

# Law and religion in Africa: Living expressions and channels of co-operation

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## Summary

*Drawing on Anglo-American legal and literary classics and the contemporary situation of Africa, this article discusses the unity of law and religion, the demand for justice, the importance of context, the power of law and religion as living expressions of a people's humanity, and the centrality of the moral agent. It concludes with observations about the need to nurture spirituality and morality in Africa in order to strengthen both legal and religious norms.*

## 1 Introduction: The tools of the trade

The theme of this conference, 'Law and religion in Africa: Comparative practices, experiences and prospects', is very apt at this stage of Africa's development. The theme is profound and multifaceted as the papers which will be presented reflect.

I am sure we shall not be groping in the dark as in this parable set in an African forest:

A blind rabbit and blind snake met. And since they could not make out who the other was, they decided to feel each other and say who they were. So the snake went first and begun to touch the rabbit and said, 'You are furry. You have long ears. You have a short stumpy tail. Ah! You are a rabbit.' The rabbit shouted enthusiastically jumping up and down, 'Yes! Yes! Yes!'

Then the rabbit proceeded to touch the snake and said, 'You are rather long and cold blooded. You have beady eyes. You have a forked tongue. You are slithery and have no means of self-locomotion. You must be, you must be a lawyer!'

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The renowned British jurist, Lord Alfred Denning, once advised lawyers to read works of history and literature. He specifically cited Sir Walter Scott's novel *Guy mannering*.<sup>1</sup> The client, Colonel Mannerling, goes to the lawyer. He finds the rooms of the lawyer lined, not with law books, but with books of history and literature, the great authors, the classics, and a painting by FE Jamieson, the Scottish Van Dyke. The lawyer points to the books of history and literature and says: 'These are my tools of trade.'<sup>2</sup> A lawyer without history or literature is a mere mechanic, a mere working mason. If he has some knowledge of these, he may venture to call himself an architect.

It is to these 'tools of trade', the great authors, the classics, the arts, music, culture, politics, stories of great men and women, life happening all around us, that I turn for inspiration to address the theme of law and religion in Africa. Let me start with a book by Peck entitled *Gifts for the journey*.<sup>3</sup> He was once at a dinner talking to a clever lawyer about it before it was published. The lawyer wanted to know what the book was about. Peck explained that it was a mix of psychology and religion. The lawyer understood that, but wanted to know the message of the book. Peck said it was rather complicated as the book said a lot of things. The lawyer persisted. All he wanted was a few sentences getting to the heart of the matter and telling what the book was about. Peck said he could not do that in a few sentences, that was the reason he had written the book.

The lawyer thought it was all nonsense and he explained to Peck that in the legal profession, there was a wise saying that anything worth saying can be said in two sentences or less – and if it cannot be, then it is not worth listening to. I should hastily say that this does not apply to any of us here.

Peck could not give the lawyer the two sentences he required. But thinking about it later, he remembered that Jesus had a similar experience in Jerusalem and he handled it brilliantly. You remember a lawyer came to Jesus and said in effect:

Professor Jesus, all these parables are very nice. But what is it that you are really trying to say? What is your message? I don't want a whole Sermon on the Mount. I just want a few concise sentences, straight and simple. What is it you are telling us we ought to learn and do?

Jesus responded and it was really no more than a single sentence. 'Love the Lord, your God, with all your heart and mind and soul, and your neighbour as yourself.' That is all He said.

Suffice to say, I too was grappling with how to locate the heart of this conference given its profundity. I have settled on the following thoughts to focus on: (1) the unity of law and religion; (2) the demand for justice; (3) the crucible of context; (4) the power of law

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1 W Scott *Guy mannering* [1845] (2003).

2 AT Denning *The family story* (1981).

3 MS Peck *Gifts for the journey Treasures of Christian life* (1999).

and religion as living expressions; and (5) the centrality of individuals as moral agents.

## 2 Unity of law and religion

On the unity of law and religion, I should state that I speak from a Christian perspective. But the principles are applicable to other faiths such as Judaism, Islam, Buddhism and Hinduism. People often think in compartments and imagine that law and religion, or politics and religion, are separate from each other. The reality is that everything in life is interconnected. Stollman illustrates this in his enchanting book *The illuminated soul*,<sup>4</sup> when he writes about the 'net of reality'. This net of reality weaves seemingly disparate things together and makes of them whole cloth. On its own, our world seems a chaos of unrelated events to the human mind, but in fact this is not the case. This perception is only due to our limitations of observation and reason.

Law and religion are two sides of social relations and human nature. As Berman wisely stated:<sup>5</sup>

Law is not only a body of rules; it is people legislating, adjudicating, administering, negotiating – it is a living process of allocating rights and duties and thereby resolving conflicts and creating *channels of co-operation*. Religion is not only a set of doctrines and exercises; it is people manifesting a collective concern for the ultimate meaning and purpose of life – it is a shared intuition of commitment to transcendent values.

Law ensures that a society maintains cohesion and peace and hence prevents chaos, whilst religion gives society faith to pursue transcendent values that promote the goodness in people and a community and hence seeks to prevent corruption.

The unity between law and religion is also evident in Islam and Judaism, which have sophisticated systems of law found in their sacred writings. Some say the observance of law is itself a religious act. For example, in ancient Israel, the law, the Torah, is the religion.

## 3 Demand for justice

The second thought, I suggest, which streams through the conference theme and will tacitly flow in the papers to be presented, is *justice*. Both law and religion are concerned with justice. The issue of social justice dominates the Old Testament. For example, the prophet Amos is emphatic on the demands of God for His nation Israel in the call to

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4 AL Stollman *The illuminated soul* (2002) 196.

5 HJ Berman *The interaction of law and religion* (1974) 24.

'[l]et justice roll down like waters, and righteousness like an ever-flowing stream'.<sup>6</sup> Lord Harries, former Bishop of Oxford, recently gave an address at the Justice Service, at Chelmsford Cathedral in England, in which he said that if we had to choose one word to sum up the message of the Hebrew Scriptures (the Christian Old Testament), that word would be justice. The core theme is also summed up by the prophet Micah in the admonition 'He has told you, oh mortal, what is good, and what does the Lord require of you but to do justice, and to love kindness and to walk humbly with your God.'<sup>7</sup>

This is the most fundamental insight the Jewish people have given to the world, not only in Judaism itself, but in its abiding legacy in Christianity and Islam.<sup>8</sup> God is inseparable from justice; because *justice is the expression of love seeking to do the right thing or what is right in any given situation*. So where justice is, there is God.

Justice is required in all aspects of life: in our personal lives, in our family life, in our politics, in the life of the nation, in the judicial system, in the world's economic order.

Justice in the treatment of the citizen by the state, of the litigant by the judge, of customary law by statutory law, of the consumer by the supplier, of the customer by the bank, of religion by the state, of the minority by the majority, of women by culture, of gays by straights, of religious intolerance by fundamentalist, of religious pluralism by constitutions.

Law and religion in concord have a vital role to play in Africa faced with challenges of injustices, prejudices and corruption, as both are focused on *justice as the expression of love seeking to do the right thing or what is right in any given situation*; as both can interact in robust laws conceived in moral values rooted in religious foundations that reverence all peoples made in the image of God. I believe this conference will have much to offer in this regard.

#### 4 Crucible of context

The third way in which law and religion interact relates to the importance of *context*. Law and religion do not exist in a vacuum - they absorb their environment, including political, social, cultural, economic, time and historic context. The great jurist Oliver Wendell Holmes said of law:<sup>9</sup>

The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories ... even the prejudices which judges share with their fellowmen ... The law embodies the story of a nation's development through many centuries, and

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6 Amos 5: 24.

7 Micah 6:8.

8 Richard Lord Harries, Chelmsford Cathedral Justice Service, 14 October 2012.

9 OW Holmes *The common law* (2009) 2-3.

it cannot be dealt with as if it contained only axioms and corollaries of a book of mathematics.

The life of the law reflects human life which we can imagine evolving to the rhyme of the captivating phrases of Charles Dickens's book, *A tale of two cities*:<sup>10</sup>

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way ...

So law absorbs at different times, the best, the worst, wisdom, foolishness, belief, incredulity, light, darkness, hope, despair, everything, nothing, heaven and hell. It is human life in its historic development, its ups and downs. In light of this insight, legal positivism is inadequate as a philosophical position to understand the life of law. Legal positivism would argue that all you can see is all there is, and that to make judgments of value, to seek meanings or causes, to seek good and bad in political and policy questions are unscientific and run the old risk of superstition and obscurantism. When the law sees itself in this way, that all there is are the rules mechanically applied without taking into consideration the dynamic contexts which give it life, then the label 'the law is an ass' becomes apt.

Let me give you the context in which the label arises from Dickens's *Oliver Twist*.<sup>11</sup>

'That is no excuse', replied Mr Brownlow. 'You were present on the occasion of the destruction of these trinkets, and indeed are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction.' Then Mr Bumble said, 'If the law supposes that, the law is a ass – a idiot. If that's the eye of the law, the law is a bachelor, and the worst I wish the law is, that his eye may be opened by experience – by experience ...' The experience law needs is not so much a married life! But rather a constant flow of moral values to bring forth justice.

## 5 Power of law and religion as living expressions

I think it is clear that law is not principally a code of rules or legal opinions, but rather a *living expression* of<sup>12</sup>

a collection of human stories, each with a moral; not as a fetter, but as a source of freedom; not as an unwelcome but inescapable response to the ills of society, but as a means of providing that justice upon which good government and social harmony fundamentally depend.

10 C Dickens *A tale of two cities* (2003) ch 1 1.

11 C Dickens *Oliver Twist* (2003) ch 51 489.

12 TH Bingham *The business of judging: Selected essays and speeches* (2000) 412.

The law, ideally, is a reservoir of justice to remedy the ills of human injustices. The reservoir of justice we speak of has to be replenished by streams of moral values that flow from religion providing a constant cleansing and healing flow for people and society.

Now, just as the life of the law has not been logic but experience, more so religion is not about logic but mystery and inspiration, wrapped in God. Albert Einstein once said:<sup>13</sup>

Every one of us appears here on earth involuntarily and uninvited for a short stay, without knowing the whys and wherefores ... The most beautiful and deepest experience a [person] man can have is the sense of the *mysterious*. It is the underlying principle of religion as well as all serious endeavours in art and science. He who has never had this experience seems to me, if not dead at least blind. To *sense that behind anything* that can be experienced there is something that our mind cannot grasp and whose beauty and sublimity reaches us only indirectly and as a feeble reflection, that is religiousness.

Not from logic but 'the sense of the mysterious' flow the transcendent values into life ennobling us if we are sensitive to them. So morality is not temporal but eternal. The spirit in people responds to the good in them. It is the good and potential good in people that is the focus of religion. It is the good in people which intuitively recognises what is justice, and law becomes the application, however imperfectly, of justice, of that good, in our everyday affairs. Religion conveys to us the importance of *moral purpose* and *spiritual sense*. Religion conveys above all the *reality* and importance of a *power* that transcends our lives and world; *a power beyond ourselves; a power that loves us; a power* that seeks to act through us to do justice in every situation.

## 6 Centrality of the moral agent

A final place where law and religion intersect is in their common insistence on the importance of individuals as moral agents in striving for justice in our world. Let me illustrate this in the life of Lord Denning, who embodied the meeting of law and religion.

In his book *Decision making in the White House*, Sorensen concludes:<sup>14</sup>

I can only offer a conclusion which all of us already know: that the only way to assure good presidential decisions is to elect and support good presidents. For in mixing all these ingredients (the challenges and forces that presidents have to deal with), his style and standard, his values and vitality, his insights and outlook will make the crucial difference. A great presidential decision defies the laws of mathematics and exceeds the sum of all its parts. A great president is not the product of his staff but the master of his house.

<sup>13</sup> D Brian *The unexpected Einstein: The real man behind the icon* (2005) 182-183.

<sup>14</sup> TC Sorensen *Decision making in the White House: The olive branch or the arrows* (2005) 87.

This observation is applicable to decision makers in every profession. Good decisions, good leadership, do not arrive from a vacuum; it is a manifestation of *wisdom*. Wisdom is not something we can download from the internet or buy in a shop or earn. It is a gift from God. Remember Solomon's prayer for wisdom before he took up his leadership role:<sup>15</sup>

Give your servant *therefore* an understanding mind to govern your people, and able to discern between good and evil; for who can govern this your great people?

This is the secret of great leadership in any field. This is what made Lord Denning a great judge and a legend in his time.

Lord Devlin once remarked that the secret of Lord Denning's appeal to both the legal profession and the general public was the belief that he opened the door to the law above the law.<sup>16</sup> That 'law above the law' is the wisdom of God of which Lord Denning was so aware. Lord Thomas Bingham said that Lord Denning had this uncanny insight into the thoughts and values of the ordinary person. We are talking here of 'the sense of the mysterious'. I recall 30 years ago, as a theological student at Oxford, having an inspiring conversation with Lord Denning in his office in London. He talked in depth about his faith, how '[i]n coming upon legal obstacles, it is not enough to keep your law books dry. It is as well to have a Bible ready to hand too.' He said the Bible was the most tattered book in his library. He believed that '[w]ithout religion there can be no morality, and without morality there can be no law',<sup>17</sup> and that '[i]f religion perished in the land, truth and justice would also'. He believed modern society had strayed too far from the faith of our fathers, and urged a return to it, for it was the only thing that could save us.<sup>18</sup>

In his book *The closing chapter*, Lord Denning spoke candidly about his faith and its impact on his life at a Legal Service at the Cathedral at Norwich. This is what he said:<sup>19</sup>

I would not be here unless I believed in God. My belief in God is in part due to my upbringing – to what I have been taught – and in part to what I have found out in going through life. That is the case with all knowledge. No man knows anything except what he has been taught and what he has found out for himself.

The fundamental point in my experience is that there is a spirit in man – quite separate from his body and from his intellect – which, when it reaches its highest and best, is but the reflection of the spirit of God. Now I know nothing of theology. Nor can I say that I have seen the sudden light of conversion as some have, but I do know that in the great experiences of life – and in the small ones too – such strength as I have is of God, and the weakness is mine.

15 1 Kings 3:9.

16 JL Jowell & JPWB McAuslan *Lord Denning: The judge and the law* (1984) vii.

17 Denning (n 2 above) 182.

18 Denning (n 2 above) 183.

19 AT Denning *The closing chapter* (2005) 42-43.

Need I relate the experiences? Take the hard things. When faced with a task on which great issues depend, when high hopes lie shattered, when anxieties gnaw deep, or when overwhelmed by grief, where can I turn for help but to God?

Or take the joyful things. A hard task attempted and done, the happiness of family life, or the beauty of nature, where can I turn in thankfulness but to God?

All experiences convince me, not only that God is ever present, but also that it is by contact with the spirit of God that the spirit of man reaches its highest and its best.

## 7 Conclusion: Nurturing African spirituality and morality

We must now reach our verdict. I have used the 'tools of trade' – the great authors, the classics, great people, life happening all around us – as inspiration to address our theme of 'Law and religion in Africa: Comparative practices, experiences and prospects'. Now, what is it that we can learn and do on the basis of this knowledge? Africa is not monochrome; it is, as some have described it, a 'coat of many colours'. So the laws are a jumble of pieces, much like a jigsaw or a mosaic: customary law, Islamic law, Roman-Dutch law, English law, and so forth. All have to be fitted together to form a single whole, and developed to meet the context and conditions of the times. How is this best to be done? This is a question that this conference must address.

Primarily, I can suggest that as humans – and especially as Africans – we nurture our spirituality. It is the only power that can lift us to our highest and best within ourselves and society. Kofi Abrefa Busia, Prime Minister of Ghana from 1969-1972, was right when he wrote a book entitled *Africa in search of democracy*,<sup>20</sup> and placed first in his treatment of factors to be considered in Africa's search for democracy what he termed the 'religious heritage'. He argued that for many people, the questions of religion seem irrelevant and out of place in discussing issues as modernisation and progress. This attitude he contended was prejudicial to a proper appraisal of the problems of Africa as Africans saw them. The 'religious heritage' defines all Africans. John Mbiti, a renowned African theologian, said that Africans are naturally spiritual people.<sup>21</sup>

I think of the 'religious heritage' as not only derived from so-called 'traditional religions', but dating back to the first century. Oden in his book *How Africa shaped the Christian mind*<sup>22</sup> enlightens us as to the vital role Africa played in the formation of Christian culture

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20 KA Busia *Africa in search of democracy* (1967).

21 See JS Mbiti *African religions and philosophy* (1969).

22 TC Oden *How Africa shaped the Christian mind: Rediscovering the African seedbed of Western Christianity* (2007).



throughout the world. Africa gave theological leadership to the Western church. The great African church fathers, such as Tertullian, Origen, Cyprian and Augustine, were pillars of the African church and the West.

There is a myth that Christianity is foreign to Africa and was brought here by white missionaries 300 or 400 years ago, when in fact it has been part of Africa's heritage for centuries. We also forget that much of Christian history occurred in Africa and that if you remove Africa from the Bible and Christian memory, then you remove many important stories of salvation history. This 'religious heritage' can give immense confidence to both lawyers and religious leaders in helping Africa to address its challenges. This 'religious heritage' is also what the African concept *ubuntu* is about. *Ubuntu* puts emphasis on our common humanity – I am because you are – and therefore we all exist in community and must treat each other with respect and dignity. This respect for one another also means respect for the core values that hold society together.

The nurturing of spirituality can instil reverence for God, which brings about *integrity* and *honesty* in people to not only curb corruption, but also to instil a reverence for law. The reverence for law is the heartbeat of the rule of law, which is critical for Africa to develop. Within the heart of the rule of law we must include respect for diversity of which many communities are comprised.

We see law and religion in Africa in concord as living expressions of people's desire to create channels of co-operation, in other words, seeking to do the right thing at every turn and religion as focusing on the ultimate meaning and purpose in life, so that people can live to their highest and best potential in life. This is only possible with the gift of wisdom working in men and women who are wise and good, who are courageous and just, who love kindness and walk humbly with God. Such can bring about respect for the rule of law and development for the benefit of all God's people in Africa. This is the dream of God and our duty to realise it.