

The historical theology of tax exemption and the Nigerian church.

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Abstract

Although the antecedents to modern-day taxation systems are embedded in the annals of western civilization, tax exemption for churches and charitable organizations, on the other hand, have a long history that dates back to the ancient Egyptian, Persian and Babylonian civilizations. Priests and Temples were forgiven their taxes and this tradition became institutionalized in western civilization in the age of Constantine the Great. His tax favours to the church were part of the binding mortar of church and state. Tax exemptions have since gained global appeal into the modern era. On the other hand, the call to tax churches in Nigeria as a consequence of accountability is also as old as the debate over the separation of church and state. The theology of this debate has a deep-rooted historical antecedents that need to be understood in the light of present realities. This paper examines both the theological and legal positions in the debate.

Keywords: Pentecostalism, Theology, Tax Exemption, Corruption, Church Nigeria

Introduction

In the debate over the separation of church and state, the question of accountability within the church has become a highly controversial one. Is the church accountable to the state or the state is accountable to the church? Many have argued to the effect that ecclesiastical issues are above the purview of state politics and as such the state should not demand accountability from the church. The growing demand for tax exemption status of a religious organization to be removed is central to this controversy. Both public and government outcry against the abuse of tax-exempt status by churches has come to represent the flagship of the anti-establishment forces. ☐

The tax-exempt status of religious organizations is deeply rooted in western civilization which accounts for the widespread entrenchment of the practice around the world. To examine this phenomenon, the paper first interrogates the origins of tax exemption going back into the annals of ancient history. From the concept of priest-kings grew a temple and palace relationship that the Christian church would enjoy at the heights of the Roman Empire. This relationship was, however, to be separated with lingering benefits in the area of taxation. The modern and post-modern era has however raised big questions about the legitimacy of the practice. The challenge to the status quo



has been fuelled by increasing corruption over the centuries that seems to have taken a new dimension with the globalization of Pentecostalism. ☒

The prosperity theology has made a mark through its association with scandals and financial impropriety world-wide. Regarding African Pentecostalism itself Ogbu Kalu an authority on African Pentecostal studies posits that within the movement “charisma and scandalous practices are close neighbors”¹ This has led to affirmations of the need for greater transparency and accountability from church organizations; the most poignant of these demands is the need to revoke the tax-exempt status of churches. The paper also details the background to such demands being the growing financial impropriety of Pentecostal megachurches. The public outcry that has proceeded these scandals has raised strong arguments against retaining the tax-exempt status of religious organizations while on the other hand, some still maintain that accountability of the state is off-limits for secular regulation. Alongside the historical interrogation of the subject, the paper explores the theology of tax exemption and its opponents. The paper discusses these arguments in light of their impact on Nigerian church and state power relations.

Historical Backgrounds to Tax Exemption for Churches.

Tax exemption for churches and other religious bodies developed within western traditions, the origins of which date back to early civilizations. The concept itself evolved out of the relationship between church and state. The primal position of religion in the social evolution of required a complementary relationship with the powers that be and vice versa. The influence that both institutions exercised over the populace required mutual collaboration for a functional balance that would enhance peace in the society. Consequently, from as far back as possible, researchers have alluded to the practice of tax exemptions for religious bodies in ancient Egypt, Palestine, Persia, Babylon and ancient Sumeria² Erika King contends that tax exemptions for priests and temples in the aforementioned civilizations were a by-product of this uneasy but necessary relationship between the palace and the temples.³

Priest-Kings and the origins of Church/State Relations

The rationale behind this balance is derived from the question of power and its boundaries. While the priest held spiritual sway over the people the kings needed to enforce temporal power for the purpose of governance. But all too often the political machinery found themselves at the mercy of the spiritual establishment who were in a position to influence the populace in their favour. This led very often to circumstances in which both institutions were subsumed or embodied in the personality of the king in order to retain absolute power.

1 Ogbu Kalu, African Pentecostalism: An Introduction. Oxford University Press, 2008, pg, 140.

2 Erika King, “Tax Exemption and the Establishment Clause” Syracuse Law Review Vol 49:971, University of Missouri School of Law Scholarship Repository, 49 Syracuse L. Rev. 971, University of Missouri, (1999), pg, 973.

3 Ibid., pg, 974.

This summation was quite common in ancient Mesopotamia and Egypt in the form of divine kingship and priest-kings. Henri Frankfort in his work, "Kingship and the Gods" attempts a descriptive analogy of this phenomena in this manner; "the Mesopotamian king was like Pharaoh, charged with maintaining harmonious relations between human society and supernatural powers"⁴ the king was consequently a spiritual representative of the people on matters relating to the gods. This presented the character of priest-kings that was widespread not only in the middle east but also in Asia and Africa. In Egypt, the fusion adopted a deeper spiritual connotation in the sense that the pharaoh was not considered to be a mere mortal but a god. He was considered to be of the divine essence, a god incarnate.⁵ Within Jewish traditions in the Bible, the spiritual and historical figure of Melchizedek is the earliest personality in which this concept is embodied. He first appears in Genesis 14:18 and 20 as the King of Salem who was also the priest of the Most High God. He is also mentioned in Psalm 110:4; Hebrews 5:6-11; 6:20—7:28. Also noteworthy is David the most prominent of Jewish Kings who is also cast in the light of the priest-king imagery.⁶

Naturally, people held divine authority above that of circular authority in the ancient world, in fact, divine authority often legitimized secular authority. Thus the summation of both in the concept of divine kingship and priest-kings greatly enhanced the social and political authority of the palace. The mutual benefits of this relationship prepared the necessary platform for the extensive favors that the temple enjoyed from the palace which included tax favors for the priest. ⁶ This phenomenon survived in the social fabric of various civilizations around the world however western civilization was largely influenced when it emerged as part of the religious fabric of Judeo-Christian traditions. ⁷

Origins of Tax Exemption in Judeo-Christian Tradition

An early form of tax exemption for religious institutions that characterized the Egyptian civilization is recorded in the book of Genesis Chapter 37-48.⁷ A young Hebrew named Joseph was sold into slavery in Egypt. Over time, he rose to power and was in the position to administer the lands of Pharaoh during a period of great famine. He was appointed by Pharaoh to devise a strategy that would enable Egypt to survive the long famine. Joseph thus implements a system of drastic far-reaching reforms that results in the Egyptian population gradually exchanging all their possessions for grain. Eventually, all lands in

4 Henri Frankfort, *Kingship and the god's: A Study of Ancient and Near Eastern Religion as the Integration of Society and Nature*, University of Chicago Press, Chicago, 1978, pg, 5
5 Ibid., pg, 5

6 Elizabeth Livingston, "A Bright Line Points Towards Legal Compromise: IRS Condoned Lobbying Activities for Religious Entities and Non-Profits" *Rutgers Journal of Law and Religion*, Vol.9.1 Spring 2008, pg, 2.

7 Edward McGlynn Gaffney, Jr. "Religious Autonomy and the Exemption of Religious Organizations from Federal Taxation in the United States" in *Church Autonomy: A Comparative Survey* by Gerhard Robbers, ed., Frankfurt am Main: Peter Lang, 2001, pg 7.

Egypt were incorporated as royal possessions except for the lands belonging to the priests.⁸

Gen 47:26

*And Joseph made it a law over the land of Egypt unto this day, that Pharaoh should have the fifth part; except the land of the priests only, which became not Pharaoh's.*⁹

The biblical narrative involving Joseph and his policy that exempted the priestly class was not necessarily in reference to the Jewish priestly class. However, the story bears out a prevailing trend in ancient times in which temples were exempted from various forms of taxation. According to Robert M Grant, this system that favored the priestly class in Egypt lasted till the first century BC a period in which Egyptian Priests persisted in seeking tax exemptions from the Roman poll tax.¹⁰

The Jewish priesthood that emerged in the aftermath of the exodus from Egypt was set apart from the rest of the Jewish nation by divine privilege. They were consecrated to serve at the altar of the Lord and as a consequence of this, their inheritance was factored among the rest of the tribes as a tithe. From the cities and the houses that the other tribes conquered, the Levites would receive a portion. This was elaborated on in Numbers 25: 32.¹¹ This privilege to the Levitical priesthood was comprehensive covering almost every aspect of livelihood. In Numbers 18: 1-30 a part of all offerings which the children of Israel brought to the Lord was given to them as their portion in the lord.¹² Other privileges were also listed alongside tithes and offerings that set the Levites apart from the rest of the Jewish population.

As the Jewish population in Palestine began to crystallize into a nation-state, the need for official taxation for purposes of nation-building became apparent. The first kings of Israel instituted standard taxation systems which were characterized by exemptions for the priestly class. After the demise of the first kings; Saul and David, Solomon and his successor Rehoboam levied heavy labour and monetary taxes upon the people. Solomon received huge revenues from merchants and traders and from all the governors of the land.¹³ He utilized these resources to build the temple of Jehovah and by the time his son succeeded him the people rebelled from heavy taxation splitting Israel into the Northern and Southern kingdoms.¹⁴

8 Ibid., pg, 7

9 Authorized King James Version, The Holy Bible, World Publishing Grand Rapids Michigan, 2001, pg, 46

10 Edward McGlynn Gaffney, Jr. "Religious Autonomy and the Exemption of Religious Organizations from Federal Taxation in the United States". Pg. 6. Also see Robert M. Grant, Early Christianity, and Society: Seven Studies 57, San Francisco, Harper and Row 1977.

11 Authorized King James Version, The Holy Bible, pg, 107.

12 Ibid., pg

13 See I Kings 10: 15, (Authorized King James Version, The Holy Bible, World Publishing Grand Rapids Michigan, 2001, pg, 284)

14 See I Kings 12: 1-23 (Authorized King James Version, The Holy Bible, World Publishing Grand Rapids Michigan, 2001, pg, 285-286)

In ancient Israel the bonding of church and state was perfect. The religious establishment was an arm of the palace and this remained the prevailing traditions of ancient middle-eastern civilizations for centuries. The approval and sanction of the temple were closely sought after by the palace which in turn protected the interest of the temples. This shared cultural trait was ably demonstrated when the northern kingdom of Israel fell to Persian kings between 740 to 689 BC. The Persian king Artaxexes made a decree in 547 BC forbidding the taxation of Jewish priests.¹⁵

This was predicated on his belief which he expressed in Ezra 7:23, stating that:-

“Also we certify you, that touching any of the priests and Levites, singers, porters, Nethinims, or ministers of this house of God, it shall not be lawful to impose toll, tribute, or custom, upon them”¹⁶

The theological arguments for tax exemption are established by the above historical precedent and as Judeo-Christian influenced flourished over the vast roman empire, the makings of legal sanction for tax exemption was a matter of time. The sanctity of the Jewish priesthood against taxation under the Persian Empire was however not consistent at the down of the Roman Empire. E.M Gaffney, Jr contends that “Roman Law was evoked both for exempting Jews from taxation and for taxing them in a way that directly violated their religious beliefs”¹⁷

The rise of Rome was during the second temple period in Jewish History. At this time they desired to escape persecution from the Hellenist and so sought closer relations with the emerging Roman power. This gravitation towards Rome led to the granting of several privileges to the Jewish population that amounted to a certain level of freedom of worship in spite of the Roman Cult.¹⁸ Most importantly, the Jews were granted exemption from the payment of religious tax created to support the temples in Rome. This was in honour of Jewish religious beliefs in serving only one God (Duet 5:7). This exemption, however, did not last beyond the first Jewish war of rebellion against Roman rule in 66-73 AD.¹⁹ This falling out between the Jews and the Romans resulted in their rescinding certain Jewish privileges including the exemption from religious tax. The Jewish temple was destroyed in 70 AD and the half-shekel that Jews normally sent annually to the Temple in Jerusalem was now collected by the Romans and sent instead to Rome as a *fiscus judaicus* (Jewish Tax) to finance the temple of Jupiter Capitoline.²⁰

15 Art Kohl, “The Bible Speaks on Taxation (Tribute)”
http://www.fbbc.com/message/kohl_political_science_taxation.htm (Accessed on 8th August 2016.)

16 Authorized King James Version, The Holy Bible, pg, 382

17 Edward McGlynn Gaffney, Jr. “Religious Autonomy and the Exemption of Religious Organisations from Federal taxation in The United States.” Paper Presented at the Congress on Religious Autonomy at the University of Trier, May 27-30, 1999, pg. 6.

18 Ibid., pg, 7

19 Ibid., pg, 7

20 Ibid., pg, 7

Church and State and the Legal Origins of Tax exemption

The birth of Christianity during this period of the Roman Empire ensured a high level of persecution for the adherents of the new religion. In spite of this, the new faith grew and spread throughout the Roman Empire. During the reign of Emperor Dioclesian (284-305 AD) persecution of Christians reached a high point. He decided that Christianity must be eradicated and so instituted far-reaching reforms in Roman society that sought to extinguish the faith.²¹ The Death of Dioclesian in 305 AD paved the way for a shift in the fortunes of the new faith.²² Dioclesian was eventually succeeded by Emperor Constantine after the brief sway of Galerius.²³ Legend has it that during the battle at the Milvian Bridge on the River Tiber in 312 AD in which Constantine defeated his rival Maxentius, Constantine was converted to Christianity.²⁴ Eusebius his official historian describes how he saw a vision of a cross of light in the heavens bearing the inscription "by this sign thou shall conquer"²⁵ The ascendancy of Constantine as the first Christian emperor of Rome was characterized by a close merger of church and state. It signaled the beginning of the rise of the Catholic Church to political power. This was reminiscent of the relationship between the palace and the temple in ancient times. Constantine used the church to solidify his hold and eastern part of the empire while the church enjoyed imperial favors and privileges.

It is instructive to observe at this point that the concept of temple and palace being inextricably connected was already part of the political culture of the Roman Empire. Rome had a long tradition of ruler worship before the republican period spanning the rule of the first Emperor Octavian/Augustus to the conversion of Constantine to Christianity.²⁶ The Various Roman Cults who thrived in their cities were viewed as state religions and treated as such. They were even jointly administered by priests and magistrates.²⁷ The emperor himself was revered under the title "Pontifex Maximus" as chief priest of the pagan state cult.²⁸ Consequently, the ascendancy of Christianity as one of the state religions under Constantine followed a similar pattern of temple and palace relationship. This relationship can be regarded as the platform on which the legal precedents to the tax exemption of churches were built. ☐

In 313 Emperor Constantine met with his co-emperor in the East, Licinius and they both agreed to what is now referred to as the "Edict of Milan." This document reversed the fortunes of Christians under the empire and compelled

21 Roger Osborne, *Civilization: A New History of the Western World*, Vintage London, 2007, pg, 123

22 Edward McGlynn Gaffney, Jr. "Religious Autonomy and the Exemption of Religious Organisations from Federal taxation in The United States." pg, 9

23 Ibid., 9

24 Roger Osborne, *Civilization: A New History of the Western World*, pg, 124.

25 Ibid', pg, 124.

26 Greg Woolf, "Divinity and Power in Ancient Rome" in Nicole Brisch (ed) *Power and Religion: Divine Kingship in the Ancient World and Beyond*, The University of Chicago, 2008, pg, 243.

27 Ibid., pg, 249

28 Kenneth Scot Lataurette, *A History of Christianity*, Harper and Row, New York 1953, pg, 92.

their losses to be returned to them.²⁹ By 325 AD when Constantine became the sole emperor of the east and west of the empire, he unified the western church at the council of Nicea and subsequently exempted the church from the payment of local taxes.³⁰ Thus tax exemption for religious organizations spread across Europe down the centuries. In Medieval England for instance, King Henry II is recorded to have exempted the “books and apparatus of clergymen” from taxation when the 1188 ordinances taxed the rest of the populace.³¹ It is then safe to assume that, this precedent in European history created a legal tradition within the state structure that would permit the gradual solidification of tax exemption for churches in western civilization.

Growth of Church Wealth

Constantine’s patronage of the church earned it the first legal status of tax exemption in the Roman Empire. This along with other privileges set the pace for the phenomenal growth of church wealth. The Emperor went further to devote huge sums of imperial and public funds to church building. He also endowed his churches with wealth and lands to provide revenue for their clergy and their upkeep.³² After the death of Constantine, the church grew in favour under subsequent emperors. S. G. Hall maintains that financial endowments to the church increased massively alongside government grants for charitable purposes. Also, A constant stream of gifts, including the estates of deceased clergy, swelled the property and wealth of the church.³³ The desire to sustain the expanding church wealth and protect church property even led to attempts by the papacy to impose celibacy on the clergy to enable the church to inherit all lands owned by the clergy after their demise.³⁴

The church essentially maintained internal accountability independent of the state through the mechanism of the hierarchy of the clergy over the centuries.³⁵ With time, however, the wealth of the church grew incredibly and this began to raise questions of accountability. The history of medieval Europe is spotted by the continuous tussle for power between the church and state with wealth and power at the center of the conflict. It is however easy to conclude that the growing wealth of the church threatened many in secular circles who saw no end to the power and wealth of the church which was only accountable to God. It was clear that men in clerical robes were abusing this

29 Edward McGlynn Gaffney, Jr. “Religious Autonomy and the Exemption of Religious Organizations from Federal taxation in The United States.” pg, 9

30 Ibid., pg, 9

31 Vaughn E. James, “reaping where they have not Sowed: Have American Churches Failed to Satisfy the Requirements for the Religious Tax Exemption?” Catholic Lawyer, Vol. 43, pg, 36.

32 Avaril Cameron, “Constantine and the Peace of the Church” in Margaret M. Mitchell and Frances M. Young (eds), The Cambridge History of Christianity: Origins to Constantine, Cambridge University Press, 2006, pg, 547.

33 Stuart George Hall, “The Organization of the Church” in Averil Cameron, Bryan Ward-Perkins and Michael Whitby (eds) The Cambridge Ancient History Volume XIV, Late Antiquity: Empire and Successors, A.D. 425–600, Cambridge University Press, 2008, pg, 741.

34 Ibid., pg, 741-742

35 Stuart George Hall, “The Organization of the Church” pg., 742.

power and privileges in such a manner that placed them and this age-old institution above the law. Most importantly the concept of the separation of church and state was increasingly gaining ground in both the church and the secular world. The concept of dualism expressed by St Augustine in the “City of God” was drawn upon to support the need for separation.³⁶ The terms of separation were however modeled after church superiority over the authority of the state. This was clearly expressed by Pope Gelasius who in 494 AD wrote a rebuke to Emperor Anastasius stating the following:³⁷

*“There are indeed, most august Emperor, two powers by which this world is chiefly ruled: the sacred authority of the Popes and the royal power. Of these the priestly power is much more important, because it has to render account for the kings of men themselves at [the Last Judgment]. For you know, our very clement son, that although you have the chief place indignity over the human race, yet you must submit yourself faithfully to those who have charge of Divine things, and look to them for the means of your salvation”.*³⁷

By 1015 AD, Pope Gregory and his successors finally cast off the political control of the kings and princes. The Catholic Church established itself with sole jurisdiction over spiritual and legal authority in Europe.³⁸ Church matters took precedence over secular issues. For instance, the Fourth Lateran Council in 1215 AD decreed that the payment of tithe was to take precedence over any other form of tax.³⁹ In fact, by 1296 Pope Boniface VIII published a papal Bull, *Clerics Laicos*, that forbade the clergy from paying taxes to secular powers.⁴⁰ Centuries followed with the growing decadence of church administration in both power and wealth.

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Accountability and Separation of Church and State

The question of accountability was central to the reformation movement of the 16th century. The rallying call of the reformation was “freedom of Christian” in this case from church laws.⁴¹ This development grew during the

36 John Witte, Jr, “The History of Separation of Church and State: Facts, Fictions, and Future Challenges” *Journal of Church and State*, Vol 48, No 1 (Winter 2006), pg 18.

37 Sidney Z. Ehler and John B. Morrall, *Church, and State Through the Centuries: A Collection of* ☐

Historical Documents With Commentaries (Newman, MD: Burnes & Oates, 1954), pg, 10-11.

38 Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), 85-119, 165-200.

39 Brigitte Resl, “Material Support I: Parishes” in Miri Rubin and Walter Simons (eds) *The Cambridge History of Christianity: Christianity in Western Europe c. 1100– c. 1500*, Cambridge University Press 2009, pg. 100

40 “Financial Privileges of Christian and Churches “ accessed from www.badnewsaboutchristianity.com/gdd_financial.htm

41 John Witte, Jr, “The History of Separation of Church and State: Facts, Fictions, and Future Challenges” pg. 21.

enlightenment period with great minds like that of John Locke lending a hand to the pressing argument for a more realistic separation of church and state. He claimed that it was “necessary to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other.”⁴² Two centuries later, the French Revolution brought the discourse on separation of church and state to a fever pitch crescendo. The corruption of the First Estate (the Catholic Church) was a crucial factor in the revolutionary movement. The New French republic stripped the church of almost all its rights establishing a legal precedent to the political separation and also financial responsibility to the church. In May 1790, the French National Assembly among several reforms approved a new settlement in which the payment by the state of reasonable salaries to both upper and lower clergy and the canonical institution of bishops would become the new practice.⁴³

The break between the church and state in the era after the French Revolution was not entirely clean. The Subsequent emergence of nation-states was accompanied by the submersion of the church apparatus under the state. The sentiments expressed by the French national assembly in 1790 was in the spirit of age-long propensity to somehow favor the church. All over Europe, the spirit of revolution reached a crescendo in 1848 and the church received largely similar treatment in different countries. Although the Church all over Europe lost a lot of property, prestige and certain tax exemptions in the post-revolutionary era, it still retained a good amount of favor as seen in the 1790 declaration of the French national assembly on the payment of salaries to the clergy. In Britain and America, the church retained even greater favor.

By 1842 Britain officially ended its taxation of churches when it enacted its first comprehensive income tax laws. This was an extension of British common law which granted tax exemption for church property under three conditions.

1. Only the property of incorporated established churches devoted to purposes prescribed by ecclesiastical law qualified for the exemption.
2. The exemption covered only "the ecclesiastical taxes that were levied for the church's own maintenance and use.
3. The state could eliminate the tax exemption "in times of emergency or abandon [it] altogether if the tax liability imposed on remaining properties in the community proved too onerous."⁴⁴

Tax exemption for churches was further improved when in 1601 Britain enacted the Statute of Charitable Uses. In its preamble, the statute stated the

42 John Locke, Letter Concerning Toleration (1689), in *The Works of John Locke*, 12th ed., 9 vols. (1824), 5:1–58.

43 A. Goodwin, “Reform and Revolution in France: October 1789- February 1793,” in A. Goodwin (ed) *The American and French Revolutions 1763-93; The New Cambridge Modern History Volume VIII*, Cambridge University Press 1965, pg. 688.

44 Vaughn E. James, "reaping where they have not Sowed: Have American Churches Failed to Satisfy the Requirements for the Religious Tax Exemption? pp, 36-37.☐☐

"repair of churches" as an example of charitable practices.⁴⁵ This was expanded under legal interpretation when in his 1891 opinion in *Commissioner Vs Pemsel*, Lord McNaughten stated that charity in its legal sense comprised of four principles among which included "trust for the advancement of religion"⁴⁶ McNaughten's opinion went on to influence the English income tax law of 1894.⁴⁷ British colonialism subsequently became a convenient means by which British law was spread to Africa and the far reaches of the globe. Likewise, other European powers spread their legal systems via colonialism. Even the American colonies largely followed the pattern laid down by their British overlords. Their conception of tax exemptions for religious organizations and charities has largely been a derivative of English law. By the dawn of the 20th century when Pentecostalism began to spread on the wings of globalization, the legal platforms for tax exemption for churches and charities were already in place. The relationship between church and state had ensured the enduring nature of this structure. Its continuous sustenance is, however, being challenged by new realities confronting the rapidly expanding Pentecostal movement. ☐

Justification for Tax Exemption☐

Argument for Tax Exemption for churches

The argument for tax exemption for churches largely revolves around the predominantly Judeo-Christian traditions of the western world. The exemption of priest from taxation in Egypt by Joseph in Genesis Chapter 37-48⁴⁸ and the tax-exempt privileges accorded the Jewish Levitical priesthood in the book of Numbers chapter 25 verse 32 represent the most prominent references to this effect.☐

The origins of churches retaining the classification of charitable organizations can be found in the interpretation of English common law. Given the already favorable disposition of the state towards the church after a long history of the association, it was natural that early English law would favor church organizations. In British common law, the statute of charitable uses was passed in 1601 to enforce charitable trust. Although it did not include "religious uses," the English court recognized the advancement of religion as a charitable purpose.⁴⁹ This means that it was the interpretation of the law and not the written code of the law that initially admitted the advancement of religion as a charitable cause. It is, therefore, needful to interrogate what English law interpreted as "charitable causes." The provision of relief for the sick and elderly for instance fell under "charitable causes" and since the church carried out these and several other similar activities, the advancement of religious causes was granted admittance under the classification of

45 Ibid., pg, 37

46 Ibid., pg, 37

47 Ibid., pg, 37

48 Edward McGlynn Gaffney, Jr. "Religious Autonomy and the Exemption of Religious Organizations from Federal Taxation in the United States" pg 7.☐

49 Erika Lietzan, "Tax Exemptions and the Establishment Clause," 49 Syracuse Law Review. 49 Syracuse L. Rev. 971 (1999), Pg, 978

charitable causes.⁵⁰ It was thus viewed by the government that the church "disposed of certain responsibilities that would otherwise fall to the government." In other words, a majority of church activities constituted social services that the government would otherwise have borne the responsibility of providing for the people. This English law became a precedent that spread to the United States and other parts of the world including Africa

Justification for tax exemption for churches was embedded in not just the common law but also the law of equity. Consequently, religious institutions received tax breaks in return for fulfilling social needs.⁵¹ This justification can also be found in the American modern-day "Social benefit Theory" which entails that as long as the churches provide public purpose they are entitled to tax-exempt status from the government. This action from government represents a quid-pro-quo relationship in which the government offers the churches financial benefits through tax-exempt status in order to encourage their development since they supplement or take the place of public institutions that ought to provide such services.⁵² The question is to what extent do churches in modern-day maintain this quid-quo-pro relationship?

Argument Against Tax Exemption for Churches and its Implications

A cursory look at the requirements for tax exemption for religious organizations in Africa and the Western world seem to have certain things in common. In Britain and the United States of America for instance, the requirements for a church organization to be recognized as a charitable organization include the following;

1. The church must be organized exclusively for religious, educational, scientific or other charitable purposes.
2. The net earnings of the organization must not inure to the benefit of any private individual or shareholder
3. The purpose and activities of the organization must not be illegal or violate public policy.
4. The organization must not intervene in political campaigns.⁵³

The similarity of these requirements cut across most African countries where Pentecostalism thrives. This is because the legacy of the British common law in America was also felt in the wake of British colonialism in Africa. In Nigeria for instance, the requirements for incorporating a church organization include the fact that "the aims and objectives of the association must be for the advancement of any religious, educational, literary, scientific, social

50 Elizabeth A. Livingston, "A Bright Line Points toward Legal Compromise: IRS Condoned Lobbying Activities for Religious Entities and Non-Profits", Rutgers Journal of Law and Religion, Volume 9.1 Spring 2008, pg. 4.

51 Ibid., pg 4.

52 Ibid., pg. 5.

53 Internal Revenue Service (IRS) "Tax Guide for Churches & Religious Organizations" Retrieved from <https://www.irs.gov/pub/irs-pdf/p1828.pdf>

development, cultural, sporting or charitable purpose, and must be lawful.”⁵⁴ The underlying principle in all these requirements is "charity" or "non-profitability." In other words, these are organizations that are social service orientated without the aim of making cash profits. It is in light of this that the government advances some form of cash incentive by exempting such organizations from paying certain taxes. Once an organization meets the requirement of charity or non-profitability, it should receive tax-exempt status. However, when religious organizations lose the character of non-profitability, their tax-exempt status cannot be maintained by law.⁵⁵

In 2009, the Lagos state government in Nigeria decided to tax the sales from books, tapes, compact disc, and other religious paraphernalia. This tax drive also included buildings that were used for business purposes by religious organizations.⁵⁵ The move sparked a huge controversy that saw the Nigerian Pentecostal Fellowship (PFN) threatening to sue the state government. For months the press published arguments for and against church taxation creating a huge national debate which eventually featured in the 2014 National Conference. On the 27th of May 2014, the delegates at the National Conference unanimously voted that religious organizations should begin paying taxes to the government.⁵⁶

The Recommendations of the National Conference delegates may not be binding; they, however, represent a policy direction that is desired by the people. The political ramifications of this "unanimous" decision indicate the increasing desire of the disenfranchised population for government interference into church affairs. It represents a vote of no confidence in the religious establishment and more distinctively the Pentecostal "prosperity movement" which is largely responsible for the outbreak of the debate in the first place. The public outcry and allegations of impropriety that attracted the attention of governments are not entirely unfounded given the activities of Pentecostal organizations that bother on outright abuse of their tax-exempt status. If the tax-exempt status of churches depend on non-profitability, the big question that follows is "are Pentecostal churches non-profit organizations" The answer of prosperity theology to this question is a big yes "for God is a businessman and he is interested in yielding profit from our lives" However does this drive for profit respect the boundaries of the law. ⁵⁶

Section 23(1) of Nigeria's Companies Income Tax Act (CITA) Cap C21.LFN 2004 states that the profit of any statutory, charitable, ecclesiastical, educational or other similar associations are exempted from companies' income tax obligation provided such profits are not derived from any trade or

54 Advocates for International Development, "Guide to Incorporation of Not for Profit Organizations in Nigeria," Accessed from <https://www.a4id.org/category/resource-category/development-partner-operations>

55 "Tax: Lagos Pastors Go To Court" accessed from <http://www.nairaland.com/280427/tax-lagos-pastors-go-court>

56 Henry Umoru, Joseph Erunke & Levinus Nwabughio, "Churches, Mosques now to Pay Tax – CONFAB," accessed from <http://www.vanguardngr.com/2014/05/churches-mosques-now-pay-tax-confab/>

business carried on by such an organization or association.⁵⁷ However, the manner in which prosperity Pentecostal mega-churches conduct their financial affairs borders on brinkmanship of the law. The tax-exempt status of churches covers "buildings used for religious purposes" These buildings are exempt from property tax as long as they are not used for commercial profit-oriented purposes. Building structures within Pentecostal circles in most African countries however now serve a dual purpose. They are both worship centers and active business premises where bookstores, supermarkets, restaurants, and even church-owned banks operate. This informs the desire of governments to now subject churches to property tax. The commercialization of the gospel which the South African government was trying to investigate is a common phenomenon throughout the continent. The sale of religious paraphernalia range from anointing oil; holy water; blessed handkerchiefs, etc. A price has also been placed by some groups on the intercession and prayers of the prophet and deliverance ministers which is reminiscent of the sale of indulgence during the middle ages in Europe.☐

The argument against tax exemption for churches is founded upon the presupposition that the church is a charitable organization. The lack of accountability of Pentecostal movements in the United States of America recently led to the appointment of the senate committee to investigate the erring ministries. The recent calls in the US, Europe, and Africa for the removal of tax exemption for religious organizations were all predicated upon public uproar to what many refer to as a compromise of the non-profit status of church organizations and also a lack of transparency and accountability. It was for this purpose that Senator Grassley (Chairman of the US Senate Committee) declared that "My goal is to help improve accountability and good governance so tax-exempt groups maintain public confidence in their operations."⁵⁸ Good governance under question here is in reference to the governance of funds entrusted to church organizations by citizens of a country. In other words, the government reserves the right to ensure that the church handles church money properly for the benefit of its people. To this end, several arguments have also been put forward. The most profound was presented in the aftermath of the US Senate inquiry into the activities of six mega-church Pentecostal pastors. Only two of the six pastors (Joyce Meyer and Benny Hinn) met the request of the senate committee on finance to make open their financial activities to the committee. The rest refused to meet this demand and to, this Rich Vermillion presented the following theological argument.☐

Quoting from two scriptures, Vermillion maintained that the refusal of these Pentecostal ministries to make transparent their records is in direct contravention of biblical standards.

"Recompense to no man evil for evil. Provide things honest
in the sight of all men." (Romans 12:17, KJV)

57 FIRS, "Guidelines on the Tax Exemption Status of Non-Governmental Organisations" (NGOs) Information Circular, FIR, August 2010.

58 Lillian Kwon, "Grassley Concludes Senate Probe of 'Prosperity' Televangelists"
Accessed from <http://www.christianpost.com/news/48383/#cEywAxt7884lVECD.99>

"...And we are sending along with him the brother who is praised by all the churches for his service to the gospel. What is more, he was chosen by the churches to accompany us as we carry the offering, which we administer in order to honor the Lord himself and to show our eagerness to help. We want to avoid any criticism of the way we administer this liberal gift. For we are taking pains to do what is right, not only in the eyes of the Lord but also in the eyes of men. (2 Corinthians 8:18-21, NIV)⁵⁹

The scripture references maintain that the church has a divine mandate to be transparent about financial matters, not just to its members, but "to all men" (government in this case). This argues for a certain level of accountability of the church towards the government.☐

Further biblical arguments presented include the following by the apostle Paul;

"Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also because of conscience. This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing. Give everyone what you owe him: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor." (Rom 13:1-7NIV)

Below Jesus is seen to be encouraging his disciples to pay tax.

After Jesus and his disciples arrived in Capernaum, the collectors of the two-drachma tax came to Peter and asked, "Doesn't your teacher pay the temple tax?" "Yes, he does," he replied. When Peter came into the house, Jesus was the first to speak. "What do you think, Simon?" he asked. "From whom do the kings of the earth collect duty and taxes from their own sons or from others?" "From others," Peter

⁵⁹ Rich Vermillion, "Senator Grassley's Crusade of Honor", accessed from <https://kennethcopelandblog.com/2008/11/10/senator-grassleys-honorable-crusade/>

answered. Then the sons are exempt," Jesus said to him. "But so that we may not offend them, go to the lake and throw out your line. Take the first fish you catch; open its mouth and you will find a four drachma coin. Take it and give it to them for my tax and yours." (Matt 17:24-27 NIV)☐

A final word on New Testament theology is provided by the Lord Jesus himself while responding to the challenge of the Pharisees regarding taxes.

"give unto Caesar, what is Caesar's and render to God, what is God's," (Matt 22:21)

Conclusion.

The debate over the legitimacy of tax exemption for religious organizations will go a long way in determining the future dynamics of church and state relationships. The spread of Pentecostalism has given rise to the increasing involvement of the church in politics and as a non-state actor, the last few decades have seen an exceptional rise in the influence and power of church organizations in the political sphere. The element of corruption and lack of accountability, however, poses a serious question regarding the health of this relationship. Historical antecedents have however established that once issues of integrity threaten the fabric of the church, reform movements emerge from within and without to engage the process. The reformation and counter-reformation in the 16th century are testimonies of this phenomenon. The calls for reform outside ecclesiastical institutions are getting louder and presently it is being compensated by a growing discontent within the establishment.