

INTRODUCTION

Security is a key topic of our time. But how do we understand it? Do law and religion take different views of it? To address these questions and others, the topic selected for our sixth annual African Consortium for Law and Religion Studies (ACLARS) conference, held in Rabat, Morocco, in May 2017 at the Université Internationale de Rabat, was “Religion, Law and Security”. The call for papers for the conference featured prominently such topics as religious extremism, blasphemy, violence, terrorism, and human and sustainable security. Important subtopics included the Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence (2013) and the Marrakesh Declaration on the Rights of Religious Minorities in Predominantly Muslim Majority Communities (2016). The names of these international declarations are a lengthy mouthful, but their focus on hate speech and incitement and on the plight of religious minorities, invokes two of the most significant issues when it comes to religion, law and security today.

The language of security has great resonance in our time of terrorism, war and political upheaval, even in advanced democracies. It addresses people’s legitimate fears about – some would even say human right to – circumstances of safety and freedom. Indeed, the Four Freedoms invoked by United States President Franklin Delano Roosevelt in his famous 1941 State of the Union Address include, freedom of speech, freedom of worship, freedom from want and freedom from fear. But there is risk, as well, of investing too much in the language of security and securitisation. For such language can also risk creating or inflaming fears – and thus becoming a self-fulfilling prophecy.

One of the most compelling descriptions of security I have encountered was provided by a U.S. military officer at a panel that I attended, convened by the National Endowment for Democracy in Washington, DC, in 2014. The topic of the panel was “Fostering Democracy, Good Governance, and Human Rights in Africa Through Security Sector Assistance” and the U.S. military officer whose presentation opened the panel had extensive experience in the field leading initiatives for the U.S. military and its Africa partners. Religion was nowhere mentioned in the presentation, but when it became time for questions and answers, I could not resist asking members of the panel what role, if any, religion might play, whether negative or positive, in resolving conflict and promoting security and peace in Africa. The military officer was the first panelist to reply, immediately dispelling the idea that religion was inevitably a negative factor and promoter of conflict. Indeed, he argued, his security and peacekeeping missions could not succeed, absent the formation of strong relationships with local religious leaders. The positive participation of religious leaders was, in his view, a key factor in achieving any kind of meaningful security and peace in Africa.

In fact, in his panel presentation, the same military officer had spoken particularly about the difference between “security” and “human security”. The last term may

sound curious or redundant, but it refers to a broad definition of security taking hold in a number of security professions and academic disciplines, including law and religion. One definition of human security is as follows: “Human security is an emerging paradigm for understanding global vulnerabilities whose proponents challenge the traditional notion of national security by arguing that the proper referent for security should be the individual rather than the state.”¹ Another definition reads: “The concept of human security represents a departure from orthodox security studies, which focus on the security of the state. The subjects of the human security approach are individuals, and its end goal is the protection of people from traditional (i.e., military) and nontraditional threats such as poverty and disease.”² Still another definition states: “Many important aspects of human development relate also to people’s security: loosely defined as people’s freedom from fear and freedom from want in a broad sense Human security relates to much more than security from violence and crime. A report team wanting to look at the security of people’s livelihoods (economic, food, environment or health security) might apply a human security approach. Human security can also be used to look into personal, community and political security.”³

These and other broad definitions of human security seem especially appropriate for law and religion studies in Africa. To be sure, Africa faces many security threats, in a traditional military sense, from war and conflict and from religious extremism and terrorism. But it also faces security threats from blasphemy accusations and hate speech, from seizures and securitisation of land and public spaces, from marriage and family practices that risk particular harm to women and girls, and from the phenomenon of witchcraft practices and accusations and the power they wield over individuals and communities, as well as forces of poverty, inequality, ill-health, climate change and food insecurity. Indeed, a key term in our consideration of security at ACLARS has been the concept of “vulnerability”, a term well theorised in law by Emory University legal theorist Martha Fineman,⁴ but now one which, along with related terms of “resilience” and “agency”, has become central to the now interdisciplinary field of vulnerability studies. All of these themes interweave in the present volume, with particular attention to the role of law and religion.

In the book’s opening section on “Countering Religious Radicalisation and Extremism”, legal scholars Wahab O Egbewole and Hanafi A Hammed address what is perhaps the best-known threat to security in Africa today, namely the Boko Haram terrorist insurgency in Nigeria. They argue for a humanitarian and human rights approach to the conditions and problems underlying the insurgency, but

1 “Human Security”, Wikipedia.

2 Gregoratti C. 2013. “Human Security”, *Enclopedia Britannica*.

3 Gomez OA and Gasper D. 2013 “Human Security: A Thematic Guidance Note for Regional and National Human Development Report Teams”. New York: United Nations Development Program (UNDP). Online at: http://hdr.undp.org/sites/default/files/human_security_guidance_note_r-nhdrs.pdf

4 Fineman MA. 2011. “The Vulnerable Subject and the Responsive State”, *Emory Law Journal* 60:251-275.

also a robust role for judicial and police intervention. Seyni Moumouni of Niger, addressing the problem of religious radicalism and emerging security threats in Africa's Sahel region, provides a detailed description of the process of radicalisation and where it might be possible to intervene. Brett G Scharffs analyses the duality of the process by which religious freedom can both propagate and resolve violent extremism. Scharffs discusses the role that religious freedom can play in both Christianity and Islam in countering religious extremism through interpretation of religious texts, challenging misuse of blasphemy laws and standing for religious majorities taking a more active role in protecting minorities.

The chapters in the second section, on "Blasphemy, Religious Freedom and Freedom of Expression", take up questions of blasphemy and religious minorities directly in connection with the Rabat Plan of Action and Marrakesh Declaration. Musa Abubakar of Nigeria writes on Nigeria's blasphemy laws and misuse of them by "self-appointed god avengers." With rich analysis of both Nigerian and international law, Abubakar analyses the implications of the Rabat Plan for Nigeria, a context in which the seemingly small matter of an inappropriate joke can lead to mob violence and even death. German law scholar Burkhard J Berkmann provides an equally cogent analysis comparing the approaches of the Rabat Plan of Action and the European Court of Human Rights on questions of blasphemy, defamation of religion, and hate speech and incitement. Berkmann provides a particularly helpful analysis of how content, speaker, intent and other elements drawn from the Rabat Plan figure into analysis of these problematic forms of speech. Cristiana Cianitto's chapter addresses the intersection of freedom of religion and freedom of expression. Like Berkmann, Cianitto draws on the infamous *Charlie Hebdo* massacre and the elements of Rabat Plan, but she further connects the Rabat Plan and the Marrakesh Declaration in discussing the ongoing challenge, in many parts of the world, of protecting the rights of religious minorities. The last chapter in the section, authored by Célestin Gnonzion, takes up the problems of freedom of religion and freedom of expression in the context of a decision of the government of Côte d'Ivoire to restrict religious access to broadcast media and the differential effects that this had on Christian, Muslim, and African traditional religion groups. For religious groups, as for secular actors, access to the medium turns out to be central to the ability to propagate the message.

With the Boko Haram and Sahelian insurgencies in West and North Africa well chronicled in the volume's first section, the third section on "Religious Extremism and Counterterrorism Laws in Kenya", takes up the topic of terrorism in Kenya, particularly the threat posed by Somalia-based Al-Shabaab. In the first chapter, Fathima Badurdeen discusses Muslim perspectives on Kenya's 2012 and 2014 counterterrorism laws. Rich in ethnographic research, Badurdeen describes Kenya's delicate and sometimes imperfect attempts to balance security interests and respect for human rights. Loreen Maseno's chapter uses a framing approach to analyse responses to terrorist acts by the National Council of Churches in Kenya (NCCCK) and the Evangelical Alliance of Kenya (EAK). Drawing on the frame, or framing, theory that appears in several other chapters in this year's volume as an

interesting trend, Maseno's chapter provides rich documentary and rhetorical analysis of the response of two Christian organisations to terrorist attacks in Kenya. Maseno describes both groups as decrying terrorist violence and calling on the Kenyan government to do more, but she also contrasts the NCKK preference for judicial resolution with the EAK's call for vigorous self-defence. Tito Kunyuk, a Kenyan Kadhi's Court magistrate, proposes the use of *fatwas* as a legal institution to address problems to counter violent extremism in Kenya. Perhaps associated most in the West with the Ayatollah Khomeini's *fatwa* against novelist Salman Rushdie, these non-binding Islamic legal decisions, Kunyuk argues, can be used to link faith, identity and citizenship in ways that provide an effective, interpretive counterweight to terrorist radicalisation.

No discussion of security would be complete without discussion of concepts of war and peace, the subject of the book's fourth section on "Just War and Peace in Africa". Therein, Johan van der Vyver situates African perspectives on war within the long arc of the development of the concept of "just war" in the Christian and Islamic traditions, culminating in discussion of ISIS and the Islamic State. Simeon Ilesanmi and Kate Temoney apply just war analysis to the Nigerian counterterrorism efforts of the government of Nigeria against Boko Haram. Their particular focus is the doctrine of necessity and how the government justifies extraordinary countermeasures against the group. They describe an ambiguous relationship between the doctrine of necessity and human rights, raising questions about the point at which the government itself may lose authority in being seen to violate universal human rights norms. A more positive possibility for religion and peace is set forth in Jean-Baptiste Sourou's comparison of the interfaith "Day of Prayer for Peace", convened by Pope John Paul II in 1986 in Assisi, the town made famous by St. Francis, and thirty-year follow-up organised by Pope Francis. These events captured and catalysed a "Spirit of Assisi" that has become an important model for religion peace within and beyond the Catholic Church.

Secularism, space and land combine in this book's fifth section on matters concerning how the state defines religion and its access to public space. Mohammed Dejen Assen writes on how the public role of religion was conceived in Ethiopia, historically and up to the present day. Assen describes how the Ethiopian government, following on the harsh secularism of the preceding revolutionary Marxist government, has sought to manage a post-1991 legal framework balance of secularism and religious freedom and how these have been used to address a "religious renaissance" that includes religious groups of a notably fundamentalist nature. The chapter by Yolanda van der Vyver – neither a law nor religion scholar, but an architect – examines the definition of the power of law and the state through body, space and structure. A notable confrontation between former South African President Jacob Zuma and opposition forces at the 2017 State of the Nation Address at the Cape Town parliament building serves as a departure point for a discussion of how the South African state has used space for division, fortification, discrimination and segregation, past and present. On the topic of land, a subject of ongoing contestation in many African nations, Elias Kifon Bongmba and Tanto Richard

Talla discuss the use of the 1974 Cameroon Land Law to manage disputes between village groups. Far from being merely a question of property and land tenure laws, the management of land in Cameroon turns out to have a deep religious dimension, given the religious and ritual importance of land for traditional leaders.

The topic of witchcraft proves also to be integrally related to security, given the numbers of people accused of witchcraft in many African societies – producing two full panels at the Morocco conference. In his chapter on Ghana, Saibu Mutaru describes the dual functions of “witch camps” to which those accused of witchcraft are sent, either for banishment or reintegration into their communities. Drawing on sociologist Erving Goffman’s concept of the total institution and Michel Foucault’s influential studies of prisons, Mutaru describes how these camps serve as places of punishment, but also refuge, particularly for women, who are especially likely to be accused of witchcraft. Bernard Pindukai Humbe describes a troubling witchcraft practice in Zimbabwe, known as *divisi*, whereby fathers engage in incestuous relationships with chosen daughters in order to secure agricultural success. The practice has long-lasting effects for the girls, who are then deemed unmarriageable and often lack access to mechanisms of law and justice. *Divisi* is illegal under Zimbabwean law, but it continues to be practised and defended as a means of addressing food insecurity and distribution. Júlio Machele describes practices of witchcraft in Mozambique including stories of people turning themselves into animals to accomplish their occult tasks. Supplementing mostly anthropological inquiries into these practices, Machele examines historical factors, particularly the context of revolutionary war, in which the new government took as hard a line as the colonial administration against witchcraft, in ways that often failed adequately to address the problems associated with displaced populations and demobilised soldiers returning home to fractured communities. Fortune Sibanda begins his chapter with an epigrammatic observation of Nigerian poet Ben Okri that, “The magician and the politician have much in common: They both have to draw our attention away from what they are really doing.”⁵ Sibanda examines the political and social role of witchcraft in Zimbabwe, particularly the nature, purpose, extent and implications of witchcraft accusations for public order and security, with a keen eye for the framing of witchcraft as an exercise of political power, a use of power that has been attributed even to politicians at the highest levels of government.

Relationships of marriage and family also turn out to be very important for security of individuals, families and entire communities. This is a theme that we saw developing in proposals for our ACLARS 2016 conference in Ethiopia, and we were delighted to put together a panel of papers on the topic for the Morocco conference. John G Esubonteng describes the conflictual effects of a 1884 Marriage Ordinance enacted by the British colonial administration of Ghana. The ordinance was largely rejected by the Ghanaian people as a hegemonic force and disruptive of existing religious and traditional arrangements, in a way that led to noncompliance and open flouting of the law. Elias G Konyana’s chapter addresses the topic of domestic

5 “Ben Okri: 10 Quotes”, *This Is Africa*, 15 March 2017.

violence, particularly among rural women in Zimbabwe. Konyana details the customary marriage practices that led to the promulgation of Zimbabwe's Domestic Violence Act of 2007, but also the difficulties that women and girls experience in seeking legal remedies under the law. Rounding out the chapter, Helen Namondo Linonge-Fontebo discusses the problem of child marriage in Cameroon. Child marriage is an Africa-wide problem, and Linonge-Fontebo describes attempts to address it under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women, as well as under Cameroonian law and through innovative international programmes in place in Cameroon that prepare girls for alternatives to child marriage.

The book's final section on "Gender, Vulnerability and Agency" picks up some of the themes of the previous section. Nigerian human rights law scholar and practitioner Abiola Akiyode-Afolabi describes the obstacles that have hindered the Nigerian incorporation of CEDAW and the African Union Women's Protocol into Nigerian law. It is a context in which traditional religions seem all too often to be an obstacle to progress, but where women are also pushing to interpret religious texts and traditions in ways that further women's rights. Taking up another important Africa-wide topic, Sohail Wahedi describes male and female circumcision as religious practices, while focusing particularly on the construction of female circumcision as a peculiarly African problem. In fact, Wahedi maintains that it is not only an African problem, but a global one, including many African and Asian diaspora communities, but that liberal approaches all too often abstract from the religious dimension in a move that creates "double standards" around exemption without seriously examining the "harsh realities" of religious practice and arguing against these in a publicly accessible way.

This is a volume that traverses a wide landscape of security issues at the intersection of law and religion in Africa. It confirms the importance of attending to the religious dimension of human security, as well as how the law addresses and constructs the security and securisation of states. It is an apt predecessor to the papers that will be presented at the next ACLARS conference in Abuja, Nigeria, in May 2018, on "Law, Religion and Human Flourishing".

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