

The Complex Interplay of State and Religion: Exploring The Dynamics and Implications for Modern Society:
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(2023) Journalofcmsd Volume 10(3)

Journal of Conflict Management & Sustainable Development



Tracing the Role of Biodiversity Conservation in Achieving Sustainable Development Goals	Kariuki Muigua
The Complex Interplay of State and Religion: Exploring The Dynamics and Implications for Modern Society	Kenneth Wyne Mutuma
A Critical Analysis of Kenya's Anti-Money Laundering and Counter-Financing of Terrorism Regime	Michael Sang
Recognising the rights of nature for Environmental Justice in Kenya	Waruiru Cecilia & Kirui Diana
High Seas Treaty: Enhancing Environmental Responsibility for Marine Protection	Kariuki Muigua
Establishing a Cold Case Investigation (CCI) Unit in Kenya's National Police Service: Delivering Justice for Victims of Unresolved Crimes	Michael Sang
Book review: Realizing True Sustainable Development	James Njuguna
Against the Obnoxious Repugnancy Clause as a limitation to Application of Traditional Dispute Resolution Mechanisms in Kenya	Pamela Nyawira Muriuki
Addressing Noise Pollution for a Clean and Healthy Environment in Kenya	Kariuki Muigua
A proposal for legislative reform of Kenya's Prevention of organised Crimes Act – A comparative analysis	Michael Sang
Decentralization of Clean Energy in Kenya: The Legal and Institutional Opportunities and Challenges	Gathii Irungu

The Complex Interplay of State and Religion: Exploring The Dynamics and Implications for Modern Society

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Abstract

The relationship between state and religion has been a complex and dynamic issue throughout history. This paper explores the interplay between these two entities and their implications for modern society. It examines how the relationship between state and religion has evolved over time and how it varies across different cultures and regions. It also analyzes the different ways in which religion and state can interact, including separation, cooperation, and conflict; and the challenges that arise when the two entities clash including religious extremism, discrimination, and human rights violations. Notably, the interplay between state and religion affects issues such as governance, education, social cohesion, and cultural identity. Therefore, it is crucial to understand the dynamics of this relationship and to develop policies that promote mutual respect, tolerance, and inclusion. In conclusion, the paper emphasizes the need for a nuanced and balanced approach to the relationship between state and religion. It highlights the importance of promoting pluralism, diversity, and freedom of religion while also ensuring that the state remains neutral and impartial in matters of belief.

Key words: *state, religion, human rights, discrimination, law, capture phenomenon*

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1.0 Introduction

Throughout history, the relationship between the state and religion has been complex and often contentious. From theocracies to secular democracies, the interplay between these two powerful institutions has shaped the course of human societies and their values. In recent years, the debate around the role of religion in public life has become increasingly salient, with issues such as religious freedom, tolerance, and extremism at the forefront of public discourse.¹ Understanding the dynamics and implications of this relationship is critical for policymakers, scholars, and individuals alike, as it has profound implications for the way we structure our societies, express our beliefs, and coexist with those who hold different opinions. This is because the relationship between these two institutions can affect the enjoyment of fundamental rights and freedoms such as the freedom of association, expression and the right to religion.² This paper aims to explore this interplay between state and religion, tracing its historical roots from medieval Europe to America, examining contemporary examples such as the Netherlands and the Kenyan context, and analyzing the theoretical framework surrounding this concept, as well as the capture phenomenon. This paper concludes by recommending a three-pronged test to assess whether state actions ensure that the relationship between the state and religion is balanced.

¹ Matteo Bonotti and Jonathan Seglow, 'Introduction: Religion and Public Life' (2017) 17 *Ethnicities* 141
https://www.jstor.org/stable/pdf/26413943.pdf?refreqid=excelsior%3Acb05f7436b8139db7b88cff43b228694&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator= accessed 16 May 2023

² Paolo Carozza, "The Catholic Church, Human Rights and Democracy: Convergence and Conflict with the Modern State" (2012) 15 *Logos: A Journal of Catholic Thought and Culture* 3 pp.15-43 <https://doi.org/10.1353/log.2012.0023> accessed 05/16/2023

2.0 Historical Context

Medieval Europe was characterized by papal influence in state affairs.³ This began when the Catholic church spread Christianity all through the Roman Empire as early as the third century and the religion crystallized following the legalization (Christians became free from persecution) of Christianity by Emperor Constantine 1 through the edict of Milan.⁴ This was followed ten years later by Emperor Theodosius who made Christianity the religion of the Roman state.⁵ Roman authorities required all persons to participate in the imperial religion, creating an allure of a universal empire, under one faith.⁶ The union of the church and the state resulted in the centralization of political affairs and the church's insistence in exercising absolute control over wealth.⁷ The church was often involved in political affairs and had significant influence over rulers and governments.⁸ This influence was partly due to its role in crowning monarchs and anointing them as God's chosen leaders. The Catholic Church in Western Europe also controlled large tracts of land and was arguably the largest landowner in Europe.⁹ A tenth of

³ Walter A. Phillips, "Episcopacy" In Chisholm, Hugh (ed.). *Encyclopaedia Britannica*. Vol. 9 (11th ed., Cambridge University Press, 1911) 699-701.

⁴ The edict was issued together with the eastern emperor, Licinius National Geographic, "Who was Constantine?" (2019)

⁵ Michele Salzman, "The Evidence for the Conversion of the Roman Empire to Christianity in Book 16 of the "Theodosian Code" 1993

⁶ Brent Nelsen and James Guth, "Roman Catholicism and the Founding of Europe: How Catholics Shaped the European Communities" (2003)

⁷ Ibid note 3

⁸ Ibid note 3

⁹ Medieval Europe: Church History

<https://www.timemaps.com/encyclopedia/medieval-europe-church-history/#:~:text=The%20Catholic%20Church%20of%20Western%20Europe&text=It%20controlled%20vast%20amounts%20of,advisors%20to%20kings%20and%20emperors.> accessed 10/17/2022

the income was paid by the people to the church every year.¹⁰ In addition, churchmen had a virtual monopoly on learning and education.¹¹ Kings and emperors sought the advice of bishops and abbots.¹²

The church became a large propaganda machine with exclusive jurisdiction even over matters such as adultery, bigamy, matrimonial cases and failure to perform oaths.¹³ All these were dealt with under Canon law as opposed to secular law in a court. The church's overwhelming power enabled it to command armies, form allies and foes in politics, and wage wars.¹⁴ The church collected taxes from the populace and made money selling indulgences to everyone from royalty to peasants.¹⁵ It also played a significant role in structuring medieval society. The clergy occupied the top rung of the social ladder, and church hierarchy determined people's social status. In addition, the church was the primary source of education during the medieval times.¹⁶ Monasteries and religious institutions were centers of learning, and many scholars and intellectuals were members of the clergy.¹⁷ The church's influence on education helped spread literacy and knowledge throughout Europe.

¹⁰ Charles Curran, "Just Taxation in the Roman Catholic Tradition" 1985

¹¹ Joseph Holden, "The Church and Education" 1929

¹² Bruce Bueno de Mesquita, "Popes, Kings, and Endogenous Institutions: The Concordat of Worms and the Origins of Sovereignty" 2000

¹³ Ibid note 9

¹⁴ History of the Medieval Church <https://study.com/academy/lesson/history-of-the-church-in-the-middle-ages.html> accessed 10/17/2022

¹⁵ Charles Curran, "Just Taxation in the Roman Catholic Tradition" 1985

¹⁶ Joseph Holden, "The Church and Education" 1929

¹⁷ John Nelson Miner, "Schools and Literacy in Later Medieval England" *British Journal of Educational Studies*

Vol. 11, No. 1 (Nov., 1962), pp. 16-27

In the United States, the establishment clause in the First Amendment was intended to separate the church from the State.¹⁸ This amendment states that Congress shall not make any law respecting the establishment of a religion or prohibiting its free exercise.¹⁹ The First Amendment's Establishment Clause prohibits the government from creating an official religion or favoring one religion over another. This has led to a clear separation between religion and government in the United States, which has allowed individuals to practice their faith without interference. It has also created a state of religious pluralism since the protection of religious freedom has allowed for a diverse range of religious beliefs and practices to flourish in the country.²⁰

An example of a country that allows for religious pluralism is the Netherlands. In the Netherlands, religious freedom is protected by law and is considered a fundamental human right.²¹ This means that individuals have the right to freely practice their religion or belief without fear of discrimination or persecution. The Dutch Constitution guarantees freedom of religion and the right to worship or not to worship as one chooses.²² This includes the right to form and join religious organizations,²³ to teach and practice religious beliefs, and

¹⁸ Thomas Jefferson to Nehemiah Dodge, Ephraim Robbins, & Stephen S. Nelson, a committee of the Danbury Baptist association in the state of Connecticut., 'Jefferson's Letter to the Danbury Baptists' (1 January 1802) <<https://www.loc.gov/loc/lcib/9806/danpre.html>> accessed 16 May 2023

¹⁹ Melissa Rogers, "Religious Freedom in the United States" (2004) *International Journal* Vol. 59 pp. 902-910

²⁰ Ted Jelen, "The Constitutional Basis of Religious Pluralism in the United States: Causes and Consequences" 2007

²¹ Jeremy Banks, "Dutch Contributions to Religious Toleration" 2010

²² Article 6.1 of the Constitution of the Kingdom of Netherlands, 2018

²³ Article 8 of the Constitution of the Kingdom of Netherlands, 2018

to express one's beliefs publicly or privately. The government of the Netherlands recognizes a number of religions and provides support for religious communities. For example, the government provides financial support for the construction and maintenance of religious buildings and religious organizations are eligible for tax exemptions.²⁴ At the same time, the Netherlands is a secular country that separates religion from the state.²⁵ This means that while the government respects and protects religious freedom, it does not endorse any particular religion or impose religious beliefs on its citizens.²⁶

Historically, the meaning of establishment was presumed to be directed to state-sponsored churches such as the Church of England. Today, the establishment of religion is governed by a three-pronged test which was developed in *Lemon v. Kurtzman (1971)*²⁷ by the US Supreme Court. The 'lemon test' as its often referred to assumes that the government can only assist religion if the primary purpose of the assistance is secular. This means that the action must have a non-religious purpose and cannot be primarily motivated by a religious purpose. The second limb of the test is if the assistance neither promotes and advances nor discourages and inhibits religion. The third prong is where there is no excessive entanglement between the State and the Church. The government should not become too involved in religious matters nor religion in government affairs. Excessive entanglement can take many forms, such as the

²⁴ 2021 Report on International Religious Freedom: Netherlands <https://www.state.gov/reports/2021-report-on-international-religious-freedom/netherlands/> accessed 03/17/2023

²⁵ Hans Knippenberg, "The changing relationship between state and church/religion in the Netherlands" 2006

²⁶ Ibid

²⁷ 403 U.S. 602

government providing direct financial support to religious organizations, regulating the internal affairs of religious organizations, or giving preference to one religion over another.²⁸

The first use of the term ‘wall of separation’ metaphor was by Roger Williams, an early American theologian and founder of Rhode Island. Williams used the phrase to describe the concept of the separation of church and state, which he believed was necessary to protect both religious liberty and civil government.²⁹ In 1802, Thomas Jefferson then wrote to Danbury Baptist Association on how the First Amendment created a ‘wall of separation between church and State’.³⁰ The Supreme Court cited Jefferson’s letter in key cases such as the 1947 polygamy case of *Everson v Board of Education*,³¹ creating a direct nexus between the ‘wall of separation’ concept and the establishment clause.³² Later on, James Madison and Thomas Jeffery, American presidents, developed the concept further by standing against the notion of compelling the citizens to support the Anglican church through taxation.³³ They averred that that support infringed

²⁸ Bryan K. Fair, “Excessive entanglement of Politics, Law and Religion” *Journal of Law and Religion*

Vol. 26, No. 1 (2010-2011) 371-380

²⁹ Joseph M. Dawson, “The meaning of separation of church and state in the first amendment” (1959) *Journal of Church and State* vol. 1 no. 1 37-42

³⁰ Ben Voth, “A case study in metaphor as argument: a longitudinal analysis of the wall separating Church and State” 1998

³¹ 330 US 1

³² See also the case of *Engel vs Vitale* (1962) where the Supreme Court struck down a New York state law that authorized a daily prayer in public schools. The Court held that the law violated the Establishment Clause of the First Amendment, which prohibits the government from establishing an official religion.

³³ William Lorigan, “The Supreme Court, the establishment clause, and the First Amendment” 2013

on their religious liberty and this position was supported by the Presbyterians, Baptists, Quakers and other dissenting denominations.³⁴

3.0 The Kenyan Context

The preamble of the Constitution of Kenya begins by acknowledging the supremacy of the Almighty God of all creation.³⁵ This inclusion of the reference to God in the preamble acknowledges the importance of religion and spirituality to many Kenyans. The Constitution then goes ahead to assert in Article 8 that there shall be no state religion. By making this declaration, the Constitution is affirming that it will remain neutral with respect to religion and will not promote or favor any particular belief. This allows individuals to practice their own religion or none at all, without fear of discrimination or persecution by the government. However, upon a keen analysis of the provisions, there seems to be an inconsistency in whether the law endorses certain religious beliefs on one hand, or explicitly makes Kenya a secular state.

The Constitution seems not to impose a state religion by protecting the freedom of religion, belief and conscience in Article 32; and promoting incidental freedoms such as freedom of expression in Article 33; freedom of the media in Article 34 and freedom of association in Article 36. Any religious group, institution, or faith-based non-governmental organizations is allowed to register as a society. The Constitution also prohibits discrimination on the grounds of religion or belief. Article 27 states that every person is

³⁴ Virginia Statute for Religious Freedom

<https://billofrightsintstitute.org/essays/virginia-statute-for-religious-freedom>
accessed 03/17/2023

³⁵ The Preamble, Constitution of Kenya 2010

equal before the law and has the right to equal protection and benefit of the law without discrimination, and this includes discrimination on the basis of religion or belief.

The reality in Kenya, however, is that a majority of the people subscribe to certain religious beliefs with 85.52% of the people claiming Christianity, 11% Islam, and less than 2% being Hindus, Sikhs, Baha'is and those that follow the African Traditional Religion.³⁶ Religion has played a vital role in Kenyan society, including in politics.³⁷ Since Kenya's independence, the church has been the main opponent of Presidents Jomo Kenyatta and Daniel Arap Moi's closed political systems.³⁸ During this era, the church was very critical of the rampant extrajudicial killings, corruption cases, pitting ethnic groups against each other, oath-taking and election rigging.³⁹ Prior to the multi-party elections in 1992, it had tacitly positioned itself as an active participant in politics as and the sole institution that spoke on behalf of the people.⁴⁰ It was also involved in sustaining and holding public discourses on democratic processes and changes in Kenya at the grass-root level.⁴¹ However, this involvement dwindled upon

³⁶ '2020 Report on International Religious Freedom: Kenya' US Department of State <https://www.state.gov/reports/2021-report-on-international-religious-freedom/kenya/> accessed 03/14/2023

³⁷ Catherine Kenga, "The role of religion in politics and governance in Kenya" 2014

³⁸ George Nyongesa, "On the relationship between Church and State in Kenya since Independence"

³⁹ Paul Gifford, "Christianity, Politics and Public Life in Kenya" 2009

⁴⁰ Galia Sabar-Friedman, "Church and State in Kenya, 1986-1992: The Churches' Involvement in the 'Game of Change" African Affairs Vol. 96, No. 382 (Jan., 1997) 25-52

⁴¹ Ibid

President Mwai Kibaki's ascension into power.⁴² During the 2002 national elections, the churches were less conspicuous but unquestionably on Kibaki's side.⁴³ For instance, the National Council of Churches in Kenya and the Anglican Church of Kenya who were at the forefront of criticizing previous regimes, suddenly abdicated their duties.⁴⁴ Observers also noticed the troubling tendency of the unwillingness to criticize Kibaki's administration even after the new NARC coalition crumbled due to Kibaki's refusal to uphold a pre-election memorandum of understanding after the 2002 general elections.⁴⁵ This was accompanied by rising accusations of tribalism, massive corruption claims such as those surrounding the Anglo-Leasing scandal and many other similar injustices.⁴⁶

Manifestation of religion within the state can be noted in the National Anthem, which is a symbol of national unity, where it begins with "O God of all creation..." Another illustration of the acknowledgement of God in public institutions is when state officers, taking an oath, conclude by stating "...so help me God". The government of Kenya also advances religion by employing chaplains and the clergy to serve in the military.⁴⁷ From this, it may be inferred that the state is advancing religion; and a particular belief system for that matter. However, it is worth noting that individuals who do not believe in

⁴² Vincent Makokha, "The role of church in State and public affairs during the Kibaki era, 2002-2013" 2018 European Journal of Philosophy, Culture and Religion Vol.2, Issue 1 No.3 27 - 40

⁴³ Paul Gifford, "Christianity, Politics and Public Life in Kenya" 2009

⁴⁴ Ibid

⁴⁵ Mwenda Ntaragwi, "Exploring the social impact of Christianity in Africa" 2011

⁴⁶ Ibid

⁴⁷ Nairobi Law Monthly, "Why marriage between the State and Church must not happen" 5/2/2016

God or who belong to religions that do not recognize the Christian God can affirm oaths in Kenya without using the phrase "so help me God." The law allows for alternative forms of affirmation that are appropriate to an individual's beliefs.⁴⁸

Severing the ties between state and religion is a lot more difficult than it seems. This is because religion in Kenya has intertwined with numerous public institutions and has become impactful in provision of education and healthcare. Many churches in Kenya operate hospitals and health clinics that provide medical services to the public.⁴⁹ These facilities offer a wide range of healthcare services, including preventive care, diagnostic tests, treatment, and rehabilitation. Churches also operate schools at all levels, from primary to tertiary education.⁵⁰ These schools provide quality education to students, often in areas where there are few public schools or where public education is of poor quality. Some church-operated schools are also known for providing scholarships to students who would otherwise be unable to afford education.⁵¹ Churches have sponsored schools such as Precious Blood, Loreto Convent and St. Mary's Nairobi as well hospitals such as AIC Kijabe Hospital, Coptic Hospital and Mater Hospital. On the other hand, Muslims have also built schools such as Sheikh Khalifa Schools in Mombasa.

⁴⁸ See section 15 of the Oaths and Affirmations Act (2012)

⁴⁹ Francis Barasa, "The Church and the Healthcare Sector in Kenya: A Functional Analysis of Its Development through Evangelization" (2020) International Journal of Innovative Science and Research Technology Volume 5, Issue 9,

⁵⁰ Ej van Niekerk and others, "Education and the role of the church in Africa: three relevant aspects" 2009

⁵¹ Stephen Muoki Joshua, "The 'Church' as a 'Sponsor' of Education in Kenya: A historical review (1844-2016)" 2017

From the description given, the Kenyan society seems like a deeply religious group, whose imposition of secularism would call for a contentious detachment of religion from political institutions. Besides, the tenets of secularism are not clearly defined and are reliant on an opposition of religious beliefs. Thus, the proposition that Kenya is a secular state only exists in the law and to the extent that the legislation does not establish or support a particular religious path for its people. This is the sovereign will of the people articulated in the Constitution. However, it should be noted that the relationship between the state and religion exists on a spectrum, oscillating between extremes of an absolutely opposed state such as China and Albania (1970s-1980s) and another where there exists no distinction whatsoever and the state and religion merge in a theocracy.⁵² Kenya exists within the model where the separation is perceived only theoretically, but the limits of intrusion from both ends are blurred in a practical analysis. This breeds a situation of ‘a constitution without constitutionalism’; where the dictates of the law do not reflect the practical aspect of the lives of Kenyans and a subsequent problematic implementation of the same.

4.0 The Theoretical Framework and the Capture Phenomenon

Religion has influenced the development of law as seen in the theories of natural law and consequently, deontological ethics.⁵³ Most Abrahamic religions such as Christianity, Islam and Judaism premise their faith in the belief of a divinity who is the source of morality and

⁵² Winfried Brugger, “From animosity to recognition to identification: models of the relationship of church and state and the freedom of religion” (2009)

⁵³ Svend Andersen, “Theological Ethics, Moral Philosophy, and Natural Law” (2001)

order.⁵⁴ This divine moral code is then replicated in daily lives and acts as a means of societal organization. Natural law is also discernible by human reasoning.⁵⁵ This theory posits that what is consistent with the natural law is right and just, and what is out of alignment is wrong.⁵⁶ This reasoning stems from rational deductions and the law of nature. Natural law refers to a set of moral principles or ethical norms that are believed to be inherent in the nature of human beings and the universe itself.⁵⁷ These principles are discernible by human reason because they are based on the observation of the natural world and the study of human nature.⁵⁸ According to this theory, natural law is not dependent on human conventions or cultural norms but is based on objective and universal principles that can be discovered through human reasoning.⁵⁹ These principles are seen as binding on all human beings regardless of their cultural, social, or historical context.

Regardless, both divine and human natural law are geared towards preservation of life and adherence to morals.⁶⁰ For instance, laws against homicide and assault are meant to protect human life and prevent harm to others. Similarly, laws against theft and fraud are meant to promote honesty and fairness, which are important moral principles as well as fundamental religious teachings. Proponents of the divine natural law such as St. Thomas Aquinas stated that natural

⁵⁴ John Hare, "Religion and Morality" 2006 The Stanford Encyclopedia of Philosophy

⁵⁵ George Constable, "Who Can Determine What the Natural Law Is" 1962

⁵⁶ Thomas Aquinas, "Summa Theologiae" 1981

⁵⁷ Marcus Aurelius, "Meditations" Translated by Francis Hutcheson and James Moor 2008

⁵⁸ Ibid note 55

⁵⁹ Ibid note 55

⁶⁰ Thomas Hobbes, "Leviathan" 1651

law is good for the preservation of life, marriage, and family.⁶¹ This line of thought that human rights are inherently God-given is seen in the rights and freedoms provided in the Bill of Rights including those related to life,⁶² and the institution of family and marriage.⁶³ The precepts of morality that are advocated for in the various religions are also captured in Article 10 of the Constitution that calls for equality, social justice, human rights, non-discrimination and protection of the marginalized.

This theory of natural law influences the relationship between state and religion by advocating for laws and policies that have an inclination to the divine scriptures or morality.⁶⁴ The closer the relationship between the state and religion is, the greater the influence that natural law theory will have on the decision-making process of the State.⁶⁵ This may lead to a dangerous trend where the State endorses the morality of a section of the population while disregarding those of a contrary belief. This is due to the fact that morality is not universally accepted and its tenets may have fundamentally varying approaches to achieving a certain common goal.

This paper anticipates a bifurcated capture phenomenon; the state capture by the church and the church capture by the state. In the former, the church intrudes into the political affairs of the state and

⁶¹ Thomas Aquinas, "Summa Theologiae" 1981

⁶² Article 26 of the Constitution of Kenya, 2010

⁶³ Article 45 of the Constitution of Kenya, 2010

⁶⁴ Wolfgang Friedman W., *Legal Theory* (4th edn, Stevens & Sons 1967) p. 83

⁶⁵ Aharon Layish, "The Transformation of the Shari'a from Jurists' Law to Statutory Law in the Contemporary Muslim World" (2004) 44 *Die Welt des Islams* 1, p. 86 <<https://doi.org/10.1163/157006004773712587>> accessed 16 May 2023

purports to have significant influence over its leadership, policy and decisions.⁶⁶ This phenomenon is often characterized by the close collaboration between religious leaders and political elites, where religious leaders may hold important political positions or have significant sway over political decision-making.⁶⁷ It can also involve the adoption of laws and policies that favor a particular religion or religious group, while discriminating against others.⁶⁸ This was mostly observed in the medieval eras as previously mentioned. The second instance occurs where the state meddles in the church's affairs by dictating the specificities of the religious sect, its habits, frequency of meetings, order of service and even its finances.⁶⁹ There exists an interesting dynamic of a two-way patronage between the church and state, both seeking to advance their own interests to different target groups. The Church supports and provides platforms to politicians seeking votes and the politicians reward this by giving sizable amounts of money as offering.⁷⁰ Recently, the activities of the

⁶⁶ Elizabeth A. Oldmixon, Brian R. Calfano, "The Religious Dynamics of Decision Making on Gay Rights Issues in the U.S. House of Representatives, 1993-2002" (2007) 46 *Journal for the Scientific Study of Religion* 1, pp. 55-70 <https://www.jstor.org/stable/4621952> accessed 05/16/2023

⁶⁷ Eliezer Don-Yehiya, "Religious Leaders in the Political Arena: The Case of Israel" (1984) 20 *Middle Eastern Studies* 2, pp. 154-156 < <https://www.jstor.org/stable/4282994> > accessed 05/16/2023

⁶⁸ Dan Koev, "The Influence of State Favoritism on Established Religions and Their Competitors" (2023) 16 *Politics and Religion* 1, pp. 129-159 < <https://doi.org/10.1017/S1755048322000153> > accessed 05/16/2023

⁶⁹ Johan D. Van Der Vyver, "State Interference in the Internal Affairs of Religious Institutions: Recent Developments" (2012) 26 *Emory Int'l Rev* 1, pp.1-10 https://heinonline.org/HOL/Page?handle=hein.journals/emint26&div=4&g_sent=1&casa_token=&collection=journals accessed 05/16/2023

⁷⁰ David Muchui, "Clergy: We Will Take Politicians' 'Dirty' Money and Cleanse It" (Nation Africa 2022) < <https://nation.africa/kenya/news/clergy-we-will-take-politicians-dirty-money-and-cleanse-it-3757270> > accessed 05/16/2023

President in hosting a Christian prayer service at the State House have sparked numerous debates on this intended separation.⁷¹ The service preceded another event where the First lady hosted a delegation of preachers received from various African countries.⁷²

These events raise the question whether the personal life and religious belief of the President and other political figures in Kenya ought to be severed upon assumption of their respective offices. Certainly not. Although they are leaders, they are also citizens, whose rights are protected under the Constitution. The Constitution of Kenya equally protects both the freedom of religion and belief⁷³ as well as the right to manifest that belief.⁷⁴ However, both the right to hold a religious belief and to manifest it are subject to limitation as stated under Article 24 of the Constitution of Kenya. Given the publicity and influence of their offices, they should reasonably avoid activities that seem to endorse, support and show bias over a particular religion. If at all they are needed to participate in religious activities, they should attend to them in their personal capacities, as opposed to a political capacity. The challenge that blurred walls of separation between state and church brings forth is the potential to disregard fundamental rights and freedoms of those who do not

⁷¹ "President Ruto Hosts Prayer And Thanksgiving Service At State House" <https://www.capitalfm.co.ke/news/2022/09/president-ruto-hosts-prayer-and-thanksgiving-service-at-state-house/> accessed 03/17/2023

⁷² "Kenyan critics State House plan for monthly prayers" <https://www.africanews.com/2022/09/27/kenyans-criticise-state-house-plan-for-monthly-prayers/> accessed 03/17/2023

⁷³ Article 32 of the Constitution of Kenya, 2010

⁷⁴ See the case of Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others [2017 eKLR

share in the faith, even worse for them if they are a minority.⁷⁵ One glaring effect is that a lack of accountability will be left to fester when the State and church institutions are merged instead of creating a system of checks.⁷⁶ This can create a worrying state of heightened tension and unrest across various institutions in the country.⁷⁷ It also goes against the sovereignty of the people who voted for specific people into leadership only for their power to be curtailed by another dominant institution alleging to advance their welfare.

5.0 Way Forward

This article suggests a three-part test to evaluate whether the activities of the State reflect the intention of Article 8 and Article 32 of the Kenyan constitution. The test measures whether inclusivity was achieved; whether freedoms were guaranteed and whether equality was preserved. The first portion on inclusivity anticipates the inclusion of the various religious groups in policy making. The complexities of inclusion should however be noted as it may not be possible to guarantee the participation of every minority group every single time. The concept of reasonable accommodation should be extended in such instances to prevent imposing an undue pressure on the State in order to fulfill certain requirements. This was seen in the appeal by IEBC to bar Mr. Reuben Kigame from contesting the

⁷⁵ Richard Schragger and Micah Schwartzman, "Against religious institutionalism" 2013

⁷⁶ Thomas O'Loughlin, "The Credibility of the Catholic Church as Public Actor" 2013

⁷⁷ Jeff Brumley, "What Happens When Church and State Merge? Look to Nazi Germany for Answers" (2023) *Baptist News Global*

< <https://baptistnews.com/article/what-happens-when-church-and-state-merge-look-to-nazi-germany-for-answers/> > accessed 05/16/2023

presidential elections after a declaration by the High Court⁷⁸ that the Dispute Resolution Committee violated his rights under Article 54 and Persons with Disabilities Act. The Commission cited stringent timelines and a strict budget that would jeopardize the holding of presidential elections on 9th August 2022.

The second portion tests whether the activities violate any other guaranteed freedoms in the Constitutions or curtails their enjoyment. The State should not proceed with such activities that bear the potential to prevent others of a different belief system from enjoying their freedoms in the Bill of Rights. Lastly, the third portion contemplates whether all persons in Kenya receive equal treatment from the State. Whether everyone is allowed the same bandwidth to express their faith, or even access the President's official residence for religious ceremonies. Regardless, it is better for the State to steer clear of any relations with the church and religion than take the approach of favoring their personal belief system.

In conclusion, the relationship between state and religion is a complex and ever-evolving one, with implications for modern society that are both positive and negative. While the separation of state and religion can promote freedom of religion and prevent discrimination, it can also limit the role of religion in public life and potentially create a secularization of society. On the other hand, when religion becomes intertwined with state power, it can lead to the imposition of religious beliefs on society and limit the rights and freedoms of minority groups. Therefore, it is important for modern society to carefully navigate this interplay and find a balance between religious freedom

⁷⁸ Lichete v Independent Electoral and Boundaries Commission & another; Constitutional Petition No. E275 of 2022

The Complex Interplay of State and Religion: Exploring The Dynamics and Implications for Modern Society:
Kenneth Wyne Mutuma

(2023) Journalofcmsd Volume 10(3)

and secular governance. Ultimately, by recognizing and exploring the dynamics of this interplay, we can work towards creating a society that upholds both individual rights and the common good, while respecting the diversity of beliefs and perspectives that exist within it.

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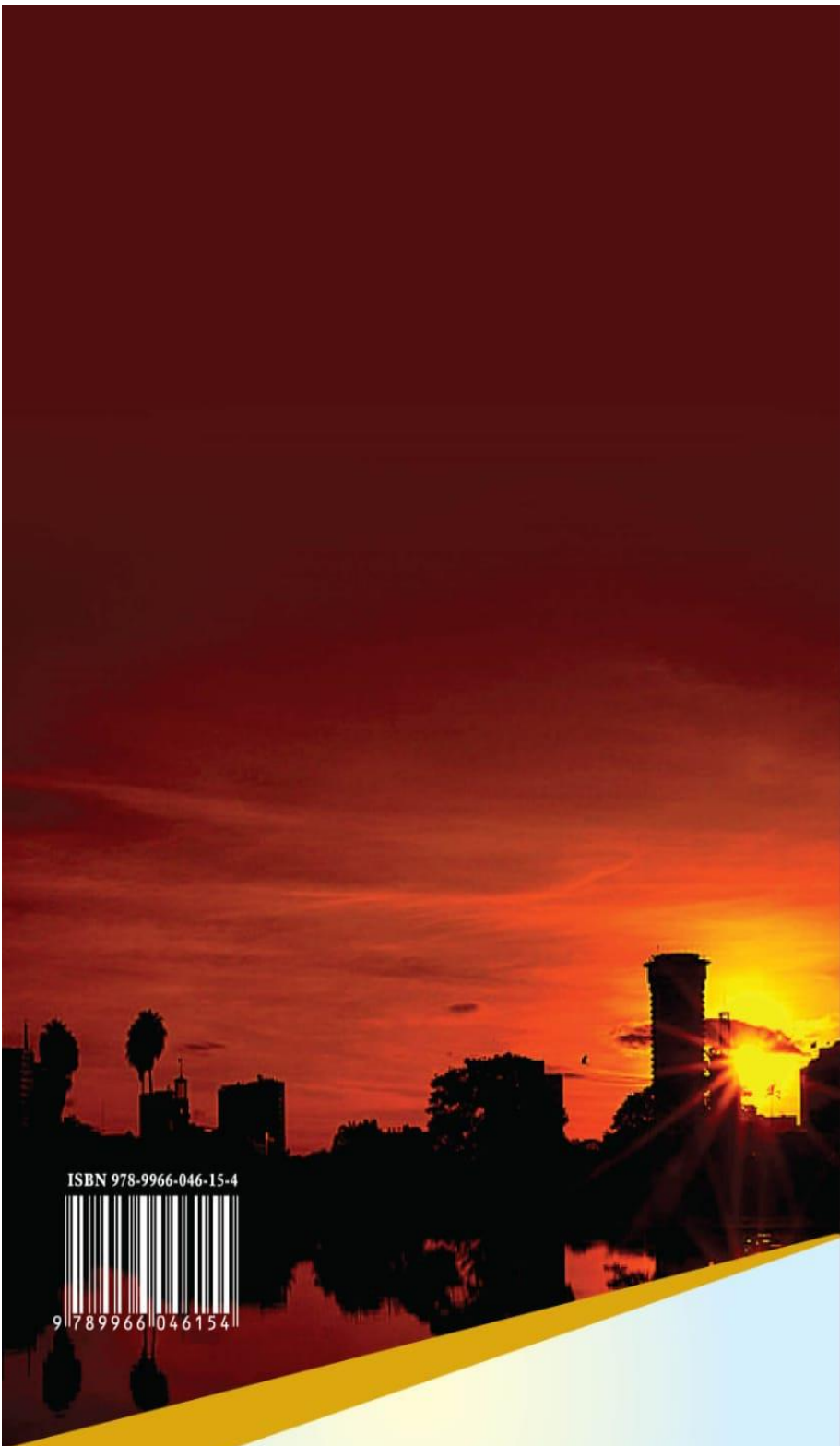
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ISBN 978-9966-046-15-4



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