THE UNIVERSALISM OF THE MAGNA CARTA WITH SPECIFIC REFERENCE TO FREEDOM OF RELIGION: PARALLELS IN THE CONTEMPORARY AND TRADITIONAL LAW OF NIGERIA.

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1.0 INTRODUCTION

The **Magna Cartra** is undoubtedly the most famous 'human rights' document in contemporary human history.

Its popularity is attributable not only to its comparative antiquity, nor its source as emanating from one of the world's "super powers" but to the universalism of its precepts.

The many extrapolations and interpretations of its socially contextual provisions will be the focus of our discussion in segment one of this presentation, with particular reference to its religious antecedents. On the subject of religion," an early clarification of our understanding of the concept might not be out of place as we will deal with other key concepts of the topic of discourse such as "the traditional or customary law of Nigeria" and

the “contemporary law of Nigeria”.

“Religion”

Religion is a powerful media of the human essence, always present at every moment of our life, embedded in man’s innermost being and featuring in all the great and minor events of life – birth, education, adolescence, adulthood, work, leisure, marriage childbirth, well-being, sickness and, death. A. C. Bouquet tells us that “anyone, who is inside a worthy scheme of religion is well aware that to deprive him of that scheme is to a large extent, so to speak, to disembowel his life”.

Man seeks a oneness, a steadying thing that will afford an escape from fluctuations…. to get the complex simplified. The manner in which man achieves that simplification, if he does achieve it, and imposes an order upon his life is his religion.

Religion may be an abstract term like art beauty, civilization, right and wrong but whatever philosophy of life that gives a man relative inner peace and equilibrium could be said to be his religion. Whether sacred, supernatural, self-existent, the Absolute or simply GOD is a matter of detail.

Religion might be an opium of the masses as it was described in the former Soviet-Russia while it existed as a “Godless” society, but the replacement of religious symbols with ideological symbols and personae and the meteoric return to prominence of the Russian Orthodox Church with the collapse of Communism is a

signal that nature does indeed abhor a spiritual vacuum.

"Traditional Law of Nigeria"

The traditional law of Nigeria is the law and customs that are regarded as binding by the communities to whom they apply. The traditional law and customs are seldom written but reside "in the breast of the elders". There is considerable similarity in the customary law of the African traditional societies before colonization. We need to examine the sources and components of traditional law for a better understanding of its operation, particularly as it relates to our topic of "freedom of religion". This, we shall attempt to do in the third segment of our presentation.

"The contemporary law of Nigeria"

These comprise of the extant Constitution of the Federal Republic of Nigeria and its provisions relating to human rights in general, and freedom of religion in particular.

Even though there are Federal laws, which touch on various aspects of human rights and freedom of religion, they are not as significant as the Constitutional provisions which will be our main focus.

Nigeria has thirty-six states but the statutory framework can roughly be divided into laws applicable in the Northern and Southern states, such as the Shariah system of law applicable largely in the nineteen Northern States of Nigeria.

Even though the three main religions of Islam, Christianity and African Traditional Religion have co-existed largely peacefully in the pre-colonial period, and for a brief period after independence, Nigeria has been experiencing turbulence in religious harmony and co-existence. A large part of the reasons for this has been the obvious promotion by the political elite of the Christian and Islamic faiths, at the expense of our indigenous religion, and a keen and often deadly competition by the two religions of Islam and Christianity virtually for the soul of Nigeria has ensued.

In the following Segment Two, we examine in closer detail, the provisions of the **Magna Carta** and what these provisions represent. Also we interrogate the various philosophical and statutory derivations from the **Magna Carta**. We conclude that segment by extracting the provisions of the Great Charter that have impacted most on religious freedom all over the world.

Segment Three will analyze the similarities and divergences between the Magna Carta and the customary law of Nigeria, with emphasis on freedom of religion.

The Fourth Segment will highlight the provisions of the Nigerian Constitution of 1999 and a few other legislation that bear on the issue of religious freedom: Why have the provisions of contemporary Nigerian law fuelled, rather than quenched the raging fire of religious conflicts?

2.0 **THE MAGNA CARTA AND WHAT IT REPRESENTS IN THE MODERN WORLD**

The Magna Carta was a product of hard bargaining (with an undercurrent of violent intimidation or duress) between the English monarchy, personified by King John and the "feudal class" in the social configuration of that time, represented by the barons. It appeared that the church or the Religious Estate, though a beneficiary of some of the bequests of the charter, played a mediatory role.

The inspirational outcome of the Great Charter for human rights philosophy was clearly an unintended consequence since its purpose was to substantially tackle the domestic grievances of the subjects of King John. The Charter was originally written in Latin, an indication of the strong influence of the Roman Catholic Church in European political affairs of that time.

The Charter consists of sixty-three sections or chapters, although the original Latin text was not numbered, the amended version of 1222 was.

Only Chapters one, eighteen and sixty-three made direct reference to religion, in terms of its provisions relating to the "English Church". The rest of the provisions deal with the English public relative to citizens' rights and concerning matters of taxation, inheritance of land and properties by heirs and widows; and

'banking' debts. These diverse issues naturally impinged on the rights of the Monarch and had been the causes of unease and civil disobedience in the past, hence the need for the King to make the concessions.

As Lord Coke observed, the reasons for the promulgation of Charter were four-fold, as far as the Preamble expressed them; namely: to honour God; for the health of the King's soul; exaltation of the Holy Church and amendment of the kingdom.

William Sharp McKechnie in his book: Magna Carta: A Commentary on the Great Charter with Historical Introduction, had this to say:

> "*Chapter One places the freedom of the church and the civil and political rights of the freemen side by side, with the implication of their equal importance to be declared in the ensuing paragraphs*."

McKechnie commented further that though the Civil and Political Rights of Englishmen occupied a large proportion of the Magna Carta, the rights of the Religious Estate was of equal prominence; hence it is the focus of the first and the last sections of the Magna Carta.

2.1 **Impact of Magna Carta on Human Rights philosophy**

The exhaustive manner of the treatment of Civil and Political rights

of citizens by the Charter has no doubt impacted on the configuration of this group of rights in several human rights instruments beginning with the English Bill of Rights in 1689.

That the **Magna Carta** provided a spark that lit up the dark caverns of the Monarchical period to provide the enlightenment of the Renaissance period cannot be questioned.

Natural Law

Though Natural law has had varying interpretations from the Greek period, the central anchor has been the influence of Divinity over the affairs of men. The monarchs invoked Natural Law to justify their power over their citizens. As "divine rulers" consecrated by God, they were entitled to the unquestioning obedience of their subjects.

Whilst the Magna Carta explored the same theme of Natural Law, here, the rulers were shorn of their divine mandate and instead made subject to Divine Law as the grundnorm against which the exercise of their powers was to be measured. Indeed, under this reverse thesis, if the laws of the Monarch were not in consonance with the Law of God, the citizen would have committed a "sin" if he obeyed them.

Furthermore, the subject had a 'natural right' to disobey an unjust ruler by revolt. This was the essence of the right which King John gave to freemen (in chapter 6) to subscribe to the banner of any rebellious Barons, should he, the King, breach the rights which he

had bestowed on his subjects under the Charter. Could King John's 'concession' be thus said to have presaged the "Liberation Theology" later to be espoused by the Catholic priests in Latin America which was under the jackboots of military Rule in the 1970s and 1980s?

Social Contract

The French Philosopher Rosseau was yet to write his seminal work **Contract Sociale**, and Montesquieu his **Spirit of the Laws** in 1721, yet here was English King John 'negotiating' with a rabble and ceding copious rights to them in a written contract. The suggestion has been made that King John did not voluntarily make the concessions to the public that he did. The evidence of that, in the view of Mckechnie, is that whereas in the Preamble, the King said he had with his 'free will' made concessions to the Church, he did not express a similar state of mind concerning his concession of civil and political rights to the "free born". Perhaps King John did this with an eye on possible repudiation of the agreement?

It is note-worthy that when the **Magna Carta** was reissued in 1225, the reference to a voluntary concession to the Church was removed.

In several other portions of the Civil and Political rights conceded to the public, the King granted important criminal justice rights to suspects (chapter 20). In chapter 24, the power of the Sheriffs and Marshalls to sit as justices over crimes was removed thereby

abiding by separation of power precepts. In the same vein, despite the King's obvious bias in favour of the Church, he did take away the power of the Church to sit over matters concerning their property rights conferring such powers on the King's justices.

These perspectives clearly presaged the Separation of Powers that was to become a cardinal doctrine of democratic governance and the Rule of Law.

Quite apart from the general democratic doctrines pioneered in the Great Charter, the concept of a written Constitution including a Bill of Rights that the Charter represents appears to have taken root in modern governance – the English Bill of Rights was promulgated in 1689, followed by the American Declaration of Independence (1776), the American Bill of Rights (1787), the French Declaration of the Rights of Man and the Citizen (1791).

2.2 Internationalisation of Human Rights

At the international level, the Universal Declaration of Human Rights (1948) emerged, from the abuses of Adolf Hillter's government against the Jews as the consensus of the international community on the duty of States to respect the rights of its citizens.

Whilst in 1948, two-thirds of the nations of the world were still under one form of colonization or the other, the wind of change, catalysed by returnees from World War II to their dependent territories led to independence and self-determination for the

colonized peoples of Africa, Asia and other parts of the world. Many of the newly independent nations made it a point of duty to put in place written Constitutions containing copious provisions on human rights.

Europe had subscribed to the European Convention on the Protection of Human Rights and Fundamental freedoms (1950) followed by several Protocols and Declarations. Other international regions soon borrowed a leaf from Europe leading to the promulgation of several other regional Charters – American Convention on Human Rights (1969); African Charter on Human and Peoples Rights (1981), the Asian Charter and the Arab Charter (1994).

2.3 **The Magna Carta and Freedom of Religion:**

Despite its substantial focus on Civil and Political Rights in its generic connotation, there is no gainsaying the fact that the Magna Carta had deep religious undertones. The very first chapter of the Charter, after the Preamble granted "autonomy" to the church in generous terms:-

> *First, we have granted to God and by the present Charter we have confirmed for us and our heirs in perpetuity that the English Church shall be free and shall have its rights undiminished and its liberties unimpaired. That we wish this to be observed appears from the fact that of our own free will, before the outbreak of the present dispute between us and our Barons, we granted and confirmed by Charter the*

freedom of the Church's elections, a right reckoned to be of the greatest necessity and importance to it caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves and desire to be observed in good faith by our heirs in perpetuity.

The components of the freedom of the English Church thereby comprises of (i) free 'English church' and (ii) Canonical Elections.

i. Free English Church

Hitherto, the terminology with reference to the church was to the "Holy church" reminiscent of the "Holy See" of Rome. The emphasis on an English Church in the charter was a veiled reference to the yearning of the English church to be free of the overarching power of the Pope.

Over the chequered history of the Church, the control of the Church in England had oscillated between the King of England and the Pope in Rome, (whichever entity was stronger at any historical moment). The English Ecclesia (which, through the instrumentality of Stephen Langton, Archbishop of Canterbury, who reputedly wrote the *Great Charte* was thus sending a subtle message that the English Church wanted its autonomy from Rome in the appointment of Archbishops, Bishops, Abbots and Priests.

Furthermore, since Rome was perceived to be in cohort with the King of England to oppress his people, priestly nationalism was

helpful to distance the English Church from any perceived conspiracy with the Roman Church.

Secondly, the English church appeared to have been competing somewhat with the barons for authority and pre-eminence in England. According to Augusto Zimmerman, if, in the original scheme of things the barons showed no special tenderness for the Church's privileges, Stephen Langton and his Bishops tried to have that defect remedied.

ii. Canonical Elections

The Magna Carta also provided for free elections to fill vacancies in the English Church on the condition that the King had been informed of the vacancies and sanctioned its filling. Despite the seemingly limited character of the rights granted to the church under the charter, it is submitted that its impact goes beyond the obvious.

Read together with the ample catalogue of civil and political rights in about sixty sections of the same document, such plenitude of rights is bound to give colour and vibrancy to the freedom of the English Church in a wider ramification.

Also, when read in the context of the Natural law doctrine of separation of Powers, Rule of Law and Democracy, and in the larger context of "religious freedom" in subsequent human rights documents, the perception of the Great charter as precursor of a

defined right to freedom of religion becomes inevitable.

3.0 THE MAGNA CARTA AND THE TRADITIONAL LAW OF NIGERIA

The full connotation of "Traditional law" can only be grasped by a cursory consideration of the sources of traditional law since they are not contained in ready tomes.

The easily identifiable sources of custom can be said to include proverbs, re-enactment ceremonies/traditional festivals, the Ifa/Afa traditional philosophy (from the southern part of Nigeria and other West African countries), individual and communal praise poems (oriki), traditional legislation, and in more recent times, treatise by anthropologists and jurists. It may be useful to consider these sources in more detail.

i. Proverbs

Proverbs are maxims of thought, a distillation or approximation of more detailed philosophy, mostly extracted from historical or religious experiences. Proverbs are expressed in virtually all African languages.

ii. Communal and Individual Praise Poems

All African communities, being usually descended from a common ancestor, have put their history and culture in permanent form through poetry. There are individual versions of such praise poems, called oriki, amongst the Yoruba. If one reviews, for example the oriki of the various war chiefs and military generals of

the Yoruba such as Balogun Ogunmola, Aare Latosa, Balogun Ibikunle (all of Ibadan), other generals like Ogedengbe, Ogunmodede and Obe from Ijeshaland, one could easily extract the prevailing norms regulating the warfare of that age. In the same way that the oriki of Ifa priests and other religious personages would reveal information about religious precepts and practices.

iii. Re-enactment Ceremonies/Traditional Festivals

Many African traditional festivals have historical and socio-legal significance. Festivals go beyond entertainment: they are a permanent visual record of the past for the purpose of educating the present generation. Some have far-reaching effects on constitutional or governmental arrangements in these communities, which persist till the present. For example, the Itapa Festival in Ile-Ife re-enacts the constitutional crisis that occurred in Ile-Ife when the "autochthones," (the aboriginals), led by Obatala, were overthrown by the Oduduwa group, who were migrants into Ife "from Egypt". That historical incident separates the "palace chiefs" (Oduduwa inheritors) from the "town chiefs" (the Obatala group) till the present day. Similarly the same ceremony provides the antecedents for the separation of power between the political and religious elite of Ife, and indeed Yorubaland.

iv. Traditional Legislation

In the Republican societies of Africa, such as the Igbo of Nigeria, Nuer of Sudan and the Talensi of Ghana, discussion and debate precedes customary legislation. Amongst the Nigerian Igbo, for

example, every proposed legislation must be exhaustively discussed at the village square (Oha) on the principle of equal participation of all members of the community. What is agreed is then passed and given ritual sanction by invoking the ofo staff, a symbol of authority carried by the okpala (chief elder). Such a legislation is subsequently announced formally by the town crier and thereafter becomes law.

v. Ifa Traditional Philosophy as a Source of Law and Custom

Ifa is the philosophy of the African. It is a corpus that contains information and ideas about virtually all aspects of life. As a body of oral knowledge, Ifa is present in all African communities, though it may be called by different names.

vi. Anthropological Studies and Juristic Treatise

For a long time, the recording and interpretation of African customs were the exclusive preserve of the Christian missionaries and explorers. Then came the academic works based on field trips and studies amongst African tribes. Those studies, such as that done by Professor Max Gluckman amongst the Barotse, inevitably suffered from western biases that were possibly innate and not contrived, based as they were on lack of understanding of the deeper nuances of the practices they were recording. The description of African religious practices as "fetish", animist, pagan, primitive were of such jaundiced views.

With the onset of the 20th Century, the subject of African Law and religion began to get attention from pioneer African scholars who

used the exposition of African ideas to convince a skeptical world that Africans indeed had juristic and spiritual premises for their circumstances. Now, these books provide a veritable source of information about African law, customs and religion as inseparable concepts.

vii. Restatement of Customary Law and Religious Laws

As part of efforts to improve the recording of African customs, some projects of "collecting and collating various customs in a "Restatement" have been put in place in some African countries like Kenya, Malawi and Eastern Nigeria. Though not binding on the courts, they are given considerable weight because of their intellectual and unbiased nature.

3.1 **Sign posts of African Traditional Religion**

Professor Bolaji Idowu ruefully observed that "Africans have a certain God-given heritage which has it own intrinsic values with which is bound in the destiny of their racial soul. The misconceptions about ATR are captured in the tendentious appellations ascribed to it – heathenism, paganism, idolatory fetishism, animism".

Some discerning observers such as PA Talbot have drawn different summations: "on the whole the African traditional religion strongly resembles that of the ancient Egyptians who combined a belief in the existence of an omnipotent and omniscient God with that in lesser multitudes of subordinates deities".

Bolaji Idowu in his monumental treatise entitled: ***African Traditional Religion***, published in 1973, identified the nature of African Traditional Religion (ATR) as follows: belief in God, belief in deities, belief in spirits (i.e. apparitional entities, disembodied, ubiquitous inhabiting trees, water, rocks, mountains which may enter birds, snakes and human beings) and belief in magic and medicine and medicine and belief in ancestors which is often misdescribed as "ancestor worship".

The leading authority on African religion concludes that it is only if there is an understanding of the means by which African values are apprehended by the African mind is discussion and communication with other religions possible. ATR is the religion, which resulted from the sustaining faith held by the forebears of present Africans, which is being practiced by the majority of Africans in various forms and shades, in most cases but also in some cases, under the veneers supplied by Westernism and Arabism.

Ghanaian Professor Kofi Asare Poku in his book: The World view of the Akan, noted that the Akan generated their own ideas concerning their understanding of the world as they went through life's experiences. These ideas became crystallized into a system of thought, which was not static but was passed on from generation to generation not only orally but also symbolically and ritually. It is in this worldview of the Akan that one finds the key to the

understanding of how the Akan evaluate life in both temporal and non-temporal dimensions. For the Akan people, spread across three countries in West Africa – Ghana Ivory Coast and Togo religion is the quest for harmony not only with the spirit but also with the environment. When this harmony is maintained, things go well otherwise there is chaos. A mystical order, an order of mysterious power is at work in the universe and this power is tapped both for good and for evil.

J.K. Olupona Nigerian born Harvard University Professor of Religion warns ominously that all religions have innate and inherent capacity for violence because they contain ideological resources necessary for an alternative to public order. After all, violence is a product of human responses to complex religions teachings. Africa has a "triple heritage" of religions – Christianity, Islam and African Traditional Religion. The essence of these religions, as all religions is the wish for good health, prosperity and long life. All religions thus offer the same goods.

As simple as it is seems, observed a local ifa priest, it is utterly complex because inherent in religions are irreconcilable tenets, public claims to oneness not withstanding. It will therefore require wisdom and an independent arbiter or entity to reinforce tolerance or the result will be mutually assured destruction.

The ifa verse of Ejiogbe records an incident in ancient times when a conflict broke out between a Hausa, Tapa and Yoruba due

largely to religious and linguistic differences. Orunmila was able to mediate because he spoke all languages of the disputants. The secret of religious harmony is tolerance, as another ifa verse relates in translation thus:

'The dog that refused to heed my advice becomes Elegbara's dog.
The fat ram that I warned which remained adamant becomes Esu's ram.
The person who refuses to heed my counsel, leave him to his own pattern of life. He would be the one to regret it.'

Ifa divination was performed for each of the deities while journeying to the market of tolerance. In the *Ifa* poetry, *Elegbara* and *Esu* mean the devil. In this context where there is intolerance then there is conflict.

3.2. **African Traditional Religion And The Magna Carta On Religion**

There are two hundred and one *orisa* (deities) in the Yoruba religious pantheon. Literally, there are enough gods to go round a village or clan even if everyone picked a different orisa. Indeed, the Yorubas chose freely the deity through whom they would offer salutation to Olodumare. These various divinities have their different shrines and aficionados. Tolerance of the different deities (read churches or religions) was therefore a necessary and inherent attribute of ATR.

There was a clear separation of the political and religious estates in ATR that was strictly observed. As we noted in our consideration of the sources of African customary law and religion using the Yoruba example, many of its communities had in the course of their evolution separated the political from the religious to enhance checks and balances. If the political leader or *Oba* should err, the sanction would invariably come from the priestly estate either individually (as for example where the *Araba* or *Dibia* invokes ritual sanction on the Oba) or collectively (as where the conclave of family heads, or chiefs called the Ogboni or Osugbo fraternity impose deserved sanction on the monarch. This is similar in the way that the church in England, in an ideal situation, retained moral powers of censure on the reigning monarch, where necessary.

In his contribution to a book: Readings in African studies (1999) entitled "The politics of *Ifa* Priesthood in Colonial Lagos," Dr. Isaac Olawale Herbert gave an account of how a Lagos monarch, Oba Falolu attempted to subvert this traditional check and balance offered by the religious estate in the person of the *Araba* (chief priest) when he usurped the authority of the conclave of Ifa priests to elect a new *Araba* upon the demise of the previous occupant of the position. He unilaterally appointed his own candidate to the position of *Araba* of Lagos in the person Chief Bayoku Ajanaku in November 3, 1932. The ifa priests of Lagos rebuffed this breach of custom refused to recognize Ajanaku's appointment and went ahead to install their own choice whilst

expelling Ajanaku from their priestly brotherhood. The crisis engendered by this unprecedented breach of custom by Oba Falolu engulfed the Yoruba nation leading to the intervention of Ooni Aderemi, the paramount ruler of the Yoruba. It is a significant example of how colonial power tended to subvert traditional authority that despite concrete efforts by the *Ifa* fraternity, Araba Beyioku Ajanaku continued in office with the active support and connivance of the colonial government in Lagos.

Despite this uncommon example of departure from the cultural norm, the religious estate continues to exercise its customary role of checking monarchical abuse in most of the traditional communities of Nigeria and religious tolerance if not harmony prevail in the various communities during the colonial period.

However, as the “wind of change” continued to blow and the collapse of British colonial authority became inevitable, the British put in place certain policies and laws which tended to divide the two main religions along sectarian lines. An example was the introduction of the Sharia Judicial System at the onset of regionalism in 1958.

The negative implication of a dual legal system was not immediately apparent. In a paper published in 1960, at the dawn of independence, Professor Bolaji Idowu exuded dear optimism that the three religions would co-exist peacefully. He opined that

by its very nature, indigenous religion and culture guarantees a heritage of multicultural religious and cultural identities, which shapes the mindset of the people to promote peaceful co-existence and inter-community relations.

At his academic base at the University of Ibadan, the Professor of Religion established *Orita, Journal of Religion in Nigeria.* 'Orita' literally meant a meeting point, a "T" junction where three separate points crossed. ATR, he suggested was anchored on the belief that the lineage, clan and ethnic allegiances are superior to faith traditions. Similarly in his monograph: *Reconciling the Faiths: Strategies for Enhancing Religious Harmony for National Development,* written in 2008. Olupona, observed that traditions with inclusive claims to truth are essential to the survival of the Nigerian people.

Furthermore Bolaji Idowu had in his book, *African Traditional Religion*, hoped that ATR would be embraced as a natural consequence of the nationalism of the post independence period and the nascent ideology of Negritude, African personality, Black power and Black Religion that Pan – Africanism had spawned.

Part of that Afro-cultural renaissance was the Festival of African Arts and culture (FESTAC) at which Nigeria hosted Continental and Disapora Africans in 1977.

According to Professor Olatunji Oloruntimehin in his monograph on

Culture and democracy (2007). A major preoccupation of FESTAC was the need to document the achievement of Africans and peoples in African descent throughout the world as contributors to the development of human civilization, highlighting the mutual exchanges and multilateral influences that have characterized such connections.

There was a Colloquium Section divided into ten groups, each dealing with a theme within the general framework of "Black Civilisation". Rather than galvanize a return to Africanity, Christian and Islamic zealots labeled FESTAC as a celebration of "paganism".

By the 1980s coinciding with the poor economic fortune which had be fallen the country, there was a resurgence of Christian and Islamic fundamentalism. On the side of the Christians, various "white garment" churches (Aladura) bloomed purporting to Africanize Christian worship. On the Muslim side demagogues such as Sheikh Abubakar Gumi had gained prominence as pious Islamic clerics. Gumi in particular had a large national following and substantial sponsorship and promotion by foreign Islamic governments notably Saudi Arabia. Part of the international visibility accorded Sheikh Gumi was his winning the King Finsal Award for promoting Islam whereat he was handed a golden sword and substantial monetary reward.

Suddenly, the secularism intended by the constitutional provision

stipulating that the Nigerian state should not adopt any religion as a state religion became "godlessness" or "multi-religiosity" in the opinion of Nigerian Muslims.

Suddenly there were sporadic outbreaks of violence over imagined "provocations" such as the Miss World Beauty Pageant that was scheduled to hold in he Federal Capital of Abuja because it was cast as an exhibition of nudity. The organizers hastily shelved the pageant. There was also the Danish cartoon episode, which surfaced when a Danish cartoonist was alleged to have profaned the Holy Prophet. More people were killed in Nigeria by the protesters than any other country in the world.

Finally, nineteen of Nigeria's thirty-six states proclaimed the application of Shariah law in their states in 2000. Clearly, Nigeria had failed to imbibe the lessons of tolerance and the separation of church and the state taught by the Magna Carta and traditional religion. The descent into anarchy and terrorism became inevitable.

4.0 **The Magna Carta And Freedom Of Religion Under Contemporary Law**

4.1 *Secularism or Not*

Section 10 of both the 1979 and 1999 Constitution of Nigeria provides that: "The government of the Federation or state shall not adopt any religion as a state religion".

The exact interpretation of this section has been a source of debate at different fora. Implied is the recognition of a society with a multiplicity of religious beliefs and a desire by the framers of the Constitution that none of these religions should be "adopted" as a state religion. Beyond this, however its exact meaning has been shrouded in a mist of religious bigotry and deliberate falsehood. In fact, the seed of distrust may have been planted during the deliberations of the Constitution Drafting Committee (CDC), which preceded the enactment of this provision into the 1979 Constitution. A dissenting member of that committee had asserted that the committee deliberately proposed the provision in this format as part of its grand design to undermine the secularism of the Nigerian state contrary to the proposal of the minority members suggested in their own separate draft.

Article 39 of the Minority Report advanced the position that:
"The Federal Republic of Nigeria is a secular state and the state not be associated with any religion but shall actively protect the fundamental rights of all citizens to hold and practice the religious beliefs of their choice".

Against the background of subsequent development, the above analysis (posited by Yusuf Bala Usman in his book: The Manipulation of Religion in Nigeria) of hidden motives by the majority of the CDC members would seem well founded. In the deliberations leading to the insertion of this provision in the

defunct 1989 Constitution, a reconstituted CDC noted in its report, that this section (i.e. Section 10 of the 1979 constitution) has "*over the years been misunderstood by many. Although no such word has been used, many have misinterpreted the section to mean that Nigeria is a secular state…The Constitution clearly shows that Nigeria is not a godless nation. The section implies a multiplicity of religious groups in the country*".

Clearly, the rejection of the word 'secular; as suggested in the minority draft in 1979, was deliberate. In fact, there appears to be a conscious attempt to misinterpret secularism to mean 'godlessness'. An interpretation, which has subsequently been re-echoed by a notable member of the Muslim lobby. Alhaji Ibrahim Dasuki, the then Baraden Sokoto once asserted in a newspaper publication that: 'Nigeria was not a secular state'. In view of the fact that the late Dasuki ultimately became the Sultan of Sokoto (before being deposed), the importance of this statement as representing the highest Muslim view has been underscored.

Much later on in a commentary at a seminar held at the Nigerian Institute of Advanced Legal Studies, Lagos on the topic 'Religion in a secular state', the then Secretary-General of the Jaamatul Nasr Islam, Dr. Lateef Adegbite, commented in a similar vein thus:

'No Muslim will support a secular state. I want to say it with all the emphasis at my command because, as far as we are concerned, secularity means 'godlessness', and Muslims will never support

that'.

This insistence against the use of 'secularism' to represent Nigeria's national policy on religion obviously flies in the face of the grammatical connotation of the word, which simply implies 'a theory of separation of religion from state apparatus'. On the contrary, the contention of this group has always been that Nigeria is a multi-religious society, and the claim of secularity is against the intense religious orientation of the Muslim.

However, this view of the status of the Nigerian state has been disclaimed by no less an authority than a former Head of State in the person of Major-General Muhammadu Buhari (Buhari has now been elected President in a democratic election in May 2015). In his Sallah message to the nation to mark the end of the Ramadan fast in 1985, he asserted: 'Nigeria is a secular state and perpetrators of religious riots are to be ruthlessly dealt with'.

The issue of the proper interpretation of 'secularism' or 'multi-religiosity' is however tangential. The core of the problem is and always has been the extent to which the Nigeria State should involve itself in religious affairs. It is consequently proposed to examine hereunder some incidents in the recent history of this country with a view to determining the trend in Nigeria's observance of the constitutional injunction that the state should distance itself from religious activities. We shall also offer suggestion aimed at reinforcing this ideal, an ideal fostered by the

Magna Carta when King John Voluntarily pledged to allow the Church of England to run its own affairs and conduct canonical elections without intervention by him.

4.2 Separating the State and religion

In defiance to the 1999 Constitution of Nigeria prohibiting the adoption of state religion, successive Nigerian governments at all levels have continued to sponsor religious activities. For example:

- The Kebbi State Pilgrims Welfare Agency remitted a sum of N2.1 billion to the National Hajj Commission as fares for 5,700 pilgrims in 2010

- The Bauchi State Government in September 2010 sponsored to the tune of N50 million, a convention of the women's wing of the Christian Association of Nigeria (CAN).

- The Gombe state government donated N100 million and N50 million respectively for the building of a mosque and a church in 2008

- The Osun State government in early 2014 announced that it had voted billions of Naira to build the largest Christian religious centre in the State in recognition of the fact that almost all the leaders of the foremost Pentecostal churches are from Osun State

- The Oyo State government sponsored 1,500 Muslim pilgrims on Hajj to Saudi Arabia in 2010

- In Abuja, the Federal capital, the two imposing religious houses- the 'National Mosque and the 'national Ecumenical centre 'were built from donations, running into several millions by the Federal Government of Nigeria.

- Lavish churches and mosques have been built in Government houses depending on which branch of religion hold sway.

- The Central Bank of Nigeria (CBN) has over the years consistently subsidized the exchange rate by about 50% for persons buying foreign exchange for Christian and Islamic pilgrimages.

Such unconstitutional spending of government resources have been deprecated by many including the world-renowned writers – Chinua Achebe and Wole Soyinka, as a dangerous involvement by the state in religious affairs and contradictory to the letter and spirit of a secular state. The persistent question has been – why set apart the Christian and Islamic religions for such government largesse? Why is the government patronizing religion instead of distancing itself therefrom? Is this not a slippery slope that will lead Nigeria ultimately on the path of religious fanatism and bigotry.

As Christian Pentecostalism gained root in Nigeria and captured the popular imagination, the differences between Christianity and Islam have become more etched. The Pentecostal strain of Christianity according to Akowonjo is viscerally opposed to Islam unlike the erstwhile mainstream churches (Catholic and Protestant), which are more liberal and tolerant. Christian fundamentalism represented by Pentecostalism has mounted such an aggressive proselytisation that alarmed the islamists.

It is our thesis that Islamic extremism manifested in religious riots in the Northern states particularly in the 1980s and 90s may have been a direct response to the perceived upper hand being gained by the Pentecostal churches with churches and worship houses springing up like mushrooms all around them i..e Muslim fanaticism may be a direct response to Christian fundamentalism epitomized by Pentecostalism and its more aggressive and pervasive proselytisation.

Ultimately, in order to strengthen a waning religion, Sharia law was finally introduced in 2000, but not before an orchestrated violence to roll back the gains of Christianity in states hitherto regarded as bastions of Islamism.

4.3. **Religion and the School System**

Section 38 of the 1999 Constitution has two apparently conflicting provisions on religious instructions in schools. In one breath, the Constitution in section 38(2) forbids the compulsion of any school

pupil to participate in religious activities other than his own. In another breath, the Constitution in section 38(3) asserts that religious bodies shall be free to provide instructions in such institutions.

Obviously, it will be unrealistic to expect young children of tender ages who are called to morning devotion in schools to have the sagacity or temerity to refuse to participate in such assemblies organized by the school authority. If the school authority decides to expel such an uncooperative child, they would have exercised legitimately a right conferred on them under section 38(2).

The way out of this confusion, in our respectful view is to ban religious instruction altogether in all schools, whether established by government or by religious bodies. Religious indoctrination is better left for the churches, mosques, and other religious bodies.

The Supreme Court of the United States has in fact ruled in *Zorach v Clauson* 343 US 303 (1952) that the government may not blend secular or sectarian education nor use secular institutions to force any religion on any person. This is as it should be. To allow religious indoctrination of children in their tender and impressionable years is to facilitate cultural imperialism and psychological disorientation.

One still recollects vividly the pictures shown in one's early years in school of a white Jesus and a black Judas; of white missionaries

'civilization' black heathens or pagans. The subtle psychological damage done may be irreversible in later years. This justifies, in our respectful view, the trend of judicial decisions in the United States.

In the case of *Engele v Vitale* 370 US 421 (1962), the New York Board of Regents instructed schools to direct pupils to recite aloud prayers in the presence of their teachers every morning. Some parents challenged this practice. The Supreme court held that it violated the separation between the church and the state and the constitutional provision entrenching freedom of religion.

It is, of course possible to argue that such policy may discourage religious bodies from establishing schools. The response is that, if religious indoctrination is the main purpose for their establishing such schools, then the country is better off without them. However, if their purpose is purely charitable, that is, to enable every desirous child to be given the opportunity of receiving education, it should be immaterial whether such a child is a Muslim, Christian or traditional religionist.

Still on the question of religion and education, the Federal Government is at present pursuing through the machinery of the state governments, a policy of ensuring that parents allow their children or wards to take advantage of its compulsory Universal Basic Education (UBE) programme. The problem of parents preventing their children from schooling is particularly common in

the northern states where girls of primary school age are sometimes married off to older men. Since religion is usually the excuse for such behavior, we may wish to examine what constitutional issues are involved.

The case of *Wisconsin v Yoder 373 US 203* (1963) illustrates that such a problem is not peculiar to Nigerian. The state of Wisconsin brought a suit against members of the Amish church to compel them to abide by the state's compulsory school attendance law which requires children to attend public school until the age of sixteen. The Amish Church parents refused to send their children to school beyond the eighth grade. Their argument was that higher education generally teaches values which are at variance with those of their church. The question faced by the Supreme Court then was whether the compulsory attendance law violated the freedom of religion of the Amish parents under the constitution. The court answered in the affirmative.

Its reason was that, however strong a state interest in universal compulsory education, it is by no means absolute and not to the exclusion or subordination of other interests. Said the court: "a way of life that is odd or erratic but interferes with no rights or interests of others is not be condemned because it is different".

This is not a positive lesson for Nigeria. It is our submission that a developing country such as Nigeria should pursue a policy of encouraging education but that this should be done with caution in

order not to antagonize religious interests and sensibilities however "retrogressive" in our perception. By the same token, where a religious institution has set up its schools, the government should not interfere by compelling the teaching of other religions in such schools as the Nigerian government is doing. Rather religious instruction should be replaced with civic instruction.

In February 1996, the then Commissioner for Education in Kwara State closed three Christian schools – Union Baptist Teachers College, Baptist Model College, and Ogele Community secondary school on the grounds that the schools had not allowed the employment of Islamic teachers to teach Islamic religious knowledge even though they had a substantial Muslim student population. The Christian Association of Nigeria (CAN) naturally protested the closure, the Civil Liberties organization (CLO) commented in its Annual report on Human Rights 1996 thus: '*Despite the clear provisions of the Constitution on Freedom of worship and secularity, the Military dictatorship continues to exploit the religious differences of the Nigerian people to divide and rule them thereby giving the impression that Islam is the state favoured religion'*.

The comments are apt and enable us to reiterate that at some point the Islamic religion was perceived as waning and that a more aggressive approach was necessary to shore up its fortunes. The introduction of Sharia Law in some northern states was such a reaction. We look more closely at its introduction.

4.4 **Sharia Law, The Nigerian Constitution and Human Rights**

The 're-introduction' of Sharia Law into the Nigerian legal system alarmed many Christians who had perceived a definite bias by the Nigerian state for Islam, then Governor (now Senator) Sanni Yerima of Zamfara State enacted the Zamfara Sharia Penal Code and Zamfara State blazed the trails on January 27, 2000. Soon enough, 11 (eleven) Northern states had followed suit using varying modalities, namely – Gombe, Bauchi, Katsina, Jigawa, Kano, Kebbi, Sokoto, Yobe, Borno and Kaduna States.

The reintroduction of Sharia is being justified on the grounds, that true Muslims must live in a religious order, that the constitutional guarantee of Freedom of religion allows them to do so, that the implementation of sharia law would obviate the prevalence of negative social vices and immorality. Shariah law is a 'reintroduction', because the implementation of Sharia Criminal Law (which is the additional component of Sharia Civil law) had been in place in the Northern States until abolished in 1960 when the new penal code law for the Northern Region, 1959 was brought into effect.

4.5 **Sharia Law and the Constitution**

What the new Sharia penal Codes of the twelve states had done is reinstate what had been in place since 1902. Generally, the law introduces the harsher penalties of Islamic criminal law for theft

(amputation of right hand), robbery (amputation of the right hand), murder (retaliation and compensation), and immoral behavior such as adultery (death by stoning), prostitution (death by stoning), drinking of alcohol (caning). Such harsher punishments include corporal punishment (caning) for many offenses in substitution for fines and imprisonment. The Sharia Court system is also seen as faster in the dispensation of criminal justice because of its avoidance of legal technicalities.

In terms of its effect on the court system, the erstwhile dichotomy between Magistrate courts (which apply Common Law along with the High Court and appellate courts) have given way to the three levels of erstwhile area courts (known as Alkali courts), now designated as Sharia courts, Upper Sharia courts, and Higher Sharia courts. All three levels of Sharia courts (formerly area courts) have jurisdiction on civil litigation involving Muslims and in criminal proceedings if the accused is a Muslim. However, a non-Muslim may accept the jurisdiction of the Sharia court in specific proceedings.

Under the Sharia Penal Code, the jurisdiction of the Sharia Court of Appeal of a state extends to civil and criminal matters tried before the Sharia courts but limits appeals from the Sharia court of Appeal of a State (equivalent to the high court in status and thus lies to the court of Appeal) to Muslim personal law.

The Sharia court system is manned by persons qualified and

knowledgeable in Islamic law. However, persons charged with crimes may be represented by legal practitioners of their choice. How limiting it would it be for a legal practitioner, himself not versed in Islamic law to appear before a non-lawyer is a matter for conjecture particularly given the fact that legal technicalities are not the forte of the Sharia courts and are in fact discouraged.

One of the problems, which have emerged under the Sharia Law System, is the issue of enforcement. The Police Force is under federal control and non-Muslims officers are often reluctant to enforce Islamic laws on adultery, alcohol consumption etc. vigilante groups called 'Hisbas', have therefore emerged as enforcers of Islamic law with the lack of discipline and control often associated with vigilante groups. In a multi-ethnic setting, such enforcement by Islamic vigilante has sparked ethnic/religious confrontation.

Specific issues have been raised on whether the Sharia Law System aligns with the Nigerian constitution. Section 1(3) of the 1999 constitution provides that if any law is inconsistent with the constitution, such law shall be null and void to the extent of its inconsistency. The Federal Government headed President Olusegun Obasanjo at that time resisted all calls on it to challenge the Sharia Law arguing that Shariah would soon wither away…political Sharia would disappear but Islamic Sharia would remain.

Chief Bola Ige, the Attorney general of the Federation and Minister for justice at that time in fact declared publicly that Sharia law is unconstitutional. However, he then wrote a tepid letter to the Sharia Law states asking them to reconsider their steps having regard to the provisions of the Constitution. The House of Representatives on February 23, 2001 passed a resolution asking the Attorney General to seek legal interpretation of Section 10 from the Supreme Court of Nigeria. The Federal Minister of Information, Mr. Dapo Sarumi, issued a statement that the Federal Government would not got to court but would explore a political solution.

The establishment of the yanagaji outfit by the Zamfara State government to enforce the Sharia Penal Code could have provided a fertile constitutional ground in view of the entrenchment of the Nigerian Police in the Constitution as the enforcement agency of the Government, but as Rudd Peters rightly observed in his report on Islamic Criminal Law in Nigeria the issue of the strict interpretation of locus standi in Nigeria by which only a person directly affected by the negative impact of any law could effectively challenge its implementation, constituted a challenge, so that human Rights organizations could not commence class actions suits. The law of locus standi may have been radically changed by the Fundamental Human Rights (Enforcement Procedure) Rules promulgated by then Chief Justice of the Supreme court- Justice Idris Kutigi in 2009, but Nigeria appears to have slipped beyond constitutional challenge of Sharia Law.

Apparently, popular discontent against the introduction of Sharia law in Kaduna was ruthlessly overcome on February 1, 2000 when more than 500 persons who attempted to protest its introduction by the Kaduna State House of Assembly were killed during a mayhem that lasted for several days. Churches, Mosques, business premises and homes were burnt in the process. On February 27, 2000 67 more persons were killed, and another 50 on May 22, 2000.

4.6 **Sharia Law and Human Rights**

The HURILAWS (Human Rights Law Service) filed a suit at the Zamfara state High Court in Gusau, challenging the constitutionality of the Sharia Legal code that provided for punishment which contravened the fundamental human rights provisions of the 1999 Constitution against torture, inhuman and degrading punishment or treatment. The suit failed on the grounds of lack of locus standi.

- In February 2000, the Sharia Court sitting in Zuni sentenced Mohammed Bello to 50 strokes of the cane and 10 months imprisonment for stealing beans worth N90 (Ninety Naira only which is less than one dollar);
- Aliyu Gusau was sentenced to 150 stokes of the cane for drinking beer on March 22, 2000;
- The office of the Governor announced the amputation of the right hand of Baba Garbe Jangebe for stealing a cow. The

President at the time (Olusegun Obasanjo) advised that he sue the Zamfara State Government. Jangebe who was poor and semi-literate and was repeatedly told that a 'true' Muslim would not contest the 'judgment of Allah'. Moreover, the government, which had cut off his hand, lavished gifts and money on the amputee and shielded him from alleged 'troublemakers' who might want to incite him to go to court.

- In September 2000, the right hand of Abdurahim Umar of Sokoto, Sokoto state, accused of stealing a compact disc was amputated
- Also in Sokoto State, reputed as "the seat of the Caliphate" seven were arrested and sentenced to death by a Shariah court for prostitution. They had been arrested in hotels and night clubs which are classified as "brothels' by the zealous enforcers of Sharia Law.

In his report on the implementation of the Sharia penal code, Rudd Peters has asked pertinent questions concerning human rights and the Sharia Penal Code.

- Do the penalties of amputation, caning, randomly imposed under Sharia Law constitute cruel and unusual punishment?
- Does the treatment of women particularly on charges of prostitution and adultery violate equality before the law?
- Does conviction for drinking alcohol, which appears to be enforced against Muslims and non-Muslim alike violate the freedom of religion?
- Does the provision of Section 40(d) of Zamfara Penal Code,

which forbids the worship of juju, violate the religious freedom of adherents of traditional religion?

For us, the greatest danger to human rights is not the black letter of the Sharia Law, but its use as a subtle justification for mass hysteria. Take the case of Mr. Gideon Akaluka, an Igbo trader who was murdered by a group of Islamic fundamentalists on December 26, 1994,overa spurious allegation of desecrating the holy Koran.

According to a report by the Civil Liberties Organisation (CLO) in its Annual Report on Human Rights, 1995 no one knew how the rumour started that Gideon's wife allegedly used pages of the Koran as toilet paper for her baby. He was set upon and beaten to a pulp, he manage to escape to a nearby police station where the policeman, afraid of the large crowd that had immediately surrounded the station, took him to the prison yard. The crowd trailed him there, entered the prison and brought him out and beheaded him. His head was put on a stake like trophy. Four members of a Muslim sect Tajdiid Islamiya owned up to the murder before a panel headed by one Ambassador Bashir Wali, to inquire into the matter. The Christian Association of Nigeria (CAN) called for the prosecution of the zealots to no avail.

In another incident reported by the Constitutional Rights Project (CRP) in its Annual Report on Human Rights 1995/96, a passenger on a commuter bus suddenly found herself fighting for her life after she was accused of blasphemy, she was beaten mercilessly

and was only saved when she escaped into a nearby military barracks. Such incident of mass hysteria can be replicated ad nauseum. A non-indigene or non-Muslim living in any of the Northern states constantly faces the possibility of lynching. All it takes is for somebody to accuse that person of breach of some Islamic injunction or the other-blasphemy, prostitution, adultery.

Conclusion

We set out in this presentation to consider the universalism of the precepts of the Magna Carta. Even though it originated from an intimidated monarchs response to volatile civil uprising, its key elements have somehow or the other fired the imagination of freedom seekers all over the world, leading to an extrapolations of its basic provisions on separation of church and state and civil and political rights to encompass the plentitude of all fundamental rights.

With particular reference to freedom of religion, we compared the Magna Carta to African Traditional Religion and found that the values of tolerance between religions and checks and balance of monarchial power by the priestly institution provides a point of congruence despite diversity of time and space. With regard to the contemporary law of Nigeria, there are various parallels to be drawn- Natural Law as basis for human rights, the essential autochthony of human rights as deriving from “people power”, the rule of law and separation of powers, suspects rights within the criminal justice system and the idea of the written Constitution.

On the issue of religion, we found that it was the subversion of these hallowed principles of human rights by religious vested interests that has precipitated religious conflicts and ultimately the present terrorism of the Boko Haram sect.