *endowed* by their creator with certain *unalienable* rights', among which are 'life, liberty and the pursuit of happiness'.[23] By implication, a person's *rights* are as *sacred* as his *life*. Claiming a right, however, seems only possible where others recognise it as an entitlement.

Second is how the notion of human rights developed. Referring to the Universal Declaration of Human Rights (UDHR), A.K. Brohi in *Islam and Human Rights* explained that the Preamble[24] spells out a political, sociological, and historical interpretation of the circumstances of world society in the aftermath of World War II.[25] Since ancient times, punitive laws have always been created for redress and to guard against any violation of rights. So, whereas the usage of human rights as a legal term may have followed the adoption of the United Nations Charter in 1945, human rights principles can be traced to pre-modern times and civilisations, including the religiously based ones.

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20 See generally E. Moosa, 'The Dilemma of Islamic Human Rights Schemes' in *Journal of Law and Religion*, Vol. 15, No. 1/2 (2000–2001), 185–215.

21 Ibid, 190.

22 Ibid. Compare with A.E. Mayer, *supra* note 17.

23 See for example, F. Whitson Fetter, 'The Revision of the Declaration of Independence in 1941' in *The William and Mary Quarterly*, 3rd Ser., Vol. 31, No. 1 (January 1974), 133–138. For a pioneering discussion on the legal analysis of 'rights', see also W. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (LawBook Exchange 2010).

24 A.K. Brohi, 'Islam and Human Rights' *PLD Lahore 28* (1976), 148–160.

25 Ibid. Study the Preamble of UDHR.

Meanwhile, the United Nations Charter (1945) had earlier made a call for human rights to be respected;[26] and this was subsequently discussed in the UDHR (1948). Even though the Charter did not specify what human rights and fundamental freedom entails, that the purpose of the United Nations' initiative was the construction of a new world order can be easily understood from the content of the Charter. The document stipulates that the 'recognition of the *inherent dignity and the equal and inalienable rights* of all members of the human family that is the foundation of freedom, justice, and freedom in the world'[27] should be the basis for the new order.

There are claims that thoughts and efforts to establish a cohesive regime for rights vis-à-vis duties[28] predate the reign of Ur-Nammu and that this ruler, in circa 2050 BC, created what was arguably the first legal codex. Ancient history records how the protection of rights was considered in subsequent ancient law. One of the best-preserved examples is the legal code of Hammurabi, who ruled Babylon between 1792 and 1750 BC.[29] Another piece of evidence is the 'Cyrus Cylinder', which was discovered in 1879.[30] This historic legal document confirms, in a way, the Judeo-Christian narrative[31] suggesting that, when the gentile King Cyrus set free the captured and uprooted Jews, the Persian Empire (Iran) established unprecedented principles of human rights. Issued after the conquest of Babylon in 539 BC, the decree abolishes slavery 'so all the palaces of the Kings of Persia were built by paid workers in an era where slaves typically did such work'.[32] Religious freedom was also implied in the document, which set free the Jews.

More recent history further accounts for how a series of struggles to free people from the grip of powerful and dominant political entities characterises the past.[33] Whether in medieval or in pre-modern political systems, emphasis was often laid on 'duties and privileges that arose from people's status and relationships'.[34] In the 13th century for instance, the Pope and some English barons united against the sovereign King John of England, coercing him to

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26 For this document, visit the UN official website at www.un.org/aboutun/charter/index.html.

27 Ibid.

28 See for example F.C. Fensham, 'Widow, Orphan, and the Poor in Ancient near Eastern Legal and Wisdom Literature' in *Journal of Near Eastern Studies* Vol. 21, No. 2 (April 1962), 129–139.

29 Ibid, 129ff.

30 Ibid. See also S. Suren-Pahlav, 'Cyrus the Great: The First Declaration of Human Rights' in *Pars Times,* available at www.parstimes.com/library/cyrus_cylinder.html.

31 Ibid. For scriptural references see Bible, 2 Chronicles 36: 15–23, Ezra 1:1–11; 2:12–70; 6:3–5; 7:8, 15–25, and Isaiah 44:28, and 45:1.

32 Ibid.

33 See for example, D.A. Orr, 'England, Ireland, Magna Carta, and the Common Law: The Case of Connor Lord Maguire, Second Baron of Enniskillen' in *The Journal of British Studies*, Vol. 39, No. 4 (October 2000), 389–421.

34 Ibid. Cf. M. Rayner, 'History of Universal Human Rights – Up to WW2' in *History of Human Rights*, available at www.universalrights.net/main/histof.htm.

accept an obligation: that 'the will of the King could be bound by law'.[35] By issuing the *Magna Carta* in 1215, the King apparently subjected his subjects, as well as himself, to a constitutional regime. Given that the power of the king was apparently not limited in the Middle Ages, it is arguable that the *Magna Carta* was foundational to (1) the modern concept of rights, (2) the recognition of these rights and (3) the rights-conscious treatment of people.[36]

A link between the evolution of human rights as a legal concept and the emergence of the nation-state as a political system is even being established.[37] In Britain, the *Magna Carta* ushered in the nation-state polity just as the ensuing model of statecraft led to a gradual change in relationship between kings and subjects. Nation-state polity significantly confers citizenship on the individual. And as far as scholars like Moosa are concerned, 'the conferral of citizenship' on the ruled remained 'the most critical development' in the polity.[38]

With rulers and the ruled all subject to the law, the relationship between the individual and the state was affected invariably. There was a shift in attention 'from social responsibilities to the individual need and participation'.[39] The French Revolution, which culminated in the Declaration of Rights of Man and the Citizens, on August 26, 1789, readily illustrates this shift in concern.[40] It distinctively declares a set of 'individual and collective' rights of the people. Although apparently different in emphasis from the earlier US Declaration of Independence that emphasises the importance of rights, the French Declaration in a similar inspirational term asserts the primacy of rights because it is perceived to be natural.

Thirdly, any sophisticated form of law demands a considerable amount of thought. By declaring that the rights are not only to French citizens but to *all men without exception*, the French Declaration also raises two matters of theoretical significance: the inherent nature of rights and the universality of rights.[41] These two subjects will be closely examined.

Meanwhile, certain ideas are found in an ancient Greek worldview,[42] which in some way anticipated the doctrine of human rights. Some scholars have

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35 Ibid.

36 Ibid. The debate in Spain from 1550–51 that followed the Spanish conquest of the Americas was about the welfare of the conquered people. One might thus see this as representing the first vigorous discourse on human rights of a disenfranchised people in European history. An antecedent may however be found in the 13th century Mali, when the right-conscious Manden Charter was drawn in 1222 to protect life and opposed slavery.

37 Ibid. Cf. E. Moosa, *supra* note 20, at 190.

38 Ibid.

39 Ibid.

40 See for example R.R. Ludwikowski, 'The French Declaration of the Rights of Man and Citizen and the American Constitutional Development' in *The American Journal of Comparative Law,* Vol. 38, Supplement US Law in an Era of Democratisation (1990).

41 Ibid.

42 For a comparative study between the alternative (Sophist) view and that of Heraclitus modelled by Stoics see p. 15 and generally E. Zeller, *Outlines of the History of Greek Philosophy* (13th ed., W. Nestle, 1931) 209, and 266, also his *Stoics, Epicureans, and Sceptics* (1870).

argued that the concept of human rights first appeared among the Greeks. In one of the Hamlyn lectures for instance, Norman Anderson reckoned that this doctrine was as old as Heraclitus of Ephesus, whose teaching was elaborated by Socrates, Plato and Aristotle.[43] He described how the fundamental moral law with its intrinsic value came to be regarded as the 'natural rights of man'.[44] Although not usually acknowledged, some historians still expound that the doctrine of natural law was the direct progenitor of modern human rights.[45]

Since the 17th century, apart from the aforementioned impacts of nation-state polity on the status and role of an individual within his political environment, this policy also brought about an earnest attempt to demystify rulers and their rules.[46] An anthropocentric demand for people's rights to political participation, religious freedom and expression significantly led to the English Revolution of 1640. The trend continued. The language and nature of the English Bill of Rights, which in 1689 followed the Glorious Revolution of the previous year, typically shows a departure from earlier theocratic tradition where the King or law assumes, by nature, a divine status.[47]

It was the Enlightenment that eventually facilitated the separation of natural law from the grip of religion. According to Ann Mayer: 'The development of the intellectual foundation of human rights was given impetus by the Renaissance of Europe and by the associated growth of rationalist and humanistic thought, which led to an important turning in Western intellectual history'.[48] Human reason was to become the final arbiter in human affairs.

The teleological reading of natural law seemed past its best. Under the influence of philosophers such as Hugo Grotius, Thomas Hobbes, and most notably John Locke, reason, not religion, increasingly dominated public thought and discourse.[49] Emphasis was in the end put, not particularly on 'natural law', but on 'natural rights': an assertion that people possess certain rights by virtue of being human. Locke's religious orientation in relation to his political and theoretical inclination is succinctly captured:

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43 N. Anderson, *Liberty, Law, and Justice* (Stevens and Sons, 1978), 34.

44 Ibid, 16. N. Anderson stated that the whole concept has only shifted in emphasis from natural law to natural rights: 'from an appeal to a divine law which man as a rational creature could in part discern and apply to proclamation of the inherent and sacred rights of man'.

45 For further studies, see for example P.R. Beaumont (ed.), *Christian Perspective on Human Rights and Legal Philosophy* (Paternoster Press, 1998); See also J. Finnis, *Natural Law and Natural Rights* (Oxford, 1980).

46 Ibid, 73ff.

47 M. Rayner, *supra* note 34.

48 A.E. Mayer, *supra* note 17, at 39.

49 M. Rayner, *supra* note 34, at 1 Cf. J. Warwick Montgomery, 'Why a Christian Philosophy of Law?' in P.R. Beaumont, *supra* note 45, at 73ff. However, it must be added that Aquinas's natural law theory seems to be grounded more in Aristotle than dogma.

> Though Locke believed natural rights were derived from divinity since (Locke himself believed) humans were creations of God, his ideas were important in the development of the modern notion of human rights. Lockean natural rights did not rely on citizenship or any law of the state, nor were they necessarily limited to one particular ethnic, cultural or religious group.[50]

In view of his natural rights doctrine, Locke may be said to encourage a liberal interpretation of natural law on the one hand. His work, on the other hand, aided subsequent expansions on the theme of universality. The implication of this theme for modern human rights thus deserves a closer scrutiny. Meanwhile, human reason is sometimes seen as a gift of nature (from God). That philosophical responses to human and political challenges following the Renaissance mostly extol the virtue of human reason cannot be over-emphasised. Moira Rayner reformulated the prevailing concern:

> One of the first, and most important, battles was about politics. Could 'natural rights' be handed over to rulers? People in their 'natural' condition have unlimited freedom. If they choose to be ruled, they surrender either all, or at least some of this natural right' to their king or government, in exchange for civil society and peace. If they could surrender 'all', then people could be subjected to absolute government authority and be under an absolute duty to obey. If only some could be surrendered, then the question is what part of those freedoms do we give up.[51]

With citizenship replacing the idea of political subjects, rulers and the ruled became co-subjects of law. The acquired freedom of thought and expression led to the development of doctrines of human rights *for all people to accept and apply*.[52] And alongside this was the freedom to search for solutions to their problems outside the box of religion. As critical investigation of 'rights' in relation to 'human nature' proceeds, so the problem of being tempted to think and make decisions for 'the other' raises its ugly head, all in the name of natural universal rights and liberty.[53]

The universality of Western thoughts on human rights was being promoted on two fronts. As a state policy, the American Declaration of Independence states what constitutes the 'unalienable rights' of 'all men' just as the French Declaration is held to be 'universal' and thereby applicable to 'all men without exception'.[54] Theorists such as the 18th- and 19th-century philosophers Thomas Paine, John Stuart Mill and Hegel likewise expanded the theme of universality.[55] These thoughts on rights and human nature obviously derive from a European

50 Ibid.
51 Ibid.
52 R.R. Ludwikowski, *supra* note 40.
53 Ibid.
54 Ibid.
55 Ibid. Cf. M. Rayner, *supra* note 34.

Christian heritage. However, as shall be demonstrated next, they continue to influence the doctrine of human rights and the consequent development of the laws of human rights.[56]

Fourthly, the legislation of human rights is a significant step in international law. That law exists simply as an instrument of human rights policy is arguable. Jurists have always been concerned about future human rights environments. Mr Justice Davis, for example, wrote on the importance of law to human rights in the second half of the 19th century: 'By the protection of the law, human rights are secured; withdraw that protection and they are at the mercy of the wicked rulers or the clamor of an excited people'.[57] In other words, laws must be made and put in place to protect the weak against violation by despotic regimes[58] or 'an excited people' – a majority in the modern world of democracy tyrannising the minority people groups. Therefore, it is necessary to consider how such a dream to legislate for the protection of human rights came true and was translated into a legal standard of international relevance.

By the 20th century the doctrine of human rights had acquired significant value within the international community. The horrors that preceded and accompanied World War II significantly informed the drastic move towards the legislation of human rights.[59] Antonio Cassese, in *International Law*, blamed the Nazis' shared 'disregard for the dignity of the human being' as being the root cause of the War. The league of the victorious powers sought 'to punish those guilty of atrocities.'[60] *De facto* awareness of human rights doctrine proved to be insufficient. This led to the development of international criminal law with the purpose of bringing culprits to justice. Alongside this was a desire to 'prevent the recurrence of similar acts in future by setting standards to be observed' even in times of peace.[61]

With Article 1 of the UN Charter, a human rights agenda was set for the United Nations and its member states. In 1948, the UN General Assembly adopted the draft of the Universal Declaration of Human Rights that the Commission on Human Rights had prepared. The adopted declaration allows for codification of rights contained in the international standard into conventions. The emergent standards are since being held as constituting an international Bill of Human Rights.[62]

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56 Ibid.

57 *Ex Parte Milligan*, 71 U.S. 2 (4 Wall.) (1886).

58 Ibid. Cf. generally H. Hongju Koh, 'The Case against Military Commission' in *The American Journal of International Law,* Vol. 96, No. 2 (April 2002), 337–344.

59 See generally, among others, A. Cassese, *International law* (Oxford University Press, 2001). Also H.J. Steiner and P. Alston, *International Human Rights in Context* (Oxford University Press, 2002); B. Galligan and C. Sampford, *Rethinking Human Rights* (Federal Press, 1997).

60 A. Cassese, *supra* note 59, at 351.

61 Ibid.

62 Ibid.

Further standards are still being developed – all with the purpose of creating a freer and safer international human rights environment.[63] Each of these covenants addresses different categories of rights, which evidently reflects the different political concerns and procedural realities in member states. Two covenants of contextual significance were adopted in 1966: one is the International Covenant on Civil and Political Rights (ICCPR).[64] This covenant articulates the specific, liberty-oriented rights that the state may not take away from its citizens, such as freedom of expression and movement. Another covenant, the International Covenant on Economic, Social, and Cultural Rights (ICESCR),[65] defines an individual's right to basic necessities, such as food, housing, and health care. Since the formulation of these two instruments, there has been a continuous process of drafting and ratification of human rights conventions as well as monitoring and reporting on compliance.[66]

In short, studying the precursors of modern human rights standards confirms that it is deeply rooted in history. By the 17th century, attention had started to shift in political and intellectual discourse 'from social responsibilities to the individual's need and participation'. Alongside this was the need to construct philosophical models to address problems associated with rights, democracy and legal rules within the context of a nation-state. The doctrine of natural law was then advanced, as manifested in 'Locke's theory of a social contract, Montesquieu's concept of the separation of powers, and Rousseau's theory of the sovereignty of the people'.[67]

By the 20th century, the political thinking of these rights theorists had acquired value within the international community. Their influence invariably brought about a radical departure from the communalistic view on the individual and his relationship with the sovereign state: 'Traditionally individuals were under the exclusive jurisdiction of the State of which they were nationals and where they lived. No other state could interfere with the authority of that State, which in a way had a sort of right of life and death over those individuals.'[68]

The horrific humanitarian experience of World War II also had a drastic effect on the relationship between international law and the individual: 'Individuals were no longer to be taken care of, on the international level, *qua* members of a group, a minority, or another category. They began to be protected as human beings.'[69] As this study will demonstrate, international protection of human rights as an individual entitlement has since the war continued to

63 Ibid. See particularly H.J. Steiner and P. Alston, *supra* note 59.
64 Ibid.
65 Ibid.
66 Ibid.
67 A. Cassese, *supra* note 59, at 349.
68 Ibid, 350.
69 Ibid, 351.

gather legal momentum. But, given the seemingly pre-determined international status of human rights, can this regime be said to adequately represent values and norms that are acceptable to all the member states of the international community? This question is considered next.

1.4.2. PROBLEMS OF COMPETING VALUES IN HUMAN RIGHTS

The international community is a conglomerate of cultures. This is, for example, made obvious by the existence of theocracies alongside secular liberal democracies in the apex world organisation – the United Nations. Given the cultural mix of the body, the universality of the doctrine of human rights remains a controversial issue in international law. Does the Universal Declaration truly reflect the value systems of all member states of the United Nations, irrespective of each society's moral, political and socio-economic order? Is there complete agreement among member states about the nature and substantive scope of human rights? Can one reasonably conclude that the widespread acceptance on the domestic and international planes of the principles of human rights, which replaces the phrase 'natural rights (of man)', will eventually put an end to an ongoing universalist-relativist debate?

Perhaps because of its pedigree in the history of secular West, some argue that modern human rights requires identification with a secularist concept that, rather than *ascribed,*[70] a right is *entitled.*[71] Modern human rights' focus on the international protection of the individual also has an impact on the doctrine of state sovereignty. Consequently, there are protests that human rights do not fully reflect the different worldviews of member states outside the West. Relativists thus posit that certain 'rights and rules about morality are encoded in and thus depend on cultural context.'[72] The ensuing debate is explored on two levels: (1) the political and (2) the religio-cultural.

Much remains controversial about international human rights standard in relation to politics. During the Cold War for instance, the contentions that were initially dominant between the Communist world (as well as its sympathisers) and the Western democracies show that different people or states can understand human rights in different ways.[73] Accordingly, there are ongoing debates among

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70 Allah gives rights to the individual based on his/her faith in Islam. For studies on how status is accorded in different cultures and particularly on the difference between 'doing' and 'being', see for example 'Achievement vs Ascription' in *Multicultural Impact*, available at www.stanford.edu/group/scie/Career/Wisdom/ach_ascr.htm.

71 A person possesses these rights as entitlements simply because he/she is a 'human being'.

72 H.J. Steiner and P. Alston, *supra* note 59, at 366.

73 See generally A. Cassese, *supra* note 59, at 355.

human rights movements on questions concerning the 'universal' or 'relative' character of the rights[74] that are declared in major instruments:

> These alternative understandings of the character of human rights have been cast in different but related ways – for example, 'absolute' rights (compare 'universal') as opposed to 'contingent' rights (compare 'relative'), or imperialism in imposing rights (compare 'universal') as opposed to self-determination of peoples (compare 'relative').[75]

This is explained, for example, by the attitude of many developing countries towards civil and political rights, which was initially that of indifference, and in some instances hostility. The reason for this attitude is the subversive effects of human rights on the authority of governments and the potential risk for state security.[76] International protection of human beings consequently entails a gradual divergence from the traditional principle of state sovereignty.

Human rights norms as well as their emphasis on individuals and the sovereignty of the people (rather than the state) are, by implication, politically erosive to foundations on which kingdoms and other non-democratic regimes rest. Also, by removing the veil that covered and protected the state from external interference, human rights potentially weaken the traditional understanding of domestic jurisdiction that enjoyed autonomy and greater strength than it does in modern times. Whatever the implications of the concerns and legal orientations of modern human rights for societies with conflicting values, contrary claims by advocates of universalism that international human rights standards *are* and *must be* the same everywhere makes the universalist-relativist debate survive,[77] and now continue, in different forms.

At the moment, the human rights debate is usually either within a North-South framework (between developed and less developed countries), or religious framework (often between Western liberal democracies and theocracies, Islam in particular). Significant links have been made between claims of 'sovereign autonomy' for a state to follow its path and claims associated with 'cultural relativism'.[78] Besides, developing countries need a strong central government for viable economic development. The foregoing perhaps explains why the 'government structure typical of many African and Asian countries was (and often still is) that of a community leader exercising undisputed power.'[79]

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74 For example Article 27 of the ICCPR stipulates that members of any minority people groups have the right 'to enjoy their own culture, to profess and practice their own religion, or to use their own language'.

75 H.J. Steiner and P. Alston, *supra* note 59, at 366.

76 See generally B. Galligan and C. Sampford, *supra* note 59.

77 Ibid. The debate between the non-Communist states especially the Western democracies, and the Communist states actually died together with the Soviet Union.

78 Ibid.

79 A. Cassese, *supra* note 59, at 356.

Apart from the above-mentioned issues of politics and international relations in the unending debate, there is also the problem of religious and cultural values. Even though, as tangentially mentioned earlier, the notion of human rights is common to most cultures and religions of the world, the universality of modern human rights attracts criticisms particularly from religiously based regimes.

For instance, an experience during the United Nations Human Rights conference in Vienna in June 1993 shows that Muslim countries continue to lead the contest against the universality of the concept of morality upon which modern human rights are based.[80] A participant, Bassam Tibi, recalled:

> In Vienna, while human rights activists from Muslim countries – like Iran and Sudan – were drawing attention to the severe violations of human rights in their own countries (acting in the basement of the Vienna Centre, where the NGOs met during the June 1993 UN Conference), ministers of foreign affairs of the very same states convening on the higher floors of the Vienna Centre were emphasizing the specific character of their culture against the claim of the universality of human rights.[81]

It seems indisputable that those states share some common set of norms and values, which are rooted in Islam – whether Shiite or Sunni. Shortly after the Iranian Revolution of 1979 for example, Said Rajaie-Khorassani stated in 1981 that an Islamic republic could not implement the Judeo-Christian influenced UDHR 'without trespassing' Islamic sacred law.[82] The Iranian representative to the UN implied that guarding against infringing Shari'ah must take precedence over the enforcement of human rights regimes. When the Saudi Minister of Foreign Affairs spoke in Vienna for other Muslim colleagues, a similar cultural-assertive claim was echoed: 'Muslim human rights can only be derived from the Islamic Shari'ah.'[83]

Relativists could well be legitimising 'the well-known violations of human rights' in their respective states.[84] However, their common emphasis on Islamic law is significant as it suggests that: (1) the secular human rights regime is based on values that are sometimes inconsistent with Shari'ah, the supreme law in an Islamic state, (2) the protection of 'human rights' is not impossible in the Muslim world and (3) in an Islamic context, 'Shari'ah remains the source of rights and obligation'.[85] All this shows that human rights as taught or understood in Islam can be distinctly different from those in a secular concept or scheme.

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80 See for example, B. Tibi, 'Islamic Law/Shari'ah, Human Rights, Universal Morality and International Relations' in *Human Rights Quarterly*, Vol. 16, No. 2 (May 1994), 277–299.

81 Ibid, 278.

82 Ibid.

83 Ibid.

84 E. Moosa, *supra* note 20. Cf. A.E. Mayer, *supra* note 17.

85 Ibid, 193.

When exploring how secular rights schemes compare with traditional Muslim jurisprudence, one confronts at least four different but related issues:

(1) *Rights* are no more important than civil and devotional *obligations* in Islam. The equal status accorded to the duo of rights and obligations seems to be more emphasised in Islamic rights schemes: 'The relationship between rights and duties is an interpersonal and correlative one. In the enforcement of a right, a jurist understands that one party has a claim to have a right (*haqq*) and another an obligation (*wajib*) to honour a right.'[86] Every right thus has a corresponding obligation.
(2) While rights in the secular rights scheme are recognised as an entitlement for any human being, it is Allah who ascribes rights in Islam. From a normative viewpoint, the religious nature of rights in orthodox Islam makes for a superior and purer human rights scheme.
(3) The shift, which allows the same level of international protection for any individual as a human being regardless of the person's status and role in his community, is at variance with the communalistic culture of the Muslim world. It might thus be the case that whatever threatens Islamic culture will constitute a threat to the Muslim state, particularly its sovereignty.
(4) A religiously based human rights theory or practice could appear distinctly out of the ordinary to democracies of the modern West. Norman Anderson gave some reasons for the prevalence of a non-theocratic approach to human rights law:

> Today the existence, the character and content of divine law are usually regarded as exclusively the concern of the theologian, while the theory of natural law is commonly relegated to the sphere of the moral philosopher or the historian; and the nature of law has tended to be pursued by lawyers at a very different plane.[87]

Whatever the shades of opinion, religion or the lack of it still defines concepts of governance in modern human rights environments. There are growing revolutionary attempts, on one plane, to secularise existing theocratic regimes.[88] On another plane are clamours for de-secularisation as well as calls for the enthronement of theocracies, for example in Nigeria. Whatever the plane of argument, belief in the divine law that, ideally at least, is equally incumbent on both ruler and subject[89] remains fundamental in contemporary theocracies, and Islam is no exception. It is thus necessary to examine whether or not the

86 E. Moosa, *supra* note 20.
87 N. Anderson, *supra* note 43, at 17.
88 Although the term 'secularisation' is rarely used, constitutionalisation movements in contemporary Islamic countries like Bangladesh do not seem to have a different political agenda or system of governance.
89 N. Anderson, *supra* note 43, at 17.

international human rights law is compatible with religiously based human rights doctrine(s) of the world of Islam in the 21st century.

1.5. METHODOLOGY

The composite nature of religio-legal orders in particular necessitates an inter-disciplinary investigation. Incidentally, legal orders and international law are now being studied from a multi-disciplinary perspective. Josef L. Kunz's thought and works are contextually instructive. His article 'Pluralism of Legal and Value Systems and International Law' for example shows a preference for an integrated approach, which, according to him, is informed by 'a life dedicated to the study of international law, long studies in philosophy of law and more recent studies in comparative law'.[90] His research experience in law and legal science notably revolved around different legal systems, but usually within Western positivist tradition(s).

Kunz believes that any appropriate study of law must, at least, take into account 'the different legal systems and the different systems of values which underlie these legal systems and the culture (of) which they are part.'[91] Hence comes the thinking that the analytical approach common to the legal profession is inadequate and unable to give a full understanding of any of the legal systems in the West. In other words, law may not be studied apart from the legal tradition and the worldview that produced the tradition.

The insufficiency of a solely analytical approach seems more obvious in studies involving legal orders that have a religious foundation. Here, unlike positive law, faith and values have a more explicit effect on how a regime is interpreted or applied. The Shari'ah phenomenon in Nigeria customarily has implications for politics and religious values of the legal environment. It implies that a typical lawyer's par excellence analytical approach, which ignores the faith or values of the legal context[92] of the people, will be insufficient and may lead to error – and miscarriage of justice. Studying a religio-legal order therefore requires an integration of the analytical approach with the axiological. Kunz writes:

> It is not essential whether we speak of this system of values as natural law or as mere ideologies. For even if they were not more than ideologies – Verdross has recently stated – their knowledge would still be necessary in order to understand this legal

90 J.L. Kunz 'Pluralism of Legal and Value Systems and International Law' in *The American Journal of International Law*, Vol. 49, No. 3 (July 1955), 370–376, at 370. See also A. Cassese, *supra* note 59, at v.

91 Ibid, 371. Compare, for example, with I. Manji, *Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom* (Atria Books, 2012), 1–304. See also D. Pipes, *Militant Islam Reaches America* (W.W. Norton & Company, 2003), 1–352.

92 Ibid, 370.

> order. The faith shared in the system of values by those subject to a legal order is, further, of the highest importance to make this legal order effective.[93]

From a socio-legal perspective, Shari'ah, as shall be illustrated, derives its authority from the religious public who accept the religio-legal order as the sacred law of an Islamic state. Thus, a comparative discourse involving the Islamic legal tradition must first include a normative understanding of the theocratic regime(s). It is equally important that one is conversant with the local politics of affected theocratic states. A good appreciation of the status and the disposition towards politics and law of such regimes within the context of the international community will be no less important. This remains the case especially where a factual discourse is also imperative. So, apart from reflecting on the normative sociological foundation in this analysis, the historical contexts of the regime(s) are equally appraised. In other words, a broader approach is considered here rather than a simple, narrow analytical approach. This inquiry thus encompasses the analytical, the 'sociological-historical' and the axiological.[94]

1.6. EXPECTED CONTRIBUTION AND THE SIGNIFICANCE OF THIS STUDY

Three years might seem like a brief time frame for an exhaustive study of a major development. Introducing Shari'ah in some states in the North of Nigeria since 1999 remains a challenge to the federal government, and it has been so intense that the controversy and its repercussion continue to threaten national security. The accompanying devastation of the Shari'ah phenomenon on the lives of individual citizens and on the image of the entire nation remains an issue of serious concern. A considerable volume of literature on human rights cases has been generated since the adoption of the religio-legal order. All the aforementioned issues justify and sustain a viable study on the administration of justice by states implementing Shari'ah in 21st-century Nigeria.

But then, inherent sentimentality in religion has always meant that a critical and an objective study on any religio-legal order may be extremely difficult. It is therefore not surprising that such a vital theme involving Islamic theocracies and the Rule of Law is rarely examined. Hence, an ethical exploration of this much-avoided territory is expected to:

– shed light on the role of religious values in the legal environments of the Muslim world, especially in the Nigerian public arena;

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93 Ibid, 371.

94 J.L. Kunz, *supra* note 90. See Chapter 8 for further explanation of the considered methodological approach.

- reveal salient areas and motivate human rights researchers to further studies on the relationship between international human rights law and other (non-Islamic) theocracies; and
- serve as a resource to policy makers who might be contemplating the idea of accepting or incorporating religiously based laws into secularly based municipal laws. Researchers and policy makers from the secular West will readily find this strategic study useful as it illustrates how, within the world of Islam in particular, religiously ignited human rights crises are often prevented or managed.

1.7. SCOPE AND LIMITATION OF THE STUDY

In exploring the question of whether or how contemporary theocracies are compatible with human rights, this study limits itself to controversies regarding the impact of religious values on international law and theory. The period between the UDHR in 1948 and December 2006 are contextually covered. However, the discourse moves in time from the 21st century back into ancient history.

In space, even though countries outside the Middle East are mentioned, the research concentrates on the contemporary (Islamic) theocracies. While studies on Turkey, Sudan and Malaysia, among others, provide a general insight into human rights practice, focusing on the administration of Nigerian Shari'ah allows for in-depth investigation of human rights compliance in a typical Islamic theocracy. The sensitivity of investigating religion beyond a normative framework, one must admit, made the study interesting, although rather difficult.

1.7.1. JURISDICTIONS EXPLORED AND HUMAN RIGHTS ISSUES

So, alongside Nigeria,[95] three human rights environments are mainly explored in this study: Turkey in Europe, Sudan in Africa, and Malaysia in Asia. These countries cut across continents but are all within the contemporary world of Islam. Religion noticeably remains an essential part of life and culture in each of the states considered. The relevance of religion to public policies therefore informs an analysis of the impact of Islamic religious doctrine on municipal and international laws of human rights. It also allows for some strategic appreciation of local realities and measures taken in the various states. It is assumed that the foregoing will enhance a critical but constructive engagement with human rights environments of contemporary theocracies, northern Nigeria in particular.

95 See generally N. Anderson, *supra* note 43. See also J. Harnischfeger, *Democratization and Islamic Law: the Conflict in Nigeria* (Campus Verlag, 2008), 1–244.

Equally provided in this study is an opportunity to understand how states in the Muslim world typically interact with doctrines and movements that are inherently opposed to human rights law, concentrating on the following: religious freedom and expression; inequality as well as all forms of discrimination; and inhuman and degrading treatment among others. Practice in each of these predominantly Muslim states is compared with human rights provisions in the municipal or federal constitution: a state constitution, it is presumed, reflects interest, aspiration, and sometimes the collective will of its people. And as shall be established, level of commitment to and, by extension, compliance with human rights varies from state to state.

1.7.1.1. Turkey

Kemalist Turkey's human rights environment is explored first.[96] While it shows that the political philosophy of the Republic is harmonious with human rights principles, human rights practice in this torn country is not always very impressive. Rather, public officials and security agents are sometimes complicit in human rights abuses. Religious fundamentalism has so often penetrated civil society to the extent that not many citizens are willing to commit to, or even recognise, the norms of human rights. Furthermore, the Islamist movements have established (or hijacked existing) political machinery, hoping to someday re-create a theocracy: an Islamic state governed by Shari'ah.

1.7.1.2. Sudan

The political philosophy of the Republic of Sudan, as implied in its constitution, is not necessarily inconsistent with international human rights.[97] Yet jurisprudence and the human rights reality in Sudan continue to suggest differently. Given the apparent gap that exists between constitutional assertion and actual practice in the republic therefore, the potential of Islamist movements to influence Sudan's political and legal environment is examined.

An opportunity to analyse the impact of Islam and Islamic organisations on the human rights environment is readily provided here. Whereas the Republic of Sudan has one of the most human rights-friendly constitutions in the Muslim world, human rights reports on the country are appalling and raise concerns.

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96 See generally Z. Baran, *Torn Country: Turkey between Secularism and Islamism* (Hoover Institution Press Publication, 2010), 1–174 (looking into the fate of both Turkey's secularism and its democratic experiment, she shows that, for all the flaws of its political journey, the modern Turkish state has managed to maintain an essential separation between religion and the political realm – a separation that is now in jeopardy).

97 For example, see A.S. Natsios, *Sudan, South Sudan, and Darfur: what everyone needs to know* (Oxford University Press, 2012), 1–280.

That Islamist groups, the Fraternities of the *Ikhwan* order[98] in particular, constitute a significant political and legal force must be reiterated. In addition, although the cultural and diplomatic tie between Nigeria and Sudan is more extensively discussed in the study, a brief mention of the shared history and value of both countries is necessary here.

Muslim elites from northern Nigeria have always identified with Arabs and Muslims in Sudan. Ambassador Sola Dada, who retired in 2009 following an eventful stint as a diplomat, including in Sudan, seems to have some insight into the nature of the relationship between the two people groups. In 2014, he gave an account of how most of the ambassadors that are appointed to serve Nigeria in Sudan have always been from the far north.[99] Sola Dada also explained what informs a belief that the Nigerian embassy in Sudan is a legacy purely for Hausas and Muslims:

> The embassy was single-handedly opened by the Sardauna with the help of Mohammadu Ribadu. So the ambassador believed the embassy was his legacy and that of the Hausas and Muslims. In fact, Sudan was our first embassy after Britain and New York. Sudan was next after those two countries because it was the main focus of the Sardauna and the Hausa/Fulani Muslims. If you look at the map, Sudan is enroute to Mecca. It is the shortest route to Mecca from Kano. So it was a strategic Islamic portal for the Hausa/Fulani Muslims. As a result, at that time when late Chief Obafemi Awolowo and Nnamdi Azikwe both focused on London and opened their embassies there, Sardauna opened his own in Sudan. He had no interest in the West but in the Islam/Arab world. The building was a four-storey structure; it served as an embassy and hotel to pilgrims. He stayed more in that hotel in those days. As a result, most of our ambassadors were Hausas and Muslims.[100]

Ruling elites in northern Nigeria and the Islamist regime in Khartoum have continued to maintain their rapport mainly through religious and cultural exchange. For instance, in states within northern Nigeria where Shari'ah is now being implemented, huge resources are committed to sponsor indigenous students and leaders undergoing training in Sudan.[101] This does not necessarily suggest that universities in Sudan rank higher than any of those found in the southern part of Nigeria. Sanusi Lamido Sanusi, a former Governor of the Central Bank of Nigeria, was among those who had such cross-cultural exposure. Sanusi eventually became the Emir of Kano, but that was after the central bank governor had been removed before the end of his term in office. The

98 See generally M. Mahmoud, *supra* note 57.

99 A. Balogun and J. Alagbe, 'I was chased out of Sudan when I raised alarm about Boko Haram' in *Punch* (April 12, 2014), available at www.punchng.com/news/i-was-chased-out-of-sudan-when-i-raised-the-alarm-about-boko-haram-ambassador-bola-dada/.

100 Ibid.

101 See for example, 'Sokoto approves 331m sponsorship for 164 students to Sudan' in *Nigerian Vanguard* (June 7, 2014), available at www.vanguardngr.com/2014/06/sokoto-approves-n331m-sponsorship-164-students-sudan/.

actual nature of exposure and the object of the training, which those Nigerians receive in the Islamist state has accordingly remained a subject of controversy:

> Sanni Yerima, former governor of Zamfara State was in Sudan for two weeks and underwent indoctrination. He was exposed to all the training camps of Osama Bin Laden, who was my neighbour. In fact, Osama Bin Laden's office in Sudan was just a few blocks away from our embassy. No report was made. Our embassy never reported Osama Bin Laden. In addition to having his headquarters in Sudan, Osama Bin Laden also had many firms and industries which he only used as a façade because he was actually using those firms as training camps for Al-Qaeda. Among his trainees were many Nigerians from the North. They would leave Nigeria as if they were going to study but were at the training camps of Osama Bin Laden. I got wind of all these things and told them, but my reports were dismissed. It was a policy of 'see nothing, say nothing' because they were working for Muslims. They were not able to draw the line between *Arabisation* and *Islamisation*. What Sudan was practising was both *Arabisation* and *Islamisation* which led to the breakaway of the South from the North.[102]

Sola Dada's estimation is revealing and alarmingly so. But the truculent worldview and conduct of some of the Sudanese-trained Nigerians only seems to corroborate his narratives. For instance, before the nascent Nigerian Shari'ah spread across most federating units in the north of Nigeria, the religio-legal order was first experimented in Yerima's Zamfara state in 1999. The Islamist-exposed elite seems to have some sympathy for Islamists and sometimes supported imperial agenda and activities,[103] which threaten Nigeria's peace and security. It is particularly more disturbing that, when Aminu-Sadiq Ogwuche was arrested in Sudan,[104] an unnamed member of the religious and political establishment in northern Nigerian was said to have for some time shielded the suspected terrorist from arrest. He was eventually extradited back to Nigeria after about three months in Sudan.[105]

1.7.1.3. Malaysia

It is difficult to discuss Mahathir's Malaysia without a mention of its pace-setting economic growth.[106] But economies of states are almost outside the scope of this research on human rights and religio-legal orders. The focus here is on the relationship between what Malaysia's constitution promises and whether or

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102 See A. Balagun, *supra* note 99.

103 J. Ajani, 'Extradition of Nnyanya Bomber: Monarch under probe for boko haram links' in *Nigerian Vanguard* (June 15, 2014), available at www.vanguardngr.com/2014/06/extradition-nyanya-bomber-monarch-probe-boko-haram-links/.

104 Ibid.

105 Ibid. See also France Lyon, 'INTERPOL Nigeria escorts Nyanya bombing suspect extradited from Sudan' in INTERPOL (July 16, 2014), available at www.interpol.int/News-and-media/News/2014/N2014–131.

106 See, for example, J. Chiyong Liow, *Piety and Politics: Islamism in contemporary Malaysia* (Oxford University Press, 2009), 1–288.

how these rights are guaranteed in the predominantly Muslim federation. This is meant to study the commitment of the state to human rights principles. To allow for a better understanding of individual and group attitudes that shape political disposition within the federation, political and cultural identities in multicultural Malaysia are also considered.

1.7.2. CAVEAT

In Malaysia and each of the human rights environments explored, as shall be demonstrated, there are threats from religious fundamentalism. Islamist agenda and policies are evidently worrying. It is, however, the collective aspiration especially of local leaders in each of these Islamic countries that mostly determines the degree of success or failure to guarantee human rights and freedom.

It must however be reiterated that the study *targets the application of Islamic law in northern Nigeria*, Zamfara state in particular: thus, Islam is treated as an Abrahamic religion given its normative understanding. The tangential mention of the Talmudic legal tradition allows for a better appreciation of Islamic law, since Muslims interestingly see Islam as a successor religion to Judaism and Christianity.

The study only *engages with theory behind the application of Islamic law to the extent that it is necessary to address religious sensitivities*. The sensitivity supports the need for a normative approach to the exploration of Islam and its legal tradition(s). In discussing theory and practice of regimes within the Muslim world therefore, the research pays greater attention to scholars who are themselves Muslims or have direct experience of the human rights environments. In other words, except where inevitable and necessary, Western philosophy or Orientalist scholarship is rarely discussed. Furthermore, very little attention is paid to the theological and political question of whether 'Islam' as a religion or way of life identifies with the agenda and objects of 'Islamism' – an ideology that is in essence both religious and political.

Similarly, *the application of human rights is not questioned in the secular context of the West* – except where comparison is necessary. As will be apparent from the study, although *concerns exist as regards the application of human rights in western democracies*, the focus of this study is the Muslim world, northern Nigeria in particular. It is the assumption here that a significant relationship does exist between the worldview of policy makers and their policies. Whereas Islam shapes the worldview of Muslims and, by extension, informs the political and legal tradition(s) of the Muslim world, governance in the secular world is shaped by the understanding or disposition of the secularly minded public and, by extension, their policy makers. Whereas secularism seeks to separate Church and State, faith (or the lack of it) still plays its part in shaping policies and practices in all human rights environments – whether theocratic or secular.