

12 COUNTERTERRORISM AND RELIGIOUS VIOLENCE IN NIGERIA: A JUST WAR PERSPECTIVE ON THE DOCTRINE OF NECESSITY

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INTRODUCTION

The frequency and brutality of religiously motivated violence in Nigeria, especially since the emergence of Boko Haram,³ has sparked scholarly debate and divergent assessments of the (il)logic of this phenomenon and its overall impact on Nigerian politics and society. Two important features of Nigeria's social and cultural reality further complicate the scholarly task of making sense not just of Boko Haram, but of religious violence generally. The first is that Nigerians have proved the prediction of the triumph of secularisation wrong; the country is among the most religious in the world. Moreover, even if the latter is acknowledged, many scholars have identified two common, but inadequate, approaches to the study of religion and its relationship to violence. The first approach blames religion as the main cause or root of all violence and considers religious violence as more pernicious than its secular alternative. The second approach exonerates religion from violence and sees any relationship it may have with it as the work of those who have "hijacked" or corrupted religion for political, ideological or non-religious reasons. Both approaches ignore the ambivalent character of religion.⁴

Acknowledging that conflict and violence are ineradicable part of the human condition, we are interested not so much in the fact that religion is deployed to justify violence or the use of force, but in why it is so used and in the meaningful moral restraints that could govern such religiously authorised violence. Our choice of this approach is not arbitrary; rather it is dictated by what seems a normative understanding of violence, regardless of intensity level, in the multiple streams of Nigerian law, including its constitution, statutes, and treaties. A similar understanding is also reflected in the various arguments of Boko Haram's spokespersons to justify the group's activities.⁵

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3 See Lubeck P. 1985. "Islamic Protest under Semi-Industrial Capitalism: 'Yan Tatsine' Explained", *Africa* 55(4):369-389; Grow J, Olonisakin F and Dijkhoorn E (eds). 2014. *Militancy and Violence in West Africa: Religion, Politics, and Radicalization*. New York: Routledge.

4 See Appleby RS. 2000. *The Ambivalence of The Sacred: Religion, Violence, and Reconciliation*. Lanham, MD: Rowman & Littlefield.

5 See Ellis S and Ter Haar G. 2004. *Worlds of Power: Religious Thought and Political Practice in Africa*. Oxford: Oxford University Press, on the importance of taking religious ideas seriously in the context of studying Nigeria's politics.

A further feature of Nigeria's cultural reality is the complex nature of the violence to which it is routinely subjected, which defies a monocausal explanation, given the way in which religious, gender, class, and regional interests intersect in the country's kaleidoscopic political terrain. Accounting for how each of these factors contributes to violence is certainly necessary; yet rarely is any single factor a sufficient explanation for any instance of violence in the country. Thus, blaming religion as the sole culprit for violence in Nigeria is without adequate foundation. Nonetheless, regardless of its cause(s), violence is never a value-neutral phenomenon, not just because of the ways it impinges upon human interests, but also, and perhaps more importantly, because of the various kinds of reasons typically offered to justify resorting to it and/or regulate the form and patterns of its expression. We examine various dimensions of this issue by drawing upon the just war tradition (JWT). The JWT specifically requires us to evaluate the ethical justifiability of the use of force at two levels – the first focusing on the reasons for fighting and the second on the means employed to fight. Together, *jus ad bellum* and *jus in bello*, respectively, “enable us to weigh the justification for entering war and the justice of using lethal practices in war”.⁶ *Jus ad bellum* criteria typically includes legitimate or competent authority, just cause, right intention, announcement of intention, last resort, reasonable hope of success, and proportionality. We argue for a *contextual* application of some of these elements – especially just cause, competent authority, and discrimination – to show how insights from the tradition might help to advance the discourse on religion and violence particular to Nigeria. *Jus in bello* criteria focuses on the criteria of discrimination and proportionality. A fundamental presupposition of JWT is that since resort to the use of force usually arises in large measure by human volition, we can be expected to exercise at least some measure of control or restraint with respect to both the precipitating decision and the method of implementation.

Oversights in previous scholarship and the two cultural realities of contemporary Nigeria are an impetus to closely assess and engage both Boko Haram's appeals to religion to justify violence as well as how religion interacts with other societal factors in Nigeria. Drawing on Nigerian law as well as scholarship in religious ethics and international law – especially the latter's two subunits of the law of armed conflict and international humanitarian law (IHL) – we suggest a novel two-pronged approach that draws on the convergence of empirical and normative insights. Our empirical interest focuses on the examination of Boko Haram's claims of religious authorisation for their deadly opposition to the Nigerian government and the Nigerian government's public invocation of the doctrine of necessity to justify extraordinary countermeasures against Boko Haram. We take up the normative task by using just war criteria to analyse both parties' justifications for their courses of action and to distinguish these actions from each other. Ultimately, this two-pronged approach offers a nuanced and more contextualised assessment of Boko Haram's and the Nigerian government's actions. The approach attends both to the

6 Miller RB. 1996. *Casualty and Modern Ethics: A Poetics of Practical Reasoning*. Chicago: University of Chicago Press, 57.

particularities of Nigerian culture and the universal standards to which all members of the international community are held to account by bringing the doctrine of necessity into dialogue with the human rights concerns of just war theory within the context of religious violence. One obvious advantage of our approach is that it situates the discourse on religion and violence within the broader deliberations that Nigerians are having about the substance and expected dividends of their constitutional democracy and the extent to which the elected and self-appointed guardians of this political experiment take seriously their fiduciary responsibilities to their fellow citizens. Another advantage is that the preservation of human rights during warfare is at the core of the JWT, and it provides a universal standard for adjudicating between the competing claims of the Nigerian government and Boko Haram as protecting the human rights of the citizenry and marginalised Muslims, respectively.

In the interest of space, we will not include public details pertaining to the history, organisational structures, and the changing dynamics of Boko Haram's operations, except where we consider such information germane to our focus. Neither this, nor our analysis of Boko Haram's justifications, should be construed as committing us to the acceptance of Boko Haram's argument or an endorsement of their understanding and interpretation of the Islamic tradition. However, any hope of stemming the tide of easy embrace of violence as a method of resolving political and other grievances would require that we take seriously the reasons that people offer, even if those reasons do not make sense to us or other people. The imperative is more acute when engaging people who appeal to religious norms, since their appropriation is only one of the multiple hermeneutical stances available within their claimed tradition. By drawing upon a religious tradition with a long and rich history, Boko Haram opens itself to critiques not only from non-Muslim Nigerians but also, and more importantly, from their fellow Muslims who draw different theological and ethical warrants for human action from the same tradition. This is because, as ethicist John Kelsay points out, the notion of a just war is "an aspect of the foundational narrative of Islam".⁷ Similarly, this strategy of immanent critique also applies to our assessment of the Nigerian government's appropriation of the language of the JWT to validate its actions against Boko Haram. As just war language is a global, moral, and legal vocabulary, it provides a foundation for testing the government's adherence to or distortion of the tenets of this tradition.

CONSTITUTIONAL FRAMEWORK FOR ANALYSING RELIGION AND VIOLENCE IN NIGERIA

The starting point for any meaningful legal discussion of religion's entanglement in violence in Nigeria is Section 14 of the Constitution of the Federal Republic of Nigeria, which declares "the principles of democracy and social justice" as two of the fundamental directive principles of state policy and further stipulates the twin objectives of "the security and welfare of the people" as being "the primary purpose

⁷ Kelsay J. 2007. *Arguing the Just War in Islam*. Cambridge, MA: Harvard University Press, 97.

of government”.⁸ A key democratic principle institutionalised as a fundamental right is religious freedom, exercisable either individually or communally, privately or publicly,⁹ and to which, as a socially distributed moral good, all citizens are entitled, without discrimination, regardless of individual circumstances and ideological commitments.¹⁰ However, this ostensibly generous disposition of the Nigerian Constitution toward religion is moderated by certain clawback clauses to discourage the absolutisation of religious rights.

First, the right to religious freedom cannot be invoked to demand for the adoption of one’s religion as the official religion of “the government of the Federation or of a State”¹¹ in the country. Second, the right has to be exercised in a manner that recognises or is consistent with the supremacy of the Constitution,¹² a guiding charter that considers the indivisibility and indissolubility of the country as sacrosanct.¹³ Most relevantly, the exercise of the right to religious freedom, individually or communally, is subject to the exigency of public order and public safety which, when threatened, obligates the government to provide, maintain and secure “such supplies and services as may be designated by the National Assembly as essential”¹⁴ for their restoration.

To be sure, perceptions of what are considered threats to public order and safety can vary considerably, sometimes influenced by the kind of government in power and the degree to which it is tolerant of alternative views and constructive criticisms. The Constitution seems to acknowledge this possibility by empowering citizens with the right “to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”.¹⁵ Nevertheless, there can arise situations when the existence and seriousness of such threats are beyond subjective interpretation. Thus, the Constitution envisions times when the country may be “at war”, during which “the National Assembly may make such laws for the peace, order and good government of the Federation or any part thereof with respect to matters ... as may appear to it to be necessary or expedient for the defense of the Federation.”¹⁶ This is, in essence, the doctrine of necessity.

Considering the series of laws that the government had enacted as part of the measures designed to interdict the threat of Boko Haram, an important question

8 See Constitution of the Federal Republic of Nigeria, sec 14(2)(a-b) of this section.

9 See Constitution of the Federal Republic of Nigeria, sec 38(1).

10 See Constitution of the Federal Republic of Nigeria, sec 42(1-2).

11 See Constitution of the Federal Republic of Nigeria, sec 10. For a discussion of the constitutional construal of “adoption” of religion, see Ilesanmi SO. 2011. “Disestablishment Without Impartiality: A Case-Study Examination of the Religious Clauses in the Nigerian Constitution”, *St. John’s Law Review* 85(2):568-569.

12 See Constitution of the Federal Republic of Nigeria, sec 1(1, 3).

13 See Constitution of the Federal Republic of Nigeria, sec 2(1).

14 See Constitution of the Federal Republic of Nigeria, sec 11(1).

15 See Constitution of the Federal Republic of Nigeria, sec 39(1).

16 See Constitution of the Federal Republic of Nigeria, sec 11(3).

to raise at this juncture is whether such moves should be understood as expressing government's belief that the country is "at war". To answer this question, we need some clarification of the conditions that have to be fulfilled for a particular course of action to be properly designated "war". The often-quoted definition that appears in German jurist Lassa Oppenheim's classic, *International Law: A Treatise*, provides a helpful guide. According to Oppenheim, "War is a contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases."¹⁷ One can understand Oppenheim's conceptual formulation of war as comprising the following four elements: (1) there has to be a contention between at least two states;¹⁸ (2) the use of the armed forces of those states is required; (3) the purpose must be overpowering the enemy, as well as the imposition of peace on the victor's terms; and it may be implied, particularly from the words "each other", that (4) both parties are expected to have symmetrical, although diametrically opposed, goals. Oppenheim's view of war illustrates what political ethicist Michael Walzer characterises as a "legalist paradigm"¹⁹ to which he proposes substantial revision.

The world has changed dramatically since Oppenheim first formulated this definition, and nothing captures this reality better than the character of recent wars and conflicts, many of which were initiated by non-state actors and fought primarily, though not exclusively, within rather than across state boundaries. It is thus important to examine the legal and normative implications of this changed context which is what the "contention" between the Nigerian state and Boko Haram typifies. Both the government and Boko Haram believe themselves to be at war with each other. If this belief is also animated by the perception that they are each other's enemy, then the application of the third element in Oppenheim's definition – the "overpowering of the enemy" – as the purpose of war raises serious questions about the possibility of post-war reconciliation, making its achievement elusive if not impossible, since it is logical to expect that neither side would be interested in exercising any moral restraints in the manner it prosecutes the war. To avoid this grim situation, the tradition of just war thinking, historically and cumulatively informed by international law, international humanitarian law (IHL), and the laws of war derived from both Christian and Islamic traditions, provides us with more helpful conceptual tools in reformulating the purpose and method of war, especially one that occurs intra-state.

17 Oppenheim L. 1952. *International Law. A Treatise*. 2 vols. Eighth Edition. London: Longmans, 202.

18 In the Instructions for the Government Armies of the United States in the Field (or Lieber Code), this condition is formulated as "a state of armed hostility between sovereign nations and governments". See Kritsiotis D. 2016. "War and armed conflict: The parameters of enquiry", in Liivoja R and McComack T (eds). *Routledge Handbook of the Law of Armed Conflict*. London and New York: Routledge, 8.

19 See Walzer M. 2015. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. Fifth Edition. New York: Basic Books, 58.

NON-INTERNATIONAL ARMED CONFLICTS UNDER INTERNATIONAL HUMANITARIAN LAW

Prior to 1949, customary international law restricted the right to make war to States as sovereign entities. As to how they should handle insurgents, states could do as they wished, unless the rebel forces were recognised by the government as belligerents.²⁰ This statist conception of the legality of war was largely retained in the UN Charter, which outlaws the unilateral use of force against the territorial integrity or political independence of any state, subject to the right of self-defence as preserved in Article 51. Chapter VII of the Charter replaced the use of individual violence by states with a system of collective security. Although scholars debate the effectiveness of this scheme, it is acknowledged as a comprehensive legal framework governing the recourse to violence in the international context.

Against this backdrop, it was a revolutionary legal (and some would add moral) development when Article 3, common to all the four Geneva Conventions adopted in 1949, set forth rules that most legal scholars agree establish “minimum criteria for armed conflicts that are not of an international nature”.²¹ Here, “armed conflict” is a situation understood in customary international law as “the existence of open hostilities between armed forces which are organised to a greater or lesser degree”.²²

Moreover, international armed conflicts are distinguishable from non-international ones based on the legal status of the entities opposing each other, but not all situations of armed strife within a state qualify as a non-international armed conflict. Article 1(2) of Protocol II excludes “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature” from the legal purview of armed conflicts, and declares that the Protocol’s norms do not apply to these.²³ The reason for establishing this hierarchy of violence or clarifying the level of violence that the requirement of an “armed conflict” entails is partly contained in Article 3(2)-(3) of the Organisation of African Unity (OAU), which enshrines the principles of “noninterference in the internal affairs of States”,

20 Belligerency is a juridical act which is both unilateral and discretionary and may take either an explicit or a tacit form. See Sandoz Y et al. (eds). 1987. *Commentary on the Protocol Additional to the Geneva Conventions of 12 relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II)* 1320–1321 (1987). Online at http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf. This situation could be complicated if some third states recognised the belligerent status of the rebel party and others did not. On this, see Stone J. 1954. *Legal Controls of International Conflict: A Treatise on the Dynamics of Disputes and War Law*. New York: Rinehart, 565.

21 See Convention [No. IV] Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art 3, 6 UST 3516, 75 UNTS 287 [hereinafter Geneva Convention No. IV]; Walker G. 2000. “Responses to Humanitarian Law Violations in Non-International Armed Conflicts: Historical Perspectives and Considerations on Conflicts of Jurisdiction”, *Israel Yearbook on Human Rights* 30:154.

22 Sandoz, *Commentary on the Protocol Additional to the Geneva Conventions*, 1319.

23 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 16 I.L.M. 1442 (1977) [hereinafter Protocol II].

and “respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence”.²⁴

Without a doubt, the war being waged by Boko Haram against the Nigerian state is more than an internal strife, even when seen under the most conservative lens of the OAU Charter. It is the kind of “armed conflict” of a non-international nature to which the common Article 3 of the Geneva Conventions applies. Furthermore, it is clear that the perspective of IHL on civil wars is focused on how participants in such wars can be brought under the governing authority of *jus in bello*, that is, subjecting them to “prohibitions against the killing of prisoners, attacks on noncombatants, and the infliction of unnecessary suffering”.²⁵ International law is nearly silent on the conformity of these wars to *jus ad bellum* assessments, so at this juncture, the question is whether it is possible for non-international armed conflicts, especially wars undertaken by rebels against the government of their country, to pass the muster of justice at both levels of assessment.

JUST WAR ANALYSIS OF BOKO HARAM’S WAR ON THE NIGERIAN STATE

We will confine our evaluation of Boko Haram’s justificatory arguments for war to the two *jus ad bellum* criteria of just cause and competent authority and the two *jus in bello* criteria of discrimination and proportionality. These criteria best bring into relief the primary thrust of Boko Haram’s claims for evaluation, as well as for a comparison to the Nigerian government’s reasons for resorting to the doctrine of necessity. Although just war theorists still disagree about how to vertically arrange the elements of the tradition’s first level of analysis, there is no dispute about the functional importance of the criterion of just cause. In nearly every variant of the formulation of this criterion, there is the recognition that it is what anticipates and makes permissible “behavior that international law would ordinarily condemn and regard as impermissible”.²⁶ Most scholars accept Augustine’s understanding of just cause: a belligerent’s cause is just if the purpose of the war is to “avenge injuries, if some nation or state against whom one is waging war has neglected to punish a wrong committed by its citizens, or to return something that was wrongfully taken”.²⁷

Boko Haram’s claims of just cause to declare war on the Nigerian government echo the first and third conditions in Augustine’s version of just cause. Its members ground the justice of their cause in the (1) odiousness of the secular Nigerian state, (2) opposition to Western education and modes of thinking, and (3) claims of defence

24 Charter of the Organization of African Unity, 25 May 1963, 479 U.N.T.S. 39, 58 A.J.I.L. 873 (1964).

25 Langan J. 1985. “Violence and Injustice in Society: Recent Catholic Teaching”, *Theological Studies* 46:694.

26 Kritsiotis, “War and armed conflict: The parameters of enquiry”, 7.

27 Reichberg GM, Syse H and Begby E. 2006. *The Ethics of War: Classic and Contemporary Readings*. Hoboken, NJ: Blackwell, 81.

against a government bent on persecuting Muslims. Boko Haram advocates a politics of “total commitment to the idea of Islam as a societal blueprint” and rejects democracy because it “positions the people as an authority in rivalry with God.”²⁸ In fact, it sees democracy as a source of multiple evils, notably, its treasured “freedom from belief” which tempts people to commit apostasy,²⁹ resulting in collective moral decay within the society. Speaking on behalf of the group, Boko Haram founder Muhammad Yusuf argues that Nigeria’s democracy is a euphemism for “bad governance, official immorality, and obnoxious modernity teachings”, whose effects are seen in the pervasiveness of “hunger, disease, poor education” and other kinds of economic woes on the people.³⁰ It would be imprudent to fight this anomaly, Yusuf further argues, with the ordinary method of moral suasion, that is, the *jihād* of the tongue. He contends a more determined, even if violent, response is required.

Yusuf’s successor, Abubakar Shekau, is more specific in his characterisation of secularly operated democracy as a moral affront. According to him, it is per se *kufr* (unbelief), despite the fact that Muslims, especially from the north, have been disproportionately favoured in federal appointments. Boko Haram concedes this fact, yet they see such leaders as nothing more than “apostates”, ruling over an “infidel state”; thus, any right to political obedience that such leaders might assert is fraudulent and to be forcefully rejected. In the language of a thirteenth-century just war theorist, Alexander of Hales, Boko Haram believe themselves to have a duty, vis-à-vis those apostate Muslim leaders and in the context of the Nigerian state, to restore the good, suppress the wicked, and pursue peace for all.³¹ To achieve these moral goods, not only would the Nigerian polity be redesigned in accordance with “a strict interpretation of Islamic law”, but all “the states around Lake Chad” would need to be replaced “with a pure Islamic society”.³² Underlying this vision of a new Nigeria, shared by both Yusuf and the movement he led, is a hardline conception of the doctrine of *al-wala’ wa-l-bara*, which prescribes “exclusive loyalty (*al-wala’*)” to those considered “true Muslims, and complete disavowal (*al-bara’*) of all others”.³³ The key word here is “exclusive”, an uncompromising stance on the object of political allegiance; for, in Boko Haram’s theological and political lexicon, loyalty to Islam cannot accommodate other moral sentiments or coexist with affective ties to other communities. Applied to the Nigerian socio-political reality, it means an unapologetic rejection of democracy and its cultural correlate, namely, Western-style education. Yusuf proclaims, “what will make you

28 Reichberg et al., *The Ethics of War*, 15, 16.

29 See Thurston A. 2016. “*The disease is unbelief*”: Boko Haram’s religious and political worldview. The Brookings Project on U.S. Relations with the Islamic World. Analysis Paper 22. Washington, DC: Center for Middle East Policy at Brookings, 12.

30 Akanji T. 2013. “Insecurity in Nigeria: The ‘Boko Haram’ Dimension”, *KAS International Reports* 7:91, 93.

31 See Alexander of Hales. “Virtuous Dispositions in Warfare”, in Reichberg et al., *The Ethics of War*, 159.

32 Thurston, “*The disease is unbelief*”, 9.

33 Thurston, “*The disease is unbelief*”, 12.

a soldier of Allah first and foremost, you make a complete disavowal of every form of unbelief: the Constitution, the legislature ... worshipping tombs, idols, whatever. You come to reject it in your speech and your body and your heart. Moreover, Allah His messenger and the believers, you love them in your speech and your body and your heart.”³⁴

Boko Haram’s rhetorical strategy, especially its focus on the task of ascertaining a true Muslim as a criterion of political legitimacy, is nothing new in Nigerian Muslim discourse. As Louis Brenner, a historian of Islamic thought in West Africa has shown, “two dominant conceptual tendencies” have characterised African Islamic discourse since the early nineteenth century. While the first tends to focus on “the legal and normative aspects of Islam and its history”, the second emphasises individual personalities “as models either of upright Muslim behavior or its opposite, unbelief, tyranny, apostasy”. Brenner identifies Shaikh Uthman dan Fodio, the leader of the first major *jihad* in Northern Nigeria that began in 1804, with the second tendency, in light of his insistence that Muslim rulers – *shaikhs* and *awliya* – have to be persons who have “moved closer to God” and thus are in a position to “intercede on behalf of other less accomplished Muslims”.³⁵ Believing themselves to be heirs to this tradition, Boko Haram regards as anathema what they perceive to be the dominant preference of the Nigerian Muslim political elite, which is a polity that excludes matters of religious doctrines and spiritual affairs from the official business of government. It is not enough for the country’s rulers to be privately religious, they must also underwrite governance with religious precepts. And, as long as Nigerians continue to select their leaders through democratic electoral process, there is no guarantee that true Muslims would emerge to help correct the current anomaly. Boko Haram’s mission, then, is to provide an alternative template of legitimacy in the governance of the country, and their willingness to use force to enact this vision is further evidence of their unalloyed commitment to the original blueprint of state polity that Prophet Muhammad and Shaikh Uthman Fodio bequeathed to the Nigerian *umma*.³⁶

Rejecting the government’s characterisation of their ambition as vile, exclusivist, and intolerant, especially in a pluralistic Nigerian society, Boko Haram invokes the just war language of right intent to defend their conceptualisation of just cause. Seemingly, Boko Haram agrees that having a just cause is a necessary but not sufficient condition for employing violence. To ensure that the putative cause does not arise from perverse motives, the Islamic tradition requires those who authorise and or fight a just war to “show that their intention is consistent” with “the purpose

34 Quoted in Thurston, “*The disease is unbelief*”, 12.

35 Brenner L. 1992. “The Jihad Debate between Sokoto and Borno: an Historical Analysis of Islamic Political Discourse in Nigeria”, in Ade Ajayi JF and Peel JDY (eds). *People & Empires in African History: Essays in Memory of Michael Crowder*. London and New York: Longmans, 22. See also Last M and al-Hajj MA. 1965. “Attempts at Defining a Muslim in 19th Century Hausaland and Bornu”, *Journal of the Historical Society of Nigeria* 3(2):231-240.

36 Thurston, “*The disease is unbelief*”, 12.

of war", which is "the establishment and governance of an Islamic state".³⁷ But for a state to qualify as truly Islamic, and therefore worth fighting for, it must accept as its *raison d'être* "the Muslim community's mission of calling human beings to Islam",³⁸ which is the path of righteousness.

Yusuf articulates this benevolent rationale in the call he issued to "the Muslim community to correct its creed and its behaviors and its morals ... and to give children a correct Islamic education, then to undertake jihad".³⁹ Given the important role of schools as agents of soul-crafting, Boko Haram contends that only the *madrasa* system of education can provide an antidote to the decay that Western-oriented institutions have unleashed upon the nation. They cite as evidence of this decay the abysmal failure of the products of Western schools to share the material fruits of their educational advantage with the masses or even create emancipatory opportunities for them. Ironically, Boko Haram is not alone in this critique of the so-called educated Nigerians whose "promiscuous environment of ostentation" has "become the hallmark of national life".⁴⁰ Some northern states responded to this perception of dissonance between cultural values and the educational system by establishing "'Islamiyya' schools that blend government curricula with religious instruction".⁴¹ However, this hybrid solution seems to have worsened the problem by raising the specter of the sin of *bid'ah* (innovation), which has been viewed with askance in Muslim theological discourse. In short, Shekau indicts Western-style education, in both its conventional and hybrid forms, not just for its intellectual content, but for its political impact, a source of disorder and heresy that he believes the Quran condemns. Convinced that a paradigm shift in the philosophy and structure of education in Nigeria would be a forlorn hope, Shekau urges his fellow members to violently oppose the system: "Know, people of Nigeria and other places, a person is not a Muslim unless he disavows democracy and other forms of polytheistic unbelief (shirk)."⁴²

In his June 2009 "Open Letter to the Federal Government of Nigeria", a lecture delivered shortly before BH's uprising, Yusuf linked his complaints against the Borno State government to famous Muslim-Christian clashes in Nigeria. Yusuf concluded: "The government of Nigeria has not been built to do justice ... It has been built to attack Islam and kill Muslims." As with opposing democracy, it was not enough to criticise the state's persecution of Muslims: *Al-wala' wa-l-bara'* and *izhar al-din* demanded an aggressive defence of Islam, because Islam's enemies were on the move. To make matters worse, the government helped strengthen Boko

37 Kelsay, *Arguing the Just War in Islam*, 102.

38 Kelsay, *Arguing the Just War in Islam*, 102.

39 Quoted in Thurston, "The disease is unbelief", 12.

40 Soyinka W. 2013. "Winding Down History: Religion and Nation, Power and Freedom", *Premium Times*, 7 March.

41 Thurston, "The disease is unbelief", 15.

42 "VIDEO: Boko Haram Declares a New Caliphate in Northeastern Nigeria", YouTube, 24 August 2014.

Haram's perception and interpretation of its plight as precarious when Yusuf died under controversial circumstances in police custody following his arrest after he led an uprising that touched five Northern states. The government's effort to suppress that uprising led to the death of over 1,100 people.⁴³

Other declarations by Boko Haram may be construed as a denial of the violation of the *jus in bello* criteria of discrimination and proportionality. Convinced that the state and Christians collaborated to target Nigerian Muslims, BH killed Christians and sought to enflame Muslim-Christian tensions. In 2011–2012, BH repeatedly claimed responsibility for bombing churches, including sites of recurring Muslim-Christian conflicts such as Kaduna and Plateau. It signalled its widening range of targets by conducting suicide bombings in multiple Northern cities, including Abuja, and attacking symbols of state repression, including military and police barracks and prisons. Surprisingly, BH's brutality has been most unleashed on fellow Muslims, which Shekau claims is his imitation of the Prophet by massacring "unbelievers" (by which he meant lapsed Muslims) in Northeastern communities.⁴⁴ Furthermore, BH appeals to proportionality when it uses retaliation rhetoric to characterise its actions. For example, Shekau cited the April 2014 kidnapping of 276 schoolgirls in Chibok, Borno as a response to the Nigerian authorities' detentions of sect members' female relatives – a tactic that violates discrimination and proportionality.

As a non-state actor, for Boko-Haram to arrogate to itself the authority to declare war seems to deviate from a cardinal requirement of the JWT, whether in its Islamic or secular variant. Historically, states have been presumed to have a monopoly on legitimate and organised violence within their territorial boundaries. The JWT takes a dim view of acts of violence undertaken by private individuals and groups because these actions lack public approbation and because of the common practice of "engaging in tactics that are beyond the bounds of the laws of war".⁴⁵ Interestingly, however, the tradition leaves room for challenging the monopoly of states on the right to use force.⁴⁶ In the case of Islam, classical Muslim jurists approach this issue by distinguishing between what they call *harb al-kuffar* (war against unbelievers) and *harb al-bughah* (war against Muslims),⁴⁷ and propose separate rules to govern each of them. Sandwiched between these territories is a special category of protected people recognised in Islam – Jews and Christians – who, "as people of the Book", should be accorded immunity from offensive war, except they act in a manner considered injurious to the interests of the *umma*.

43 Thurston, "The disease is unbelief", 12.

44 Saharatv. 2014. "Boko Haram Leader Shekau Releases Video on Abduction of Chibok Girls", YouTube, 5 May.

45 Kelsay J. 1993. *Islam and War: A Study in Comparative Ethics*. Louisville, KY: Westminster/John Knox Press, 81.

46 See, e.g., Aquinas's discussion of tyrannicide in Miller RB. 2002. "Aquinas and the Presumption Against Killing and War", *Journal of Religion* 82(2):173-204.

47 See Abou El Fadl K. 2003. "Between Fundamentalism and Morality: The Juristic Debates on the Conduct of War", in Brockopp JE (ed). *Islamic Ethics of Life: Abortion, War, and Euthanasia*. Columbia, SC: University of South Carolina Press, 108.

The problem with Boko Haram's reliance on Islam as the theological framework for articulating their rationale for violence is the inconsistency in their perception and characterisation of the religious nature of Nigeria, in both juridical and sociological terms. On the one hand, their blanket criticism of the irreligious character of the country suggests that they are the only authentic and credible Muslims in the country, and that their war is intrinsically one against unbelievers, citizens and government alike. On the other, they want the presumably irreligious government to accord their fighters the kinds of belligerents' rights that a legitimate Islamic government would accord fellow Muslims who rebel against such a government, that is, rights enjoyed by *baghi*.⁴⁸ If the former, then the illegitimacy of the government inversely confers a right upon Boko Haram to declare war upon it and replace it with a legitimate one. But if they expect to be treated as *baghi* in combat, they must also be willing to accept the implication that only a government recognised as validly Islamic can accord them such a right. This confusion is compounded by Boko Haram's utter disregard for the mixed religious identity of the country, especially in the northern region where their violence is largely, though not exclusively, concentrated, a sociological reality that should limit those they aim to attack, as Christians – a protected group – are not an insignificant part of this region's population.

From the documents, videos, and statements released by Boko Haram, they seem to be cognisant of the confusion they are creating in the public's mind, especially on the issue of their claim to legitimacy. They acknowledge that the overwhelming majority of northern elite – governors, legislators (state and national), civic, traditional, and religious leaders – is Muslim; yet, they dismiss these leaders as toothless tigers, whose ostensible religious professions have not translated into tangible benefits for Islam and its faithful adherents. Although these rulers still dominate public life and consciousness, some Northern Muslims see them as not just bedfellows of corrupt politicians but in fact beholden to them. As a result, the putative leaders have forfeited their *de jure* legitimacy to rule and command obedience, because they “had squandered their prestige, and had failed to discharge their core duties of spreading Islam and preserving the Muslim community's moral order”.⁴⁹

Thus, violent rebellion against a ruler is governed by very strict criteria in Islam, and Boko Haram believe they meet these requirements. These include, according to a contemporary Muslim jurist, “a plausible interpretation [i.e., of Islamic precepts] (*ta'wil muhtamal*) or cause (*dhikr mazlama*)”.⁵⁰ In short, rebellion against “an unjust caliph” is permitted if the group undertaking it is prepared to fulfill certain conditions: first, its opposition or resistance to “the ruler or his designated representatives” must be unequivocal and “go beyond speech” (that is, it must perform *al-khuru*). Second, its convictions about the rightness of its actions (even if objectively mistaken) must be based on commonly recognised religious sources

48 Abou El Fadl, “Between Fundamentalism and Morality”, 111.

49 Abou El Fadl, “Between Fundamentalism and Morality”.

50 Abou El Fadl, “Between Fundamentalism and Morality”, 109.

(the Quran or the *hadith*), without which the justice of its action would be in doubt. Finally, the group must have a sizable and organised membership.⁵¹ The last requirement, understood by jurists as *shawka*, was stipulated to ensure that a group without mass support does not hijack power, thereby creating “anarchy and lawlessness” (*hatta la tafsad al-siyasat*).⁵² Boko Haram believes it satisfies all the three criteria for a justified rebellion against the Nigerian government. It is on this basis that BH presents itself as the victim of state aggression and the voice for a larger, and aggrieved Muslim constituency.

NIGERIAN GOVERNMENT COUNTERTERRORISM RESPONSE TO AND MILITARY ATTACKS AGAINST BOKO HARAM

A democratic government has an obligation to ensure that its decision to intentionally inflict injury on the very people it has sworn to protect passes both constitutional and moral muster. In the case of the government of Nigeria, with its past and present trust deficit in its relationship with its citizens, treating any segment of its population as enemy combatants deserving of the kinds of treatment typically meted out to foreign aggressors, requires a rationale that robustly and persuasively outweighs the harm entailed by its apparent violation of fundamental rights. One can argue that the government’s cognizance of the importance of this obligation partly explains its initial reluctance to take the dangers posed by Boko Haram very seriously. There was also the confusion about how to characterise the threat posed by BH as either an insurgent⁵³ or a terrorist group, a confusion that might have arisen from the perception that BH was just like other previous or contemporaneous violent groups that have all been generically labelled as militant groups.

The unpredictable frequency and indiscriminate manner of BH’s brutal atrocities quickly convinced the government that it needed to make a clear case for delegitimising the movement’s ideological underpinnings and claim to use force. The government adopted a twofold strategy – legislative and military – justifying both approaches on grounds of necessity – namely, the necessity to ensure political stability and greater respect for the rule of law. In pursuit of the first strategy, the government halted the debate about how to properly label BH by describing it as a terrorist group. Invoking the authority of Section 4(2) of the 1999 Constitution of the Federal Republic of Nigeria, it gave a legal backing to this description by successively passing two pieces of legislation, the Terrorism Prevention Act (TPA), 2011 and Terrorism Prevention (Amendment) Act, 2013.

51 Kelsay, *Islam and War*, 88-90.

52 Abou El Fadl, “Between Fundamentalism and Morality”, 111.

53 One scholar defines an insurgency as a “struggle between a non-ruling group and ruling authorities in which the non-ruling group consciously uses political resources and violence to destroy, reformulate, or sustain the basis of one or more aspects of politics” (O’Neil BE. 1990. *Insurgency and Terrorism: Inside Modern Revolutionary Warfare*. London: Brassey’s Inc., 13.

Rather than offering a conceptual definition of terrorism, Section 1(3) of the TPA (as amended) defines an “act of terrorism” as an act which is deliberately done with malice aforethought and which may seriously harm or damage a country or an international organisation. Serious harm or damage includes, but is not limited to, kidnapping, bodily injury, death, destruction of public or private property, and destabilisation of political and/or economic activities. However, strikes and demonstration are excluded from the definition of terrorist acts, provided they are not intended to result in any harm.⁵⁴ One immediate effect of these legislations is the heightened attention they give to certain acts that were originally prosecutable under Nigerian criminal law, but they also expand the scope of criminal law jurisprudence by creating new line of offences related to terrorism.

If the government had hoped that the enactment of Terrorist Prevention Act (TPA) would deter Boko Haram from engaging in activities proscribed by the Act, the events of the last few years clearly show that the government underestimated Boko Haram’s depth of commitment to transform Nigeria into its vision of a legitimate state. While Boko Haram may not agree with being designated a terrorist group, the various violent acts for which it claimed responsibility violated virtually every provision of the TPA. In the words of a Muslim resident of Maiduguri, the centre of Boko Haram’s operations, “the Boko Haram uprising has been costly in terms of not only the number of people killed – most of whom in the prime of their lives, but also the furor it has set ablaze nationwide.”⁵⁵ From the perspective of the government, this situation presented it with a just case to use force in its dealings with the group.

Nigeria’s former president, Goodluck Jonathan, argued that this condition was more than satisfied in the level and scope of threat posed by Boko Haram. In his Democracy Day address to the nation on 29 May 2014, he unequivocally characterised this threat as “a war”, in fact, “an unconventional war”, unleashed on the country by fellow citizens whom he considered “misguided” partly because of their collaboration with “foreign elements” in the treasonous “attempt to bring down our country and the democracy and freedom we cherish”.⁵⁶ He reminded the country of Boko Haram’s various unjust attacks “that have claimed the lives of several of our compatriots”, “injured or maimed” others, destroyed “whole villages and communities”, and put “the economy of our states in jeopardy”.⁵⁷

A year later, Jonathan’s successor, President Muhammadu Buhari, made a similar argument in his maiden address to the United Nations General Assembly. He averred that Boko Haram’s activities were nothing short of “war”. However, while the Nigerian government and Boko Haram may be engaged in war against each other, there is no moral equivalence between them. Echoing Samuel Huntington’s language of a civilisational clash, Buhari describes the government’s counterterrorist

⁵⁴ Terrorism Prevention Act, sec 1(4).

⁵⁵ Tijani K. 2008–2009. “Boko Haram: Reflections of a Nigerian Progressive”, *Annual Review of Islam in Africa* 10:14.

⁵⁶ Jonathan G. 2014. Democracy Day address to the nation, 29 May.

⁵⁷ Jonathan, Democracy Day address to the nation.

military response as “a war about values between progress and chaos; between democracy and the rule of law” on the one hand, and what Boko Haram celebrates on the other, which is “violence against the weak and the innocent”, accusing members of Boko Haram of “deplorably ... hid[ing] behind their perverted interpretation of Islam”. Undoubtedly wanting to delegitimise the group, Buhari asserts that “Boko Haram is as far away from Islam as any one [sic] can think of”.⁵⁸

Both Jonathan and Buhari freely invoked several idioms of the JWT to articulate the rationale of the government’s military engagement with Boko Haram. In addition to their delegitimation of the group on both normative and religious grounds, thereby rejecting its claim to having the right to use force, the government asserted that such right resides exclusively with the state. According to Jonathan, it was because the government has a constitutional duty to protect and defend the country that he instructed “our security forces to launch a full-scale operation to put an end to the impunity of terrorists on our soil”.⁵⁹ Within the JWT’s purview, it is not enough for a belligerent to have a just cause, it is also necessary that the cause be accompanied by right intention. For Buhari, without ridding the nation of the menace of Boko Haram, it would be difficult for the government to implement other important policies and programmes that are pertinent to the development of the country and its citizens, such as addressing “inequalities arising from massive unemployment and previous government policies favoring a few people to the detriment of the many”.⁶⁰ Jonathan couched the military attacks on Boko Haram as deriving from the duty to protect Nigeria’s democracy, national unity, and political stability.⁶¹

A central dilemma for any government engaged in a civil war is showing that its actions are not motivated by sectional interests. This is what paradigmatically distinguishes international armed conflicts from non-international ones. The arguments by both Jonathan and Buhari under various just war rubrics were in part designed to address this concern. But both felt they needed to offer additional proof, especially to demonstrate that a military response was not their first option in dealing with a group of recalcitrant citizens. This sensitivity to just war’s concern to the use of force as a last resort is evident in the tactful way in which Jonathan framed his government’s perception of and policy about Boko Haram. He referred to them as “our citizens” and their “belief that violence can possibly solve their problems” as “misguided” rather than intrinsically evil, in the hope that they would be interested in “dialogue and reconciliation”, the doors to which, he assures them, “remain open. He further declares that his “government, while pursuing security measures, will explore all options, including readiness to accept unconditional renunciation of violence by insurgents, and to ensure de-radicalisation, rehabilitation, and

58 Buhari M. 2015. Address by Muhammadu Buhari, President, Federal Republic of Nigeria at the 70th Session of the United Nations General Assembly, New York, 28 September.

59 Jonathan, Democracy Day address to the nation.

60 Buhari, Address by Muhammadu Buhari to the UN General Assembly.

61 Jonathan, Democracy Day address to the nation.

re-integration into the broader society”.⁶² Yet, should force become necessary in dealing with Boko Haram, neither Jonathan nor Buhari were in doubt that they would be militarily successful, which is another requirement of the JWT, namely, that it would be foolish and cruel for a government to start a war it knows it cannot win. On this score, the level of success the government has been able to record against Boko Haram is debatable.

It was perhaps this determination to achieve comprehensive victory that led the government to be flippant about its *jus in bello* obligations in the way it has been prosecuting the war against Boko Haram. Although it is the military that fights war, the moral tone for how the war should be conducted is usually set by the government. The directive signal that Jonathan sent to the security forces, which Buhari has also repeated, is “to use any means necessary under the law to ensure” the defeat of Boko Haram. Two important moral values are at stake when a war is conducted under this kind of blanket instruction. The first is the *principle of discrimination*, which captures the moral intuition that it is morally wrong to target civilians and so dictates that attacks must be confined to military personnel and bases. “All non-harming persons or institutions are thus immune from direct and intentional attack by soldiers.”⁶³

The other value jeopardised by this blanket approach to the conduct of war is embodied in the principle of proportionality which, while permitting the military to use the level of force necessary to bring about a justifiable outcome, rules out using more force than is necessary. One wonders then whether Jonathan realised the implication of the instruction to use whatever necessary means “under the law”, for part of the law relevant to the assessment of conduct in war is international humanitarian law. In fact, it can be argued that he gave the green light to the security forces to disregard this law, because he insisted that nothing short of “total war” is required to defeat terrorism. Total war rejects the very notion of rules in warfare. Any attempt to place moral constraints on warfare is hopeless; a war is a struggle for survival, and a struggle for survival knows no rules.⁶⁴ In short, total war stretches the doctrine of necessity beyond any limit such that it is no longer recognisable.

This is the moral conundrum facing both the Nigerian government and Boko Haram in their ongoing “war” against each other. While both sides have mounted both strong *jus ad bellum* arguments to justify their respective resort to the use of force in pursuit of their particular objectives, neither side has shown any inclination or interest in upholding the other pole of justice that the JWT requires for any war to be considered fully just. Both sides have prosecuted the war indiscriminately and disproportionately, killing, maiming, raping and kidnapping civilians, and

62 Jonathan, Democracy Day address to the nation.

63 Orend B. 2000. *Michael Walzer: On War and Justice*. Montreal: McGill-Queen’s University Press, 112.

64 See Walzer, *Just and Unjust Wars*, 29-33.

destroying valuable property and infrastructure in ways that undermine the possibility of post-conflict humane and harmonious coexistence within an indissoluble Nigeria that its Constitution envisions.

CONCLUSION

An ambiguous relationship exists between human rights and the doctrine of necessity, especially in a politically volatile and religiously pluralistic society like Nigeria. For while the polity as a constitutional democracy affords the citizens a panoply of rights, an irresponsible exercise of any of these rights can impel the government to invoke a constitutional mandate to respond in a manner that ultimately renders those rights vacuous. We have also demonstrated the theoretical and normative utility of the just war theory for a study of religion and violence to illustrate the protean character of armed conflicts as an aspect of the contemporary global challenge. By using the tradition to do a comparative study of Boko Haram's and the Nigerian government's actions, we were able to show that although Boko Haram's rhetoric can be made intelligible, their attacks cannot be condoned by just war criteria. Furthermore, subjecting the actions of Nigerian officials to the inspection of the JWT calls into question whether, despite the backing of legal precedents and the veneer of authority that sovereign states possess in the interest of protecting its citizens, this authority can remain credible if the government's actions violate universal norms, especially the *jus in bello* criteria of discrimination and proportionality.