

THE NON-DISCRIMINATORY STATE

Toward a Model of Church-State Relationship and Freedom of Religion in Nigeria

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1. Introduction

The Church embodies and expresses the religious aspects of human life. Religion, which the Church makes concrete, relates a human being with the supernatural. As a lived reality, religion is both private and public. The State, on its part, articulates and underscores the socio-political spheres of human needs and preoccupations. Since both are concerned with the well-being of those same human beings in society, the Church and the State, therefore, must enter into a co-operative relationship. What this comes to is that there must be a proper relationship between the religious sphere which the Church represents, and the socio-political arena embodied by the State. Hence, there is the need to determine the appropriate link that should exist between the State and the Church. That is the task of this essay: to propose the thesis that it is *not* in remaining neutral (or what is conventionally called being secular *vis-à-vis* religious matters) that the State plays its appropriate role. It is rather in treating appropriately the various segments of religion in its territory, that is to say, that the State should not be neutral as if unconcerned, but non-discriminatory.

The view that will be defended here is that the principle of non-discrimination is the best policy and relevant praxis that would maintain a healthy balance in Church-State relationship, especially in African nations. When correctly applied, this principle respects the status of both institutions. At the same time, it realises the maximum welfare of all individual persons-in-community. To show this, I will first discuss the Church-State relation, next, religious freedom and conflict (particularly in the African context), then, the secular state, and finally the non-discriminatory state.

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2. Historical Background of the Church-State Relationship: Praxis of Hegemony

For much of history, and especially in their early days, the Church and the State have been in constant conflict about who will have the last word, which will be subject to the other, who will have hegemony over issues that matter in life, in a word, who will wield the higher authority? The great French scholar Jacques Maritain expressed the foundational grounds for the age-long tension between the Church and the State in the following words: “In medieval Christendom, the temporal actually often had the simple role of means, a simple ministerial or instrumental function in relation to the spiritual.”¹ Earlier, in the classic text *The City of God*, Augustine argued for the “City of God,” which is the spiritual realm of reality, in contrast with the “City of the World,” the temporal sphere. In what has come to be known as Political Augustinianism, this ancient but influential argument not only encouraged the conflict, but brought disdain on the temporal order: the world, politics, and socio-civil life.² In short, what is evident in the long history of Church-State relationship is the struggle by both for power, authority, supremacy, but ultimately for survival.

In his *Essays on Church and State*, Lord Acton writes that the struggle between the Church and the World resolved itself into a contrast between the Church and the State, the priesthood and the empire; neither thought it could secure its rights and respect those of the other, and each

¹J. Maritain, *Integral Humanism: Temporal and Spiritual Problems of a New Christendom*, New York: C. Scribners and Sons, 1968, 176. See also Maritain, *Man and State*, Chicago: University of Chicago Press, 1976.

²Augustine, *The City of God*, trans. Henry Bettenson, Middlesex: Penguin Books, 1972, parts 1 & 3. Note that the enunciation of the formula of double, or better, separated allegiance by Christ in the New Testament – that one should render to Caesar what is Caesar’s and to God what is God’s (Mt. 22:21) – did not solve the problem of conflict of allegiance. For though the statement positively separated the two powers to a certain extent, it did not, and cannot in advance, specify concretely in all cases, what belongs to Caesar and what belongs to God. It is human beings who must decide, and in many cases the conflict was more than material. For instance, should the Jews pay homage to Caesar as Roman Law demands and at the same time worship Jahweh as the Torah commands? Should the African Traditional Religious adherent worship both his/her local divinity and equally venerate the High God now introduced by the Christian Religion as Supreme? Syncretism in many places is the evidence of the ongoing tension.

conceived that it was safe only if it was predominant. Acton concludes his remarks by stating that the notion of the superiority of the ecclesiastical power ripened into the notion of the worthlessness of the civil power and of the derivation of its authority from the Church.³

The long struggle for supremacy yielded various models of Church-State relationships. We distinguish them here into two broad groups. The first are those Hegemony models in which one party tried to dominate or even assimilate the other. Here we find Caesaropapism (State domination) and Hierocracy (Church domination). The second group of relationships are the separation or autonomy models, in which we get Pure Separation, Hostile Separation, and Co-ordination (Partnerships and Concordats). It is in the context of the Separation model that the autonomy of Church and the State, and further the issue of Neutrality or Secularity of the State, come into play. Before we proceed to examine the Separation model (in Section 3 of this paper), we shall look into the Hegemony model represented in our grouping by Caesaropapism and Hierocracy.

The intuitive idea behind both Caesaropapism and Hierocracy is the belief that God meant all humanity to become an *Ecclesia Universalis*, otherwise known as Christendom. Such Christendom is to dominate the entire universe and become a *Republica Christiana* or Christian Commonwealth. Hence, in this theocratic monism (or what D. J. Herlihy describes as “theocratic world monarchy under absolute papal power”⁴), there has to be unity of Faith, similarity of Morals and correspondence of Worship under one administrative arrangement with Pope as the Supreme Head. The principle was thus: One World, One Faith, One Church, and One State. This is Christendom. But it had a great challenge: Caesaropapism.

2.1. Caesaropapism

Caesaropapism is the system of government in which “the supreme royal and sacerdotal powers are combined in one lay ruler.”⁵ Literally, Caesaropapism means “Caesar playing the Pope.” It is such a system that

³Lord Acton, *Essays on Church and State*, New York: Thomas Y. Crowell Co. 1968, 112.

⁴*New Catholic Encyclopedia*, 1967 edition, s.v. “Church & State,” by D. J. Herlihy, 732.

⁵*New Catholic Encyclopedia*, 1967 edition, s.v. “Caesaropapism,” W. Ullman, 1049.

so unites the two powers that the emperor or king is at the same time, *de facto* or *de iure* the head of the Church. In such cases, the Church becomes an *Instrumentum Regni* (instrument, organ or branch of civil government). This was effectively the case, for instance, after Constantine the Great was recognized as the first Christian emperor (though he was baptized only on his deathbed in 337); after the Edict of Milan (313), Constantine became more active in religious affairs and, in 325, summoned the Council of Nicea. Pursuing the same line, the Roman Emperor Theodosius declared Christianity the ‘Religion of the State’ (380).

Soon, however, the Church was to suffer the negative effects of this move. The Roman emperor had the title *Pontifex Maximus*, with all the combined ultimate power of a *pantocrator* (one possessing absolute power). This resulted naturally in the emperor becoming an *autocrator* (dictator or absolute monarch). (Church Fathers like St. Ambrose [340-397] had to oppose it vehemently, and the title was eventually given up by the Emperor Gratian in 382.⁶) Still, the Emperor (of the Eastern Empire) Justinian (527-565) was to regard himself as “priest and king,” at the cost of dogmatic and canonical disorders. Clearly, the authority of the Church was compromised by Caesaropapism in dogmatic, administrative, and legal issues. There had to be reactions against Caesaropapism, as it had led to the Great Schism of 1054.

2.2. Hierocracy

From the Greek *hieros* (sacred), hierocracy is the system that makes the religious leader also the head of government. It is the opposite of

⁶*New Catholic Encyclopedia*, 1967 edition, s.v. “Caesaropapism,” W. Ullman, 1049ff. An extended model of the Caesaropapism system is *Jurisdictionalism*. It is a claim, justified by the need for order and unity in the polis, that the State has such jurisdictional authority and power over the Church that it can declare the Church to be a State Religion or a National Church. With such a declaration, it can, therefore, have easy access to control the Church and interfere in ecclesiastical matters and laws. In the further species of *Regalism*, the State leader has power to declare which Church its members would adopt, almost certainly the one favoured by the Ruler himself. This would mature later in the Protestant principle of *cuius regio eius religio* (the religion of the King becomes the religion of his people). In the situation of Jurisdictionalism, the Church, as Marsilus of Padua (1275-1343) put it, is devoid of any character as society and has become a mere function of the State. See H. Jedin ed., *Handbook of History*, London: Burns & Oates, 1970, 2: 363.

Caesaropapism and is a species of *theocracy* (divine ruler). Theocracy, as well as its species hierocracy, can be direct or by God's representatives or ministers on earth. In hierocracy, while there is recognition of the State and State functions, these are subordinated to the religious leaders. In this system all authority flows from one source. In cases of conflict it is the Church authority that has the final say. As Paul Mikat writes, "The hierocratic theory itself affirmed the autonomous jurisdiction of the State, and the Pope's duty to pass on the temporal sword."⁷ This means clearly that the Church represented by the Pope has a higher if not absolute authority *vis-à-vis* the State represented by the King or any other ruler.

Nevertheless there is a proviso. The power of the Pope is not all-pervasive or unlimited. The scope of the power of the Pope is in *ratione peccati* (*salvation at stake*). This means to say that the Pope acts absolutely against the State when salvation is at stake. Salvation, thus, gives papal power its legitimacy. This is justified by the fact that of the two powers (otherwise called the two swords), the spiritual is superior to the temporal. As ecclesiastics like Gregory of Nazianzus and John Chrysostom would put it, just as heaven is higher than the earth, the sun brighter than the moon, and gold more noble than lead, so is the Church superior to the State. While the State is of this earth, the Church is of heaven. This Church which is supernatural has, therefore, the last word in unified Christendom.⁸

There, thus, developed what scholars have called Pontifical Theocracy during which Popes deposed Kings. In 1076, for instance, Pope Gregory VII excommunicated King Henry IV (1056-1106) and made Henry carry out what Herlihy calls a humiliating penance at Canossa.⁹ The principle of Pontifical Theocracy also justified punishing erring Rulers and made Lords pay homage to the Church leaders as their superiors.¹⁰ The Church focused on the welfare of the universe and, thus, demanded the necessary power and wherewithal from everyone, including the State. This

⁷P. Mikat, "Church and State," in K. Rahner ed., *Encyclopedia of Theology: Concise Sacramentum Mundi*, New York: Seabury Press, 1975, 230.

⁸Among other documents of authorities that make strong cases for Hierocracy, see Pope Innocent III (1198-1216), *Plenitudo Potestatis*; Pope Boniface VIII, *Unam Sanctam* (1302).

⁹*New Catholic Encyclopedia*, 1967 edition, s.v. "Church & State," 730.

¹⁰For more on this see S. O. Eboh, *Church-State Relations in Nigeria*, Rome, 1984, 12-13.

is expressed by Herlihy in the following observation of the situation at the time:

The Papacy through its universal authority, provided unity and direction in the work generating Christian Society. Kings had to follow the leadership of priests and to place their swords at their service; to oppose them was to merit reprimand, excommunication, and even deposition.¹¹

At the time, then, Church and State struggled for power, for hegemony. With time, however, it was gradually realised that a superiority complex and domination instinct may not be to the greatest advantage of either power. Above all, it worked against the realisation of the common good of the citizens who are also members of the Church. As Mikat put it, both the State and the Church “claim the allegiance of the same persons and are composed of the same members.”¹²

In the course of historical events, however, instead of the temporal (State) being a mere instrument of the spiritual (Church), the process of differentiation saw the temporal take its full autonomy. In the words of Jacques Maritain, “the secular or temporal order has in the course of modern times been established as regards the spiritual or sacred order in such a relation of autonomy that, in fact, it excludes instrumentality. In short, it has become of age.”¹³ It has, then, become necessary to consider more appropriate and mature ways of treating the relationship – ones that recognise the authenticity and autonomy of each, and ones that call for both separation and co-ordination at the same time. After all, if it is the same human persons who are affected, they should not be torn by such a power struggle. Thus, the Church has developed the thesis that it is *in the human person* that unity is to be sought and discovered, unity of purpose and commitment. The old Gelasian principle enunciates that “the Christian is both a child of God and a member of the human community as a citizen of the State. In each capacity he is endowed with a set of rights. Harmony between Church and State must be achieved in the human person.”¹⁴

¹¹*New Catholic Encyclopedia*, 1967 edition, s.v. “Church & State,” 730.

¹²Mikat, “Church and State,” 227.

¹³Maritain, *Integral Humanism*, 176-177.

¹⁴*New Catholic Encyclopedia*, s.v. “Church and State,” by J. N. Moody, 738.

3. Historical Background of the Church-State Relationship: Separation Praxis

In contrast to Augustine, Thomas Aquinas developed a political theory that recognised the two powers, not only as being both divinely instituted, but as consequently autonomous, each in its own mode of existence and area of operation. In matters concerning the salvation of souls, however, the Church has priority to demand and receive obedience. In Aquinas' words, "Both powers derive from God, the spiritual and the temporal... In its own sphere, the civil power enjoys ample independence."¹⁵ This doctrine – called by Herlihy the roots of the balance of power – was developed further by Robert Bellarmine who called for separation of Church and the State as the Church has only indirect power *in temporalibus*. This development of the separation thesis was brought to conclusive clarity in the nineteenth century by Pope Leo XIII. In the words of Pope Leo,

Like civil society the civil power has its source in nature and therefore in God himself. Whence it follows that civil authority as such is from God alone ... God has divided the care of the human race between two powers, the ecclesiastical and the civil. One is in charge of divine concerns, the other of human concerns. Each is supreme in its own sphere; each is confined within certain limits which follow from its nature and proximate goal.¹⁶

These are very clear teachings on the truth that Church and the State are two separate realities, and that it is to be accepted, both in theory and in practice. History has witnessed various forms of this separation. We study three major ones.

3.1. Inimical Separation

This is a hostile separation of the Church from the State. Examples are found in Communist countries where the Church is strategically (though often not legally) excluded from public life. The State accuses religion (represented by the Church) of being the opium of the masses (*Opium des Volkes*). This must stop, the State claims. The spiritual dimension of the human person is denied and those who insist on religion suffer immensely.

¹⁵Thomas Aquinas, *II Sent.*, d. 44, q. 2, a. 3 & 4. See Mikat, "Church and State," 230.

¹⁶Pope Leo XIII, *Immortale Dei* (Nov 1885), no. 1; See Mikat, "Church and State," 230.

There is a clear-cut separation of State and Church, and an even greater separation of Church from schools. The purpose is to deprive religion of influence, especially over young people.¹⁷

3.2. Co-ordinated Separation

This can also be called a separation bound up in Partnership, Co-ordination or Co-operation. It admits the autonomy of both Church and State, yet it recognises areas of mutual interest and consequent common engagement. Such areas include education, marriage, health, and other social services. In these areas the State cannot dig it all alone. The State can, therefore, provide aid, thereby encouraging the religious and other bodies in their work for the good of all. The basic fact is that it is the same human persons that both powers are working for. Countries that practice Co-ordinated Separation include Germany, Belgium, Austria, and Canada.¹⁸

In some of these and other countries like Germany, Spain, Belgium, and the Dominican Republic, the arrangement of a Concordat has been entered into. A Concordat is a legal proviso that guarantees the Church freedom of worship and, in some cases, material means of sustenance for its clergy. Today concordats are no longer in vogue and are not even necessary. There could be treaties and constitutional arrangements to ensure that the Church has the necessary freedom to operate in the society. The United Nations Declaration on Human Rights has made religious freedom a right for all. This is respected in most nations of the world – including Nigeria (at least in principle).

3.3. Pure Separation

This is the system found today in the United States of America and, to a large extent, in France. Its basic tenet is “Free State and Free Church.” In the First Amendment to the U.S. Constitution, it is stated categorically: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹⁹

Religions and churches are, thus, fully free to exist and practise. They should, however, expect no subsidies from the government, federal

¹⁷See Mikat, “Church and State,” 237.

¹⁸See Mikat, “Church and State;” S. Eboh, *Church-State Relations*, 31.

¹⁹See Mikat, “Church and State;” S. Eboh, *Church-State Relations*, 29.

or state. This is to obviate possible ill-feelings of those who do not believe or practise any religion, or who practise other faiths or doctrines. Even though there should be no teaching of religion in state (public) schools, the Churches are free to establish their own schools where they can teach their religion. Of course, the State would set the standard for the operation of schools. The Church has freedom within the law and can immensely contribute to the welfare of the citizenry. Thus, the State recognises its limitedness, that it is not, in the words of John Courtney Murray, “all-embracing, and omnicompetent.”²⁰ Pure separation has something to commend it. It avoids the quarrels about who should be helped or not. Yet, it sets the State at an unwarranted distance from the Church in terms of areas of mutual concern. One could ask: how pure in reality is the purity of pure separation? One element comes to the fore here: the fundamental freedom of religion that pure separation guarantees. Some notes on this follows.

4. Religious Freedom and Conflicts

It is worthy noting here that, today, there is recognition by almost all of the fundamental rights of human persons, including freedom of religion, conscience (on the churches’ side), association, and the political franchise (on the States’ side). The 1948 Universal Declaration on Human Rights, the 1962-1965 Vatican Council II, and, at the local level, the Nigerian Constitutions of 1960 and 1979 make clear the reality of human rights for all. Article 2 of the Universal Declaration states as follows:

All persons are entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour sex, language, *religion*, political or other opinion, national or social origin, property, birth or other status.

Further this is specified in Article 18 as follows:

Everyone has the right to freedom of thought, conscience and *religion*; this right includes the right to change his religion or belief, and freedom, either alone or in community with others and in public

²⁰J. Murray, “Separation of Church and State” in *Theological Studies*, 16, 1 (March 1953), 152.

or private, to manifest his religion or belief in teaching, practice, worship and observance.²¹

The official text of the Catholic Church guaranteeing Religious Freedom (*Dignitatis humanae*) states as follows:

The human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups, and of any human power, in such wise that in matters religious, no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others within due limits.²²

The Nigerian Constitution also provides for freedom of Conscience, Religion, and Worship in the following words:

Every 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 private to manifest and propagate his religion or belief in worship, teaching, practice and observance.²³

It is in this perspective that one must seriously challenge, and even directly condemn, the many acts of what we may call religious injustice perpetrated in Nigeria (and in other nations of the world) where people are persecuted for their religious beliefs and where a particular religion with force and violence tries to impose its tenets and laws on others. This is

²¹United Nations, *Universal Declaration of Human Rights*, approved and proclaimed by General Assembly Resolution 217 A (111), of December 1948, see Articles 2 & 18; emphasis added.

²²Second Vatican Council (1962-65), "On Religious Freedom (*Dignitatis Humanae*)," in *The Documents of Vatican II*, trans. W. Abbot, London: G. Chapman Pub., 1967, no. 2. The concluding clause of "within due limits" is meant to underline the context within which one can practise and evangelise. It is within the respect that is due to other religions and rights, that there be no undue interference on the liberty of others, for instance, to quiet atmosphere, to speak, and to have their peace and order in the nation. This proviso is to avoid confusion and disorder. For, as legal experts agree, "to guarantee rights without qualification is to guarantee licence and anarchy." S. Eboh, *Church-State Relations*, 44.

²³*Constitution of the Federal Republic of Nigeria*, (1960), Chapter III, Section 23. The same is repeated in the 1979 and practically in all other Constitutions of the country.

clear in the cases of Muslim fundamentalism where *Sharia* laws were imposed on non-Muslims and where, when Christians resisted this illegal and unjust practice, they were attacked.²⁴ We call these acts ‘religious injustice’ because they are squarely against the Constitution that holds that Nigeria is a secular state and that the State shall not adopt any religion as the state religion.

Why is this situation so? Izibili believes that ignorance, selfishness and false interpretations of the texts of the given religion are contributing factors. Islam is formally said to be a peaceful religion and nowhere in the Koran is one asked to attack people of other faiths for being of other faiths.²⁵ Yet, some fundamentalists divert it to warring against non-Muslims. The Jihad, properly understood, is a spiritual war against one’s egoism and not a war against innocent citizens. Selfish fundamentalists, however, continuously wage war against Christians despite the fact that the Koran directly forbids the shedding of innocent human blood (Koran 5:32). It is plainly inconsistent that some state governors in Nigeria impose *Sharia* law on all, including non-Muslims, in their territory, directly transgressing the Constitution of the land which states that there is freedom of conscience and religion. This gross religious injustice must be redressed. Justice has been said to be a weeping virtue. The Nigerian nation will not know peace, and shall continue to weep, until justice is done.

In most African democracies there is separation of Church and the State. While the law does not legislate aids in terms of subsidies to religions and Churches, practical sense allows it, and the common practice is that the State does intervene in assisting various religions especially in their engagements in socio-caritative work. We shall return to this point in our later discussion of the Non-Discriminatory State. For now, however,

²⁴Records on this are innumerable. Since the 1980 *Maitatsine* group emergence, Matthew Izibili writes, there have been continuous planned uprisings of Muslims against Christians in Northern Nigeria, e.g., Maidugri (1982), Jimeta & Yola (1984), Gombe (1985), Zangon Kataf (1992) as well as Kano (2004). For more on this see M. Izibili, *An Inquiry into the Politics behind Christian-Muslim Confrontation in Nigeria*, Warri: Coewa Pub., 2005, 10ff. See also the informative study done by B. Okike, *The Practice of Sharia in Nigeria: A Democratic Secular State*, Enugu: Snaap Press, 2000.

²⁵H. Abdalati, “Islam,” *Focus, Islamic Publications Bureau*, Lagos, N.D., 160, See M. Izibili, *Christian-Muslim Confrontation*, 44.

we must consider the vocabulary and realities of how separate and neutral or secular the State can and should be *vis-à-vis* the religions and the churches that are found in its citizenry. It is important to address this point, as it could help us in coming out of the web of confusion, for instance, in the Nigerian case, where the Constitution says one thing and some governors do another. Should the state be fully neutral or should it be involved in religious matters?

5. State Neutrality: The Secular State

5.1. The Secular State: Caring

In his book *The Secular City*, which has now become a classic, Harvey Cox has argued that modern man has found himself in a city (the technopolis, megalopolis, or today's Supercity) where religion and God do not play any major roles. This is in contrast to the religious-imbued life of what Andrew Greeley describes as the "primordial, tribal, communal *Gemeinschaft* style of the past."²⁶ To talk of a secular city, and, in our context here, of a secular State, therefore, points to a '*décalage*' (rupture) with a past that was predominantly religious. Basically, the term 'secular' is contrasted with 'sacred' or 'holy'. It has various nuances, and Andrew Greeley distinguishes about five senses of the secular. Secular can mean:

1. a situation where religion is no longer identified with every aspect of life as before;
2. that man falls short of his religious ideals;
3. that religion no longer influences civil authority, and should not do so;
4. that people are practising religion or church laws less; and
5. finally, that people live in modern anonymous cities with no religious or moral ties as hold in village life of former times or in church communities.

In brief, a secular state would, then, be one that does not attach itself to religious practice. It stays and functions so to say, in a free atmosphere, one that is unencumbered by people's religious sentiments, ideals, faith

²⁶Harvey Cox, *The Secular City*, New York: Macmillan Pub., 1965. In this new 'supercity' men live now "the metropolis of automation, mass communication, mobility and anonymity." See D. Callahan ed., *The Secular City Debate*, New York: Macmillan Pub., 1966, 23, 102; See also H. Cox, *Religion in the Secular City*, New York: S. & Schuster Pub., 1984.

and morals. But in many societies – including the American, as described by Cox – people still have their religious tenets and practices. How should the modern State relate to these? The response to this question brings in the principle of the neutrality of the State. While groups and individuals may have and practice their religious convictions, the State which is neutral, absents itself from these religious issues. It carries out only those purely socio-political and economic-administrative tasks of a modern State.²⁷ But this effort at neutrality could be fraught with problems.

First, there is a dichotomy in how it cares for the basic welfare of the citizen; it is involved with some, like the socio-economic, while abandoning others like the religio-moral. Second, neutrality can be well defined in theory, but in practice, the statesman is often obliged one way or the other, to favour or exclude religious practice. Third, if one rejects absolute neutrality (which is difficult given the second point above), one must settle for relative neutrality. Relative neutrality requires the State to be committed up to a point to the religious needs of the citizens. It, thus, would care for what the members regard as basic values for them (e.g., opportunities for religious practice), without falling into the error of making itself the High Priest or Imam of the religion (as occurs in Caesaropapism). It is in this context that A. Hartmann cautions that the State cannot abdicate its responsibilities to the citizens just because it is secular, separated from the Church. He makes the interesting distinction in French between *Etat laïque* (lay or secular State) and *Etat laïcisé* (secularised State).²⁸

If this description squares with what the members want as a caring state, what then is the force of calling such a state a *secular* state? The proper state in our conception here cares in all sectors with due limits. The religious is not screened out. Such a comprehensive caring State calls for a change in terminology. Such a State would no longer be secular in the strict sense of secular (non-religious). This description justifies the new

²⁷Such a secular State would be different from what S. Eboh has called a secularised State: one that is anti-religious, anti-Church and an avowed enemy of religion. It would confiscate Church property and systematically work toward her downfall. See S. Eboh, *Church-State Relations*, 92-93.

²⁸See Mikat, "Church and State," 232. One can apply the beautiful expression of Karl Rahner when he spoke of the *respect of domains*. Both the State and the Church should recognise and respect the domains of each.

name we are proposing for this type of State: the Non-Discriminatory State.

5.2. Secular State: Non-Adoption of a Particular Religion

In many nations of the world, and particularly in the nascent African democracies, a secular State is understood as one that does not favour one religion to the disadvantage of others. Hence, in a 1986 communiqué, the Catholic Bishops Conference of Nigeria defined what secular means:

Secularity of State implies that the State does not favour any one religion to the detriment of others. Such a secular State assures the common good and obviates common harm. It respects the conscience of all citizens and allows the full range of religious practice.²⁹

A leading Muslim author, Abdurraman I. Doi has argued that while the government does not interfere with states that do not run the *Sharia* system in Western Nigeria (as some states in Northern Nigeria do), it nevertheless does not favour one religion or the other. At the same time, he concludes, the government does not hinder religious progress and the individual and communal efforts made by the adherents to foster their faiths.³⁰

This goes to show that absolute neutrality in the sense of absolute neutrality of the State is unrealistic and, hence, out of the question. Biased, unfair, and outright unjust involvement must be excluded. The State, we hold, must work with, and help religions (in the case of Nigeria, churches and mosques) just as the religions must co-operate with the State in good governance. This is the practicalisation of the principle of Co-ordinated or

²⁹Catholic Bishops Conference of Nigeria, *Christian-Muslim Relations in Nigeria*, Lagos: CSN 1986, 14. This definition is confirmed by the Formal Christian Association of Nigeria (CAN) as follows: “We understand secularity in the Nigerian Constitution to mean that in a multi-religious society, the state and the government must not adopt any religion as state religion, nor favour any one religion through overt or covert act.” See CAN in *Africa News Bulletin* 139 (Jan 1989), 22. Even in the Asian context neutrality is also impartiality as the Constitution of India clearly states: By declaring India a secular state, it merely meant that “religious matters were wholly referred to the respective Hindu, Muslim, Sikh, Christian, Jain, and other religious communities.” In no sense does secularism mean anti-religion. Doi interprets this Indian situation to be exactly the same with the Nigerian one. For these and other details see Mushir-U Haqq, “Religion, Secularism and Secular State: The Muslim Case,” in *Religion and Society* 18, 3 (September 1971); A. I. Doi, *Islam in Nigeria*, Zaria: Gaskiya Corp. Ltd., 1984, 342-343.

³⁰Doi, *Islam in Nigeria*, 343.

Partnership relationship we saw above. If we have taken all the pains in delineating the type of relationship we want (co-operation) and the type we do not want (total neutrality), we are logically and existentially bound to re-think the name we give the State that satisfies our relational praxis. It can no longer be said to be neutral in the strict sense. It cannot also be a merely secular State. Again, we dare to suggest the proper appellation of such a State is that it is a Non-Discriminatory State.

6. A Non-Discriminatory State

To make the expression of Jacques Maritain our own, a non-discriminatory State is “a concrete historical ideal.”³¹ By this we mean that, in the particular context of African socio-political and economic-religious realities, we must use the right expression and find the right, relevant model that can work. This demands that we must not blindly imitate other societies. We must be concrete, realistic, and existential. African socio-political and cultural realities constitute our reflective and constructive background. The African is still deeply religious and religion counts as a fundamental value for his life. Nevertheless, we must present an ideal that has a future open to changes in the globalising world. Such an ideal, based on our past and constructed in our present, must pierce into the future. Only then can it shape better our future political landscape in the African *Sitz-im-Leben*.

Put bluntly, our argument here is that the proper arrangement of Church-State relationship, rather than being neutral or of a secular standard, should be non-discriminatory. A non-discriminatory State is the best for African and like nations. Commenting on the Indian Constitution, D. D. Basu comes close to expressing our sense of a secularity which is non-discriminatory when he writes: “A secular State ... means a State which has no religion of its own and which refrains from *discrimination* on the ground of religion.”³² Another support to our thesis here is, as Eboh contends, that though Nigeria is a secular State with a separational policy, it is so in the sense of religious neutrality (at least legally) and not religious *indifferentism* or *secularisation*.³³

³¹Maritain, *Integral Humanism*, 127f.

³²D. D. Basu, *Commentary on the Constitution of India*, Calcutta: Sarker Pub. 1965, 2: 155, emphasis added.

³³Eboh, *Church-State Relations*, 41, emphasis added.

Ordinarily, the word ‘secular’, as we pointed out above, has a sense of non-religious. It is contrasted with the religious or the sacred; at times, it is opposed to it. This sense, however, does not fully capture what is described above, where the state does not only not oppose any particular religion, but promotes an equality of religious life and expression. A strictly secular state, which is the same as an absolutely neutral state, should not be concerned with any aid to religions.

Thus, while an absolutely neutral State is a non-discriminatory (or conventionally-called secular) State, a non-discriminatory state (in the sense that we have described it) is not an absolute neutral state. In the Nigerian context of religious value, then, a non-discriminatory arrangement is the preferred alternative both in content (e.g., open to aid to religions) and in terminology (as distinct from the strictly secular state). A non-discriminatory state expresses best the idea of the relationship between the state and the religion in its domain.

The change of terminology from secular to non-discriminatory is significant. ‘Non-discriminatory’ removes the (false) impression that the State has nothing to do with religions. It expresses the relationship that justice demands, but which the term ‘secular’ hides. That relationship is to provide what is fair to all. At the same time, the term non-discriminatory avoids understanding the state as religious, in the sense of adopting one religion as a state religion. One may ask, what are the exact types of provision and assistance that the state should give to religions that would not lead to quarrels among those who would feel excluded? We shall come to this point soon. To be noted at this point is that a non-discriminatory arrangement has the positive advantage of giving a sense of belonging to all members and, thus, promoting participation.

Thus, the members of a political community who are also members of a religious group would agree that, since religion is a basic value to them, a non-discriminatory state would be the best arrangement. Every compatible interest is protected. One can say that a non-discriminatory state is a partially neutral state – one which makes provision for religions while avoiding favouring some over others; one in which there is a relative, but not an absolute separation of religion and state. Citizens, by and large, would want such a state. Having the state provide for religious matters is consistent with their culture and tradition. Nevertheless, there must be a shred commitment to the rule of law; doctrines or morals which are provocative, not reasonable, or non-negotiable have to go. If one

religious community, for example, preaches that only its members can become the president of the country, any effort to concretise this unreasonable, discriminatory doctrine cannot be allowed to have its way. Violence is not to rule over dialogue.

7. Objections and Responses

One might object that state provision for religions discriminates against those who have no religion or are atheists. Even if we admit that Nigerians, like other Africans, are deeply religious people, this fact is contingent and can change. Some people may come to reject religion and become atheists. In such situations, should the State still provide for religion? Even if it does, could 'the future Atheists' argue that such a provision discriminates against them because common resources will be used to support a private good, i.e., religion?

Various answers to this objection suggest themselves. A rather sharp response will say that the objection is irrelevant because it has a purely hypothetical premise: the possibility of atheism being a significant force in Nigeria. For Nigerians, religion is a basic value and atheism is not a basic value. Yet, what happens should atheism become a reality, at least at a theoretical level?

One may argue secondly, that since the people see themselves as religious, any future atheists must be such a minority that their existence should not hinder state provision for religion, which is a basic value for the vast majority. This majoritarian view is, however, oblivious to what is due to the minority in justice. Moreover, there is no guarantee that atheists would remain the minority as suggested.

A third view is purely liberal: that of absolute neutrality. The state must be perfectly neutral in religious issues because of the dispute that has arisen. Therefore, any aid to religions must be eliminated as soon as even one atheist turns up. The liberal doctrine of absolute neutrality does not exhaust the plausible answers. At any rate, Nigeria is not like Western liberal societies that clamour for irreligion and, in places, has excluded religion from any state provision.

We prefer to argue that, instead of being absolutely neutral about the basic value of religion shared by many of its citizens, the State should provide for this value without neglecting any alternative basic value chosen by those who may turn out to be atheists, as these values are compatible. This is what a non-discriminatory state will provide for. After

all, Religion is known to be a powerful builder of human conscience that is equally conscious of civic responsibilities. Though not a political organisation like the State, the Church nevertheless has a socio-educational task to accomplish in the world and in the State. On this 'social mission' of the Church, Mikat writes:

The Church is the conscience of the public ... to awaken both the society members and the State ... to their role in making the common good a reality... [I]t is to awaken the conscience of all men, proclaiming that they must always observe justice and love in their doings.³⁴

The moral order is a functional responsibility of both the State and the Church. Therefore, mutuality of action and programme is a desideratum in this area. The State must not shy away from its deeper role as being responsible for values. Economy is not all. An economy may even collapse if there is no deeper value that sustains it. This value is provided by religion that aspires higher and goes deeper than this-worldly. The reality of God is necessary to maintain the integral reality of man, of society and of humanity *in globo*. This is why the State must assure a fair provision for all compatible interests in *relative* neutrality. Religion, when not manipulated, is the most reliable candidate for genuine state provision for the good of all and sundry.

In the African context under discussion, we have noted the reality of religious value, which is the fundamental justification for State provision. But there is another important reason why the State must provide for religion. It is the fact of the engagement of religions or churches in the socio-developmental welfare of the members of the society irrespective of religious affiliation.

Churches are seriously committed to education, health, and rescue services. Social services that care for the aged, lonely, and for abandoned children, orphans and street children are constantly engaged in by religious groups. One should only recall the extraordinarily successful case of Mother Theresa of Calcutta. It was not simply church work. It had to do with human persons as persons. These and many others are services to the citizens. The Catholic Church is known all over the world to be a pioneer and in the vanguard of providing these services. These services are not purely religious. They have to do with the quality of life of the human

³⁴Mikat, "Church and State," 233.

person, a being who possesses dignity and intrinsic value. All members of the society can and do profit from them. We argue here that the state is bound to assist religions in the provision of these and allied services to the public. These services are the duties of the state and, when religions engage in them, they are aiding the state in its responsibilities.

It is a logical consequence that the State not just co-operates with religions in these areas. It is equally required in justice that the state, which has the greater financial capability, aids religious bodies who commit themselves to educational, health, and other services to the people. There can be, then, no system of absolute neutrality. This calls forth, as a matter of justice, partnership, co-operation, and co-ordination. This brings into the limelight, makes relevant, and even renders imperative, our proposed system of Non-Discrimination.

We do not ignore what Paul Mikat calls the ‘dialectical relationship’ – meaning the uneasy and at times conflicting relationship – between the Church and the state caused by their different purposes of existence and fields of operation. We do not overlook his caution that no permanent arrangement can be fixed in advance for Church-State relationship, as historical factors (which are always changing) affect any such relationship.³⁵

Nevertheless we consider it necessary to delineate a vision that can guide the Church-State relationship in African nations given African socio-cultural conditions. We admit that as times change things also change. For now in our times (i.e., the Third Millennium in which we live), we can still articulate some clear ideas that can guide both Church and the State. It is our considered submission that the best guide is *A Non-Discriminatory State* within the background of committed religions. In this system all are involved for the good of all. This thesis is practicable given our circumstances. Above all, it can yield the very best results: for the State, the Church, and all in the society at large. Although the background and focus here are on African societies, other societies are not excluded from adopting and giving it a chance.

8. Conclusion

The relationship between the Church and the State has had a chequered history, and often there has been a struggle between them. Such a struggle

³⁵Mikat, “Church and State,” 227.

has neither produced peace nor has it helped to achieve better the purposes for which either of them exists. The Church was founded to minister to the spiritual welfare of its members and through this ministry to reach out to the whole world for the salvation of souls. It does this through ministering, care, and love that will be completed in the next world. But to arrive at ultimate happiness, one must already live relatively well in this world with some modicum of happiness. Hence, the Church (which Edward Schillebeeckx describes as “the human story of God”³⁶), and more particularly the African Church (which the specialist in African Ecclesiology and Mission, Adrian Hastings, described as “the sign lifted up upon the earth of the care and love of God of the mission of his Son, of the renewal of all things”³⁷), also engages in humanitarian works to promote human welfare on earth (social mission). It is here that she is inescapably related to the state to work for the common good. Hence, between the Church and the State there is a veritable *do ut des* (give and take).

The state, on its part, is there to aid the temporal good of its members. But temporal goods are also closely linked with spiritual ones, such as moral values, the formation of conscience, and the proper understanding of the human person. Mikat writes that the Church is the conscience of the public.³⁸ The State, it must be noted, is made up also by citizens who must obey not only the civil law but also the law of God. No one is exempt from the Divine Law. Hence, the State must work with the Church in the realisation of its goals. This means that both Church and the State need each other. History has shown the excesses of Caesaropapism (State hegemony) and Hierocracy (Church hegemony), excesses that ceased only once some recognition of the autonomy of both institutions was arrived at. Some thinkers have settled for absolute neutrality (otherwise called pure separation); others went the way of a hostile separation that oppressed religion. But there also developed in the course of time the system of co-ordinated separation, called partnership. This was

³⁶E. Schillebeeckx, *Church: The Human Story of God*, New York: Crossroad Pub., 1990. He argues in this book that the Church must achieve its salvation in the context of the human society and polity. In his words, there is no salvation outside the world.

³⁷A. Hastings, *Church and Mission in Modern Africa*, London: Burns & Oates, 1967, 257.

³⁸Mikat, “Church and State,” 233.

laudable as it gave both Church and the State opportunity to appreciate what the other can contribute to the persons that both are concerned with. For, as we saw, every citizen is also a member of the Church.

Now, when the notion of the neutrality of the state was developed, it becomes problematic whether the State should be fully neutral or only partially so. Neutrality vis-à-vis all religions has the advantage of saving the State from conflict about whom to support (e.g., financially) and whom to leave aside. But it has the disadvantage of neglecting what a partnership with the Church involves, that is, support of the work of the Church. How can the State expect the support of the Church when it does not reciprocate in supporting the Church's mission? In the words of J. N. Moody, "the State must support the Church when its aid is needed or when the temporal and spiritual or when the temporal and spiritual converge (e.g., in education, marriage)."³⁹

As we have seen, the problem that arises here – one which has also been the basic task of this paper to clarify – is: if the State supports religions represented by the churches, how can it avoid being accused of unfairness to some who may not have any religion? Not to support religions, we have argued, is not the best answer. Instead, the State should support the Church in a manner that does not discriminate against other religions or people of other convictions. In the African context, religion is a basic value and the State cannot stand aloof.

Furthermore, we made the proviso that the State also makes room for the interests of those (if any) who do not have religion, by giving support to whatever they choose as their basic value, provided such a value does not contradict state or normal human norms. Above all, the ultimate claim of this paper is that the State must work together with the Church in humanitarian and social work. (These include education, health, care for the disabled and the aged, and the hospice ministry.) These are responsibilities of the State, and if the Church gets involved in them, the State should gratefully and concretely support the Church and any other body that do so much good work. This following statement of Lord Acton,

³⁹J. N. Moody, "Church and State," 736. In the former West Germany, for instance, this was no longer a problem as both Concordat and State Legislation made a provision for the Church. Close co-operation, writes Mikat, had grown between the Church and the State, and when the Church engaged in social or public activities, "the State provided it with substantial sums." Mikat, "Church and State," 236.

drawn from *The Chronicle* of 1867, supports our thesis. For it addresses the proper relationship and mutual checks and balances between the Church and the State in their mission:

Real Liberty depends not on the separation but on the distinct and appropriate, but continuous, action and reaction of Church and State. The defined and regulated influence of the Church in the State protects a special sphere and germ of political freedom, and supplies a separate and powerful sanction for law. On the other hand, the restricted and defined action of the State in ecclesiastical affairs gives security to the canon law, and prevents wanton violation and arbitrary confiscation of rights.⁴⁰

The best relationship between Church and the State in contemporary African society is not merely a neutral state, nor a purely separated one. It is a state that cares for and commits itself to the values that religion itself supports – the provision of basic human necessities for all. It is a state that does not refuse to co-operate with other bodies in the task of the provision of the integral welfare of people, who are both citizens of the state and members of the Church. The name for this model type of State is the *Non-Discriminatory State*.

⁴⁰*The Chronicle*, 1868, 2: 31; see also Acton, *Church and State*, 467.